



**FRANCHISE DISCLOSURE DOCUMENT**

**SMOKER'S DESTINY, LLC**

**ISSUANCE DATE : APRIL 28, 2023**

## FRANCHISE DISCLOSURE DOCUMENT



### Smoker's Destiny, LLC

A Pennsylvania limited liability company  
1236 E Lincoln Hwy  
Langhorne, Pennsylvania 19047  
hmv.infinity@gmail.com  
www.smokersdestiny.com

Smoker's Destiny, LLC ("Smoker's Destiny Smoke Shop") offers franchises for prospective business owners that want to operate a modern smoke & vape shop that will carry all smoking related products for tobacco, nicotine, and other legal herbal use (a "Smoke Shop" or "Franchised Business").

The total investment necessary to begin operation of a new Franchised Business ranges from \$346,450 to \$778,600. This includes the amount of \$40,000 that must be paid to the franchisor or its affiliates.

This Disclosure Document summarizes certain provisions of your franchise agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Harshad Patel at 1236 E Lincoln Hwy, Langhorne, Pennsylvania 19047; (215) 989-8112; hmv.infinity@gmail.com.

The terms of your contract will govern your franchise relationship. Don't rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "*A Consumer's Guide to Buying a Franchise*," which can help you understand how to use this Disclosure Document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

This Disclosure Document was issued on April 28, 2023.

## State Cover Sheet

### How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits, or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Exhibit C.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Exhibit A includes financial statements. Please review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Smoker's Destiny Smoke Shop business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Smoker's Destiny Smoke Shop franchisee?</b>	Exhibit C lists the current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## **What You May Need To Know About Franchising *Generally***

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business Model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from a franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### **Some States Require Registration**

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit B.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement or area development agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider about *This Franchise*

Certain states require that the following risk(s) be highlighted:

**Out of State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Pennsylvania. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Pennsylvania than in your own state.

**Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support you.

**Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your spouse and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

**Unregistered Trademark.** The primary trademark or logo that you will use in your business is not federally registered. If the franchisor's right to use the trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This change can be expensive and may reduce brand recognition of the products or services your offer.

**Supplier Control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.

**New Franchise Concept.** We do not have a proven concept for the business model we are seeking to franchise, and our name and trademarks have limited name recognition. The business model has never been franchised prior to 2023. As of the Issuance Date of this Disclosure Document, there are no (and have been no) franchisees who have signed a franchise agreement and/or opened and operated a Smoker's Destiny franchised business - all Smoker's Destiny businesses have been owned and operated by franchisor or its affiliates.

**Compliance with FDA Regulations.** The affiliate of the franchisor is in the process of evaluating and attempting to comply with FDA regulations. If the affiliate is unable to comply with FDA regulations, in whole or in part, it may have material effects on the Smoker's Destiny Smoke Shop products that are permitted to be sold in the United States.

**Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

## DISCLOSURES REQUIRED BY CONNECTICUT LAW

**The State of Connecticut does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.**

1. Pursuant to Section 36b-63(c)(23) of the Connecticut Business Opportunity Investment Act:

**If the seller fails to deliver the products, equipment or supplies or fails to render the services necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled”.**

2. Pursuant to Section 36b-63(c)(21) of the Connecticut Business Opportunity Investment Act, regarding historical information relating to sales or earning claims:

**"Caution: Some business opportunities have earned this amount. There is no assurance you will do as well. If you rely upon our figures, you must accept the risk of not doing as well."**

3. Pursuant to Section 36b-63(c)(20) of the Connecticut Business Opportunity Investment Act regarding the Seller's Sales or Earnings Estimates and Projections:

**"Caution: These figures are only estimates of what we think you may earn. There is no assurance you will do as well. If you rely upon our figures, you must accept the risk of not doing as well."**

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**ITEM 1.**  
**THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

To simplify the language in this Disclosure Document, “Smoker’s Destiny Smoke Shop”, “SDSS” or “we” means Smoker’s Destiny, LLC, the franchisor. “You” or “Franchisee” means the person or entity who buys the franchise, including all equity owners of a corporation, general partnership, limited partnership, limited liability, or any other type of entity (an “Entity”). If you are an Entity, each individual with direct or indirect ownership interest shall be referred to as an “Owner.”

**The Franchisor**

Smoker’s Destiny, LLC is a Pennsylvania limited liability company organized on November 29, 2022, with a principal place of business at 1236 E Lincoln Hwy Langhorne, Pennsylvania 19047. To the extent that we have designated agents for service of process in other states, they are listed in Exhibit B. We conduct business under the name “Smoker’s Destiny Smoke Shop.” We began offering franchises on April 28<sup>th</sup>, 2023. We have not, and do not offer other franchises in any other line of business. We have not, and do not operate a business of the type that we are franchising. We have not, and do not conduct any other business activities other than selling and supporting Franchised Businesses. We do not have any predecessors or parents.

**Parents, Predecessors and Affiliates**

Our affiliate, Infinity Smoke Shop, LLC (“Infinity”) is a Pennsylvania limited liability company organized on August 23, 2019, with a principal place of business at 1236 E Lincoln Hwy Langhorne, Pennsylvania 19047. Infinity owns the marks we are licensing in this Disclosure Document and has licensed us the right to unrestricted use of the marks through a license agreement. Infinity will not provide products or services to our franchisees. Our affiliate does not and has not offered franchises in this or any other line of business. Our affiliate does not conduct any other business activities.

Our affiliate, H&V, LLC (“H&V”) is a Pennsylvania limited liability company organized on August 23, 2019, with a principal place of business at 1236 E Lincoln Hwy Langhorne, Pennsylvania 19047. H&V operates a location similar to the Franchised Businesses, under the mark “Infinity Smoke Shop” but will be changing to conform with the marks we are licensing in this Disclosure Document. H&V will not provide products or services to our franchisees. Our affiliate does not and has not offered franchises in this or any other line of business. Our affiliate does not conduct any other business activities.

Our affiliate, H&V Morrisville, LLC (“Morrisville”) is a Pennsylvania limited liability company organized on February 5, 2021, with a principal place of business at 1236 E Lincoln Hwy Langhorne, Pennsylvania 19047. H&V Morrisville operates a location similar to the Franchised Businesses, under the mark “Infinity Smoke Shop” but will be changing to conform with the marks we are licensing in this Disclosure Document. Our affiliate will not provide products or services to our franchisees. Our affiliate does not and has not offered franchises in this or any other line of business. Our affiliate does not conduct any other business activities.

Other than as described above, none of our affiliates will provide products or services to our franchisees. None of our affiliates offer franchises in any line of business. Collectively, our affiliate’s locations will be referred to as “Company-Owned Outlets.”

**The Business and Franchises Offered**

We are offering, under the terms of this Disclosure Document, the opportunity to become a franchisee to develop and operate a Smoker’s Destiny Smoke Shop Franchised Business. Our affiliates have conducted the business to be operated by you since 2019. Franchised Businesses offer: (i) wide selection of smoking related products for tobacco, nicotine, and other legal herbal use (ii) and other similar services that we may approve and modify from time to time (collectively the “Approved Products and Services”).

A Franchised Business operates under the “Smoker’s Destiny Smoke Shop” mark and certain other trademarks, service marks, trade names, signs, associated designs, artwork, and logos (collectively, the “Marks”). We may designate other trade names, service marks, and trademarks as Marks and may change the Marks at any time.

A Franchised Business operates under a prescribed system of specifications and operating procedures that we have and/or will continue to develop (the “System”). The distinguishing characteristics of the System include, but are not limited to, our designs, layouts, and identification schemes (collectively, the “Trade Dress”), our specifications for equipment, inventory, and accessories; our website or series of websites for the Franchised Businesses (the “System Website”); our relationships with vendors; our software and computer programs; the experience reflected in our training program, operating procedures, customer service standards, and marketing techniques; and the mandatory and suggested policies, procedures, and requirements (“System Standards”) set out in our operations manuals (“Manuals”) and otherwise in writing. We may change, improve, add to, and further develop the elements of the System from time to time.

You may purchase a Smoker’s Destiny Smoke Shop Franchised Business which grants you the right to develop and operate one Franchised Business at a mutually agreed upon site (“Site”) within an area (“Site Selection Area”) specified in the Franchise Agreement that we and you will execute (the “Franchise Agreement”). Our current form of Franchise Agreement is included as Exhibit E. You will have no right to open any additional Franchised Businesses. Under the Franchise Agreement, you have no right to use the Marks or the System at any location other than the Site or to use the Marks or the System in any other channel of distribution other than the operation of the Franchised Business within the Territory. See Item 12 for more details about your Territory and certain rights that we retain.

You may, if we approve, convert an existing business offering similar services to a Franchised Business by entering into a Franchise Agreement with us.

## **Competition**

The general market for the products and services offered by Franchised Businesses is well developed and made up of adults of legal smoking age, and there will be competition from other national and local businesses that offer the same or similar services. The market for our services year-round, but it will fluctuate to some degree depending on the time of year. Your competitive advantage in the marketplace will be based largely on your adherence to our System Standards, as well as your entrepreneurial and managerial abilities and focus on customer service.

## **Industry-Specific Regulations**

You will have to comply with federal, state, and local laws and regulations that are applicable to business generally (such as employment, workers’ compensation, OSHA, insurance, and health and safety requirements). In some states you may be required to obtain alcohol, tobacco, lottery, restaurant, pharmacy, business and occupational, food products, and miscellaneous other permits in addition to permits that are otherwise required for tobacco shops. Some states may also have laws regarding who may secure these permits. It is your responsibility to comply with all applicable laws in the operation of your Franchised Business. We urge you to make further inquiries about these laws in the area in which you intend to operate your Franchised Business.

Some states, cities and/or municipalities have restricted the use of e-cigarettes and included them with the same or similar restrictions on the use of tobacco products. There may be state, county and municipal law, ordinances, rules and regulations pertaining to electronic cigarettes that affect your Franchised Business. You should consult with your attorney about laws and regulations that may affect your Franchised Business.

On May 10, 2016, the United States Department of Health and Human Regulations, Food and Drug Administration (“FDA”) issued a Final Rule (“Final Rule”) entitled “Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products”. As of March 31, 2018, the current version of this rule requires that all Electronic Nicotine Delivery Systems (“ENDS”), including electronic cigarettes, must comply with FDA regulations. Including regulations affecting the manufacture and retail of ENDS products.

Our affiliate is in the process of evaluating and attempting to comply with these FDA regulations. If our affiliate is unable to comply with FDA regulations, in whole or in part, it may have material effects on the Smoker’s Destiny Smoke Shop products that are permitted to be sold in the United States.

Examples of industry compliance risks include a manufacturer’s inability to file applications for certain products by the FDA’s deadline, FDA’s rejection of certain applications, FDA’s unwillingness to affirmatively render a decision by the deadline (thereby preventing the product from being sold), a manufacturer’s inability to extend deadlines, continuing uncertainty within the industry regarding specific content for premarket tobacco applications, substantial expenses associated with FDA application requirements, and implementation of new FDA product standards and similar regulatory compliance issues beyond our reasonable control. These issues are not unique to us, but they may affect our industry such that the number and type of products available to Smoker’s Destiny Smoke Shop may be limited or extinguished altogether (absent statutory relief, regulatory changes or judicial intervention).

As a retailer of ENDS products, you are required to comply with all FDA regulations for the sale of tobacco products. The FDA provides the following literature for Retailer Overview of FDA Regulations for Selling Tobacco products at <https://www.fda.gov/tobacco-products/compliance-enforcement-training>

## **ITEM 2. BUSINESS EXPERIENCE**

### **Harshad Patel – President**

Mr. Patel is our President and serves as our President since our formation in November 2022. From his offices in Langhorne, Pennsylvania, Mr. Patel serves as an owner of our affiliates: H&V Morrisville, LLC since October 2021, H&V Mont LLC since November 2020, H&V, LLC since September 2019. Mr. Patel has also owned Jai Hind, LLC since January 2018.

### **Vishal Patel – Co-Owner**

Mr. Patel has been a Co-Owner since our formation in November 2022. From his offices in Langhorne, Pennsylvania, Mr. Patel serves as a Co-Owner of our affiliates: H&V Morrisville, LLC since March 2021, H&V Mont LLC since November 2020, H&V, LLC since September 2019. From January 2018 through September 2019, Mr. Patel served as a Manager for Jai Hind, LLC in Langhorne, Pennsylvania.

### **Dezmond Smith – Manager/Supervisor**

Mr. Smith, prior to his current role, worked as an associate at a T.J. Maxx in Langhorne, Pennsylvania from October 2020 to April 2021. Mr. Smith worked as a Warehouse Associate at Amazon in Burlington, New Jersey from April 2020 to July 2020. Mr. Smith worked as a Scanner Operator at MetaSource in Bristol, Pennsylvania from December 2019 to February 2020. Mr. Smith worked as a warehouse associate at Custom Happy in Bristol, Pennsylvania from August 2018 to August 2019. Mr. Smith worked as a Metal Finisher at Zober Industries in Croydon, Pennsylvania from January 2018 to April 2018. Mr. Smith worked as an associate at Walmart in Levittown, Pennsylvania from April 2017 to January 2018.

**ITEM 3.  
LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4.  
BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

**ITEM 5.  
INITIAL FEES**

**Initial Franchise Fee**

The initial franchise fee (the “Franchise Fee”) for a single Franchised Business is \$40,000 and is due upon execution of the Franchise Agreement. The Franchise Fee is not refundable under any circumstances.

Except as described above, the fees described in this Item 5 are non-refundable, uniform for all franchisees, and must be paid in a lump sum.

**ITEM 6.  
OTHER FEES**

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Royalty Fee <sup>2</sup>	8% of your Gross Revenue	Weekly, for the week preceding	See Note 2 for the definition of Gross Revenue.
Marketing Fee	Currently not assessed; we reserve the right to collect up to 2% of Gross Revenue	Same as Royalty	You must contribute the Marketing Fee to our established Marketing Fund.
Local Marketing Spending Requirement	Minimum of 1% of Gross Revenue	As incurred	In addition to your Marketing Fee, beginning in the first full month after the date the Franchised Business opens, you must spend a minimum of 1% of Gross Revenue per month on local advertising and promotional activities, which shall be payable directly to third party vendors. If you fail to pay the required amount in any quarter, we may require you to pay us the shortfall as an additional Marketing Fee or to pay us the shortfall for us to spend on local marketing for your Franchised Business.

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Technology Fee	Currently, \$200 per month but subject to change at any time upon 30 days' written notice to you.	Same as Royalty	The Technology Fee currently includes fees related to your access to and usage of our reservation system, our intranet, any mobile applications we develop, and the System Website. We may add, delete, or otherwise modify the products and services that are included in the Technology Fee. There is no cap on the amount the Technology Fee may be increased. Any increase will be based on our actual increase in costs to us. The first month will be assessed pro rata from the date on which you begin receiving services.
Transfer Fee	\$10,000	\$2,500 deposit due with written notice of proposed transfer; balance due at closing	No Transfer Fee is due for transfers upon death or incapacity.
Renewal Fee	Our administrative expenses in executing a renewal agreement.	As invoiced, if you renew	
Late Fee and Interest	18% per annum or maximum interest rate allowed by law (whichever is less) from due date to date of payment, plus \$25 for each day that a payment is paid after the due date for the payment specified	When amount owed becomes past due	Required whenever a payment to us is made after its due date.
Relocation Fee	\$2,500 plus our administrative and legal costs in evaluating the relocation	Upon demand	Payable if you relocate your Franchised Business from the Site to a new location
Initial Training Fee for Additional or Replacement Trainees	Currently, \$0 per trainee for up to 3 trainees who attend a scheduled training class at our headquarters. (subject to change without limitation upon written notice to you). \$500 per day for additional on-sight training at your Site (plus the cost of our travel and living expenses).	Within 10 days of receipt of an invoice	We will provide Initial Training in the System for up to three trainees at no charge. We reserve the right to charge a reasonable fee for training (i) more than three trainees, even if they attend the same training session, (ii) persons who are repeating the course or replacing a person who did not pass, and (iii) subsequent Operating Principals, Key Managers, or employees who attend the course.
Additional Training Programs	Our actual cost, which varies based on program	Within 10 days of receipt of an invoice	We may charge you a reasonable fee for optional or required training programs that we may provide.

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
In-Person Consulting Services	Currently, \$500 per employee or agent for each full or partial day, plus their travel and living expenses	Within 10 days of receipt of an invoice	Payable if we provide requested consulting services in person at a place other than our offices. We may change this fee without limitation from time to time upon written notice to you. Any fee change will be based on our then current costs, and any foreseen additional costs based off of the requested consulting services.
Temporary Key Manager	Currently, \$500 per employee or agent for each full or partial day, plus their travel and living expenses plus our actual costs and expenses	Within 10 days of receipt of an invoice	Payable if we provide a Key Manager to work at your Franchised Business, after the departure of your previous manager, until a new Key Manager is hired and trained
Temporary Management	5% of the Franchised Business's Gross Revenue during the period of management, plus any direct out of pocket costs and expenses	Within 10 days of receipt of an invoice	Payable if we exercise our right to manage your Franchised Business after a default
Annual Convention	\$1,000 for up to 2 people to attend. We may charge a reasonable fee for additional attendees.	Prior to attending the event	Payable for you and your employees who attend the annual convention that we host. You are responsible for the travel and living expenses of you and your employees. If you do not attend the mandatory seminars, annual convention, you must pay us the applicable registration fee, regardless of the cause for non-attendance, unless you receive our advance written approval for such absence.
Product, Service, Supplier, and Service Provider Review	Our actual cost of the inspection and our actual cost of testing the proposed product or evaluating the proposed service or service provider, including personnel and travel costs	Upon demand	Payable if you wish to offer products or use any supplies, equipment, or services that we have not approved or wish to purchase from a supplier or service provider that we have not approved, whether or not we approve the item, service, supplier, or service provider.
Insurance	Cost of the premium plus a 10% administrative fee for our services in procuring the insurance	Upon demand	Payable only if you fail to maintain the minimum insurance we require and we choose to procure the required insurance for you.
Mystery Shopper Program	A reasonable fee as defined in the Manuals	Upon demand	We have the right to establish a mystery shopper-type program and to set reasonable fees associated with such program. Details of any program and fees will be included in the Manuals.

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Audit	Our costs and expenses, including costs for an independent accountant and attorneys' fees and related travel and living expenses	Within 10 days of demand	Payable if audit or review shows an understatement of Gross Sales for the audited or reviewed period of 2% or more.
Inspection	Our actual expenses incurred in inspecting your business (ourselves, through our employees or agents), including travel and living expenses, wages, and other expenses for our employees	Upon demand	Payable if inspection is necessitated by your repeated or continuing failure to comply with any provision of the Franchise Agreement.
Remedial Expenses	Our actual expenses incurred in correcting your operational deficiencies	Upon demand	Payable if we correct deficiencies that we have identified during a Site inspection and that you failed to correct within a reasonable time after notice from us.
Indemnification	Amount of our liabilities, fines, losses, damages, costs and expenses (including reasonable attorneys' fees)	Upon demand.	Payable if we incur losses due to your breach of the Franchise Agreement or any other action or inaction by you or any other person relating to your Franchised Business
Enforcement Expenses	Our actual cost of de-identifying your Franchised Business	Upon demand	Payable if your Franchise Agreement expires or is terminated, you fail to de-identify your Franchised Business and we take steps to do so.

#### NOTES:

1. Except as described in the remarks above, all of the fees in the table above are imposed by us, payable to us, non-refundable, and are uniformly imposed. You must use the payment methods we designate. You must furnish us and your bank with any necessary authorizations to make payment by the methods we require.

2. "Gross Revenue" means all revenue that you receive or otherwise derive from operating the Franchised Business whether from cash, check, credit or debit card, gift card or gift certificate, or other credit transactions. If you receive any proceeds from any business interruption insurance applicable to loss of revenue at the Franchised Business, there shall be added to Gross Revenue an amount equal to the imputed gross revenue that the insurer used to calculate those proceeds. Gross Revenue includes promotional allowances or rebates paid to you in connection with your purchase of products or supplies or your referral of customers. In the case where you receive only a commission from a business activity rather than the gross revenues from such activity (e.g., lottery ticket sales, ATMs, and the like), only the commission received by you shall be included in Gross Sales provided that such commissions are reasonable and customary. Gross Revenue does not include (i) any bona fide returns and credits that are actually provided to customers, (ii) any bone fide shipping charges that you collect from a customer and actually pay to a third-party shipping or logistics company for the delivery of items to customers, (iii) any sales or other taxes that you collect from customers and pay directly to the appropriate taxing authority. You may not deduct payment provider fees (i.e., bank or credit card company fees and gift card vendor fees) from your Gross Revenue calculation.

**ITEM 7.**  
**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be made
	Low Estimate	High Estimate			
Initial Franchise Fee <sup>1</sup>	\$40,000	\$40,000	Lump sum	At signing	Franchisor
Travel to Training Expenses <sup>2</sup>	\$500	\$2,000	As incurred	As incurred	Misc. Vendors
Rent (plus 1 month deposit) <sup>3</sup>	\$14,000	\$40,000	As incurred	As incurred	Landlords
Leasehold Improvements <sup>4</sup>	\$10,000	\$50,000	As incurred	Prior to opening	Vendors & Contractors
Furniture and Fixtures <sup>5</sup>	\$40,000	\$70,000	As incurred	Prior to opening	Vendors & Contractors
Technology Fee <sup>6</sup>	\$600	\$600	As incurred	As incurred	Franchisor
Signage <sup>7</sup>	\$5,000	\$10,000	As incurred	Prior to opening	Vendors & Contractors
Telecom/Security Equipment <sup>8</sup>	\$500	\$2,000	As incurred	Prior to opening	Vendors & Contractors
Computer System <sup>9</sup>	\$2,500	\$5,000	As incurred	Prior to opening	Vendors & Contractors
Opening Inventory and Supplies <sup>10</sup>	\$200,000	\$500,000	As incurred	As incurred	Misc. Vendors
Grand Opening Marketing <sup>11</sup>	\$500	\$2,000	As incurred	Prior to opening	Misc. Vendors
Professional Services <sup>12</sup>	\$2,500	\$6,000	As incurred	As incurred	Accountant and Attorney
Business Licenses <sup>13</sup>	\$350	\$1,000	As incurred	As incurred	Government Agencies
Additional Funds - 3 month <sup>14</sup>	\$30,000	\$50,000	As incurred	As incurred	Misc. Vendors
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>15</sup></b>	<b>\$346,450</b>	<b>\$778,600</b>			

**Notes:**

Generally. The amounts provided in this Item 7 include costs you will incur to start your business. These estimates are based upon industry data and upon the experience of our management team in operating similar businesses in Pennsylvania. All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. We do not require you to purchase a facility to serve as the headquarters for your Franchised Business. This estimate does not include costs associated with the acquisition of real estate if you decide to operate from a building you purchase. If you choose to operate your Franchised Business from a building you purchase, your costs will be significantly higher.

1. Franchise Fee. The standard Franchise Fee for opening a single unit is \$40,000.
2. Travel Expenses to Training. This estimate is for the cost of three people to attend Initial Training in Langhorne, Pennsylvania, or for one of our representatives to provide training to you at your Smoke Shop. If you elect to participate in Initial Training at our headquarters, you are responsible for the travel and living expenses, wages, and other expenses incurred by your trainees during Initial Training. If you

elect to have our representatives provide Initial Training at your Smoke Shop, you are responsible for the travel and living expenses of our representative while they conduct Initial Training in your area. The actual cost will depend on your location, method of travel, class of accommodations, and dining choices.

3. Rent. The figures in the table reflect our estimates for leasing our standard prototype Smoke Shop, which is a one-story 1,500 – 4,000 square foot space. The low estimate assumes that you will be able to negotiate a rent abatement for your initial months of operation. The high estimate assumes that you lease a Smoke Shop in a high-demand area and do not receive a rent abatement. Your rent will depend on the Site's size, condition, visibility, accessibility, and location, local market conditions, and demand for the premises among prospective lessees. In certain major metropolitan markets such as Boston, Chicago, New York, Los Angeles, San Francisco, Seattle, and Washington, D.C. and in certain other high demand districts, prevailing market rents could be significantly higher than the high estimate. We cannot accurately project your costs. You should consult with a local commercial real estate broker to get a more accurate estimate of costs in your market.

You may choose to purchase, rather than rent, real estate on which a building suitable for the Smoke Shop already is constructed or could be constructed. Because of the numerous variables that affect the value of a particular piece of real estate, this initial investment table does not reflect the potential purchase cost of real estate or the costs of constructing a building suitable for the Smoke Shop.

4. Leasehold Improvements. This estimate includes the net cost of leasehold improvements to our standard prototype 2,500 square foot Smoke Shop, including floor coverings, wall treatments, ceilings, painting, electrical, carpentry, plumbing, HVAC, and similar work. Our standard prototype Smoke Shop is a one-story 2,500 square foot space, but Smoke Shops typically range from 2,500 square feet. This estimate includes both materials and the cost of labor. You may be able to negotiate tenant improvement allowances from your landlord.

If you are able to negotiate a tenant improvement allowance from your landlord, the landlord typically may require you to provide proof that you have paid for the leasehold improvements before reimbursing you the money. Some landlords may require you to receive the tenant improvement allowance in the form of reduced rent over the life of your lease, rather than in the form of a lump sum reimbursement. As a result, your actual out-of-pocket costs and the cost of any construction financing that you may need to obtain may be significantly higher than the net leasehold improvement costs presented in this table.

Your actual costs will depend on, among other factors, the Smoke Shop location, the size of the Smoke Shop, the condition of the premises being remodeled, national and local economic factors, the local costs of materials and labor, and the amount of tenant improvement allowances that you are able to obtain, if any. In certain major metropolitan markets such as Boston, Chicago, New York, Los Angeles, San Francisco, Seattle, and Washington, D.C., costs could be significantly higher than the estimates provided here due to local market rates for materials and labor. As a result, we cannot accurately project your costs.

5. Furniture and Fixtures. This estimate includes the furniture, fixtures, and equipment to be used in the Smoke Shop, including, showcases, slatwall, hooks, shelves, checkout counter, and gondola racks.

6. Signage. This estimate includes the cost store front signage and pylon signs for the Smoke Shop.

7. Telecom and Security System. This estimate includes the purchase of a work phone, a camera system, DVR, an alarm system, and a Bluetooth speaker the cost of purchasing a video security system with telecom capabilities for your Smoke Shop.

8. Computer System. This figure includes the cost of acquiring the hardware, software, other equipment, and network connections (including three months of internet service and security system service) that we specify in the Manuals necessary to operate our point-of-sale system, the customer relationship management system, the online reservation system, and other technology systems that we designate (the "Computer System"). You must purchase these components from suppliers that we approve

or designate and must execute any related software licenses required by designated vendors. See Item 11 for details on required hardware and software.

9. Security Deposits for Lease and/or Utilities. This estimate includes prepaid rent and deposits payable to the landlord or storage facility and any deposits on utilities required to open the Franchised Business. These amounts will vary based on your location and the terms of your lease.

10. Initial Product/Inventory Purchase. This estimate covers the cost of your initial inventory of smoking related products for tobacco, nicotine, and other legal herbal use for use in your Smoke Shop. The size of your inventory will depend on the size of your Smoke Shop, the number of retail bays that you have, and the products that we require you to stock.

11. Grand Opening Marketing Spend. This estimate covers the cost of your grand opening advertising. This cost includes the price of flyers, business cards, and flags.

12. Professional Services. This figure estimates the cost to have an attorney and accountant review your documents.

13. Business Licenses. This estimate includes the cost of acquiring business licenses and permits. Your costs will vary depending upon your Franchised Business's location.

14. Additional Funds. This is an estimate of the amount of any other additional required expenses the franchisee will incur before operations begin and during the initial first three months after opening your business. We cannot guarantee that you will not have additional expenses starting the business. The factors considered in coming to the amount range includes additional funds you may need to pay employee salaries and wages, utilities, payroll taxes (including payroll to cover the grand opening promotional period and the pre-opening training period for your staff), Royalty Fees, Marketing Fees, Technology Fees, legal and accounting fees, additional advertising, health and workers' compensation insurance, bank charges, miscellaneous supplies and equipment, staff recruiting expenses, state tax and license fees, deposits, prepaid expenses, and other miscellaneous items. These factors are based off of our knowledge of the industry, our experience in operating, and general notions of operating a business. It is best to contact your accountant or financial advisor for further guidance.

15. Total. This total amount is based upon our experience developing and operating the affiliate businesses in Pennsylvania, industry data, and the experience of our management team in operating similar businesses. We strongly recommend that you use these categories and estimates as a guide to develop your own business plan and budget and investigate specific costs in your area. You should independently investigate the costs of opening a Franchised Business in the geographic area in which you intend to open a Franchised Business. You should also review the figures carefully with a business advisor before making any decision to purchase the Franchise.

We do not provide financing to franchisees either directly or indirectly in connection with their initial investment requirements. The availability and terms of financing obtained from third parties will depend upon such factors as the availability of financing, your credit worthiness, collateral which you may make available, or policies of local lending institutions with respect to the nature of the business.

## **ITEM 8.**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

#### **Authorized Products and Services**

We have the right to require that furniture, fixtures, signs and equipment (the "Operating Assets") and products, supplies, and services that you purchase for resale or purchase or lease for use in your Franchised Business: (i) meet specifications that we establish from time to time; (ii) be a specific brand, kind, or model; (iii) be purchased or leased only from suppliers or service providers that we have expressly approved; and/or

(iv) be purchased or leased only from a single source that we designate (which may include us or our affiliates or a buying cooperative organized by us or our affiliates).

You must offer to customers only the products and services we approve in writing. In addition, you must offer the specific products and services that we require in the Manuals or otherwise in writing. We may change these specifications periodically, and we may designate specific products or services as optional or mandatory. You must offer all products or services that we designate as mandatory. You may sell products and services only in the varieties, forms, and packages that we have approved in accordance with our System Standards. You must maintain a sufficient supply of required products to meet the inventory standards we prescribe in the Manuals (or to meet reasonably anticipated customer demand, if we have not prescribed specific standards).

We may require you to purchase merchant processing services from us, our affiliates, or an approved vendor we select. You must (i) require your customers to pay all services and other fees through the Computer System; or (ii) enter all other payments received from customers into the Computer System upon receipt. When you begin collecting revenue in your Franchised Business, the payment processor may process all credit card payments related to your Franchised Business, and remit payment to you of all monies owed, after withholding any Technology Fees, Royalty Fees, or Marketing Fees payable to us and any payment processing fees payable to such processor.

You must offer products and services in accordance with the System. You must offer at the Franchised Business any products or services that we deem to be mandatory. Any products, services, methods, or procedures that you or your employees develop must be consistent with the System Standards that we specify from time to time. If we disapprove of any product or service that you offer, you must immediately discontinue offering the product or service in accordance with our instructions.

### **Items You Must Purchase from Us or Affiliates**

We or our affiliate are currently not an approved supplier for any products or services, but we reserve the right to make ourselves an approved supplier at any time. Except where we are the approved supplier for items you must purchase, none of our officers owns any interest in any supplier with whom you are required or recommended to do business. Neither we nor our affiliates derive revenues, rebates, or any other material consideration based on the required purchases, but we reserve the right to do so at any time.

### **Items You Must Purchase from Designated or Approved Third Parties**

Retail Inventory. You must purchase your retail inventory, such as cigarettes, cigars, kava, CBD, Delta-8 THC, vapes, vape accessories, wax vaporizers, cart batteries, and candles from a designated or approved third party. You are not required to purchase cannabis products. If you choose to purchase cannabis, you must comply with all applicable laws.

Supplies. You must use the supplies services provider we designate. We will provide you with the specifications in the Manuals.

Fixtures and Display Cases. You must use the fixtures provider we designate. We will provide you with the specifications in the Manuals.

POS Hardware/Software. You must use the POS hardware/software services provider we designate. We will provide you with the specifications in the Manuals.

### **Items That Must Meet Our Specifications**

For some products and services, we have not designated a specific source or vendor that you must use, but you must follow our specifications and/or obtain our approval of the vendor. As of the date of this disclosure document, they include:

Uniforms. The uniforms for your Smoke Shop employees must meet our specifications.

Computer System. In addition to the required POS System software and hardware, you must purchase a computer that can run our required software, a dedicated phone line, a camera system, DVR, an alarm system, scanner, printer, and label maker to operate your business. Each must meet our specifications, as we require.

Grand Opening Marketing Materials. You must purchase flyers, business cards, and flags for grand opening advertising. We must approve all marketing materials you prepare before you use them in your market. We will provide specifications in our Manuals.

Office Furniture. Your office furniture must meet our minimum requirements. We will provide specifications in our Manuals.

Signage. Any signage we require you to purchase must meet our specifications, which we will provide in the Manuals. We must approve any signage before you use it.

Insurance. You must maintain the types and minimum amounts of insurance coverage and bonds we specify for the Businesses. The table below sets out our required and recommended insurance coverage as of the date of this disclosure document:

Type	Minimum Coverage
Comprehensive General Liability	\$1 million per incident / \$2 million aggregate
Commercial Umbrella Policy	\$1 million excess over all underlying liability coverages per occurrence and \$1 million in the aggregate
Property and Casualty Insurance	Full replacement value of your equipment, furniture, fixtures, inventory, and vehicles
Business Interruption	12 months loss of income, including coverage for our Royalty Fees with no co-insurance clause
Product Liability	\$1 million policy limit
Workers' Compensation	As required by law in your area
Employer Liability	\$100,000 per incident

Your insurance policies must be written by a carrier with an industry rating acceptable to us, must name us, Smoker's Destiny, LLC, and our parents, subsidiaries, and affiliates, and their respective officers, directors, members, shareholders, and employees as additional insureds, and must not have deductibles, exclusions or co-insurance that are unacceptable to us. All public liability and property damage policies must be primary and non-contributory and must contain a waiver by the insurance company of subrogation rights against us and our affiliates, successors, and assigns.

Prior to opening your Business, you must provide us with certificates of insurance demonstrating that you have met the requirements. At least thirty (30) days before expiration of a policy, you must furnish evidence of renewal or replacement insurance. If you do not obtain the required coverage, we have the right (but not obligation) to obtain insurance on your behalf. If we do so, you must reimburse us for the cost of insurance, plus a reasonable fee for our services. We can increase the coverage requirements or require different or additional kinds of insurance.

## Approval Process

If you would like to offer products or use any supplies, Operating Assets, or services that we have not approved or to purchase or lease from a supplier or service provider that we have not approved, you must submit a written request for approval and provide us with any information that we request. We have the right to inspect the proposed supplier's facilities and test samples of the proposed products and to evaluate the proposed service provider and the proposed service offerings. Proposed suppliers may be required to come to our offices in order for us to make an evaluation. You agree to pay us an amount not to exceed the reasonable cost of the inspection and our actual cost of testing the proposed product or evaluating the proposed service or service provider, including personnel and travel costs, whether or not the item, service, supplier, or service provider is approved. We have the right to grant, deny, or revoke approval of products, services, suppliers, or service providers based solely on our judgment. We will notify you in writing of our decision as soon as practicable following our evaluation. If you do not receive our approval within 90 days after submitting all of the information that we request, our failure to respond will be deemed a disapproval of the request. You should know that the products and services that we approve for you to offer in your Franchised Business may differ from those that we permit or require to be offered in other Franchised Businesses.

We reserve the right to re-inspect the facilities and products of any approved supplier and to reevaluate the services provided by any service provider at and to revoke approval of the item, service, supplier, or service provider if any fail to meet any of our then-current criteria. Upon your request, we will provide our then-current criteria. If we revoke approval of a previously approved product that you have been selling to customers or service that you have been offering to customers, you must immediately discontinue offering the service and may continue to sell the product only from your existing inventory for up to 30 days following our disapproval. We have the right to shorten this period if, in our opinion, the continued sale of the product would prove detrimental to our reputation. After the 30-day period, or such shorter period that we may designate, you must dispose of your remaining formerly approved inventory as we direct.

### **Issuance of Specifications and Standards**

To the extent that we establish specifications, require approval of suppliers or service providers, or designate specific suppliers or service providers for particular items or services, we will publish our requirements in the Manuals. We may, at any time, in our discretion, change, delete, or add to any of our specifications or quality standards. Such modifications, however, will generally be uniform for all franchisees. We will notify you of any changes to our Manuals, specifications, or standards in writing, which we may transmit to you electronically.

### **Proportion of Purchases Subject to Specifications**

We estimate that the cost to purchase and lease all equipment, inventory and other items and services that we require you to obtain from us or our affiliates, from designated suppliers, or in accordance with our specifications ranges from 50% to 75% of the total cost to purchase and lease equipment, inventory, and other items necessary to establish a Franchised Business and 50% to 75% of the total cost to purchase and lease equipment, inventory, and other items to operate a Franchised Business.

### **Revenue from Purchases**

We or our affiliates may receive revenues or profits or other material consideration from the purchases you make from us, our affiliates, or from other approved suppliers. We or our affiliates intend to earn revenue from your purchase of apparel and merchandise, project management services, furniture, fixtures, equipment, technology, signage and graphics, audio-visual equipment, services we or they may offer, and other items that we may specify from time to time. We or our affiliates may retain any rebates or other payments we receive from suppliers.

As of the issuance date of this Disclosure Document, we have not established arrangements with any suppliers which require the supplier to make rebate payments to us, but we reserve the right to do so in the

future. Because we have just started franchising the Smoker's Destiny Smoke Shop Brand, we have not received any rebates from the required purchase of products and services by our franchisees.

## Cooperatives and Purchase Arrangements

We are not involved in any purchasing or distribution cooperatives. We may, but are not obligated to, negotiate purchase arrangements with suppliers for the benefit of franchisees. Currently we have not negotiated purchase arrangements with our approved suppliers because we reserve the right to do so in the future.

## Material Benefits

We do not provide any material benefits to franchisees (for example, renewal or granting additional franchises) based upon their purchase of particular products or services or use of particular suppliers.

## ITEM 9. FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the Franchise Agreement (FA). It will help you find more detailed information about your obligations in the Franchise Agreement, and in other items of this Disclosure Document.**

	Obligation	Section in Franchise Agreement	Disclosure Document Item
a.	Project management and site acquisition/lease	FA: Sections 4.1, 4.2, and 4.4	Item 11
b.	Pre-opening purchases/leases	FA: Sections 4.4, 6.7, and 6.10	Items 6, 7, 8 and 11
c.	Site development and other pre-opening requirements	FA: Sections 4.4 and 4.5	Items 7, 8 and 11
d.	Initial and ongoing training	FA: Section 5	Items 6, 7 and 11
e.	Opening	FA: Section 4.5	Items 6 and 11
f.	Fees	FA: Section 3	Items 5, 6, 7 and 11
g.	Compliance with standards and policies/Operations Manual	FA: Section 6	Items 7, 8, 11, 13, 14, 15 and 16
h.	Trademarks and proprietary information	FA: Sections 9 and 10	Items 13, 14 and 17
i.	Restrictions on products/services offered	FA: Sections 6.6, 6.7, and 6.8	Items 8 and 16
j.	Warranty and customer service requirements	FA: Section 6.12 and 8.6	Items 8 and 16
k.	Territorial development and sales quotas	FA: Section 1.3,	Item 12
l.	Ongoing product/service purchases	FA: Sections 6.7 and 6.8	Items 8 and 16
m.	Maintenance, appearance and remodeling requirements	Section 6.4	Items 7, 8 and 11
n.	Insurance	FA: Section 6.12	Items 7 and 8
o.	Advertising	FA: Section 7	Items 6, 7, 8 and 11
p.	Indemnification	FA: Section 11	Item 6
q.	Owner's participation/management/staffing	FA: Sections 1.4, 1.5, and 6.2	Items 11 and 15
r.	Records and reports	FA: Section 8.1, 8.2, and 8.3	Items 6 and 17
s.	Inspections and audits	FA: Sections 8.4 and 8.5	Items 6 and 11
t.	Transfer	FA: Sections 3.7 and 13	Items 6 and 17
u.	Renewal	FA: Section 15.5	Item 17
v.	Post-termination obligations	FA: Section 15	Item 17
w.	Non-competition covenants	FA: Section 12 and 15.9	Item 17
x.	Dispute resolution	FA: Section 16	Item 17

## **ITEM 10. FINANCING**

We and our affiliates do not offer direct or indirect financing arrangements for any purpose in establishing or operating your Franchised Business. We and our affiliates do not guarantee your promissory note, lease, or any other obligation you may make to others.

## **ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, we are not required to provide you with any assistance.**

### **Our Pre-Opening Obligations**

For all Franchise Agreements, before you begin operating your Franchised Business:

1. Designate Areas. We will designate your Site Selection Area. (Franchise Agreement - Section 1.1).
2. Real Estate Site Selection and Lease Approval
  - a. Site Selection. We will review each site that you identify and determine whether to approve it using our site selection assistance criteria. We do not own, nor do we typically own any locations where we would lease you premises. We will conduct such on-site evaluation as we consider necessary and appropriate as part of our evaluation. We are not required to complete our review within a certain period of time. In addition to certain demographic characteristics, we also consider the following factors in the approval of a Franchised Business location: site visibility, zoning, parking, competition, neighboring tenants, accessibility, population density, and adjusted gross income. (Franchise Agreement – Section 4.1)

While we will provide assistance and guidance, it is solely your responsibility to select a suitable site for the Franchised Business.

You must secure a site that we have approved by signing a site lease or purchase agreement within 90 days after the effective date of your Franchise Agreement (the “Site Acquisition Deadline”). We may extend this Site Acquisition Deadline by up to 90 days in our sole discretion, and we may require you to execute a general release as a condition of us agreeing to grant such extension. If we have approved a site for your Franchised Business and you are unable or unwilling to acquire such site or an alternative site that we approve by the Site Acquisition Deadline or you are unable to identify a site for your Franchised Business that we approve by the Site Acquisition Deadline, we may terminate the Franchise Agreement. If you do not submit your site for our approval, or we do not approve your site by the Site Acquisition Deadline or any extension of the Site Acquisition Deadline, we may terminate the Franchise Agreement. (Franchise Agreement - Sections 4.1, 4.2, and 4.4).

- b. Approval of Site Lease. Before you make a binding commitment to purchase, lease, or sublease a site, we must approve in writing the proposed lease or purchase agreement or any letter of intent between you and the third-party seller or lessor. If you lease the site, unless we waive the requirement in writing, you must arrange for the execution of the Lease Rider in the form that is attached as Appendix D to the Franchise Agreement. We may require you to engage an attorney to review your lease or purchase agreement for the Site that we have approved and to supply us with reasonable documentation in connection with such review, including a lease abstract and confirmation that the terms in the agreement reflect the terms in any letter of intent between you and the third-party seller or lessor. We will not provide you with any legal advice with respect to your lease or purchase of the site. Our review of the lease is for our benefit and is not intended to supplement or replace any review by a real estate attorney engaged on your behalf. You are strongly encouraged to engage competent legal counsel to assist in the review and negotiation of your site lease. (Franchise Agreement - Section 4.4).

3. Initial Training. We will provide Initial Training in the System and our policies and procedures to your Required Trainees. See “Training,” below in this Item. (Franchise Agreement - Section 5.1)
4. Manuals. We will provide you with electronic access to our Manuals, on loan for as long as the Franchise Agreement or a successor franchise agreement remains in effect. (Franchise Agreement - Section 6.1(a))
5. Initial Product Purchases. We, or the approved supplier, will deliver to you your initial supply of inventory, fixtures, and supplies, which you must offer for sale to your customers. (Franchise Agreement - Section 6.6) We, or the approved supplier, will deliver the initial supply of inventory, fixtures, and supplies, but you will be responsible for the installation and/or set up.
6. Advice. We will advise you as to local marketing and networking efforts. We will provide you with templates for services agreements for use in your Franchised Business, which you must adapt to comply with applicable laws and regulations. We must approve any modified forms of such agreements or waivers. (Franchise Agreement – Section 5.2)
7. Opening Approval. We will approve your Franchised Business opening, provided that you have met all of our requirements for opening, including completion of Initial Training. We estimate that the typical length of time between signing a Franchise Agreement and opening your Franchised Business is approximately 180 days. Factors affecting this length of time include, among others: hiring of the requisite employees; successful completion of Initial Training; local ordinances or community requirements; build-out or developer delays; issuance of all necessary licenses, permits and approvals; and procuring required insurance. You are responsible for confirming the premises to any applicable local ordinance, building codes, and obtaining any required permits. You must open the Franchised Business no later than 180 days after the effective date of the Franchise Agreement. We may extend this deadline, in our sole discretion, which we may condition on you agreeing to pay an extension fee of \$2,500 for each month (or portion of a month) for which the deadline is extended and you executing a general release. (Franchise Agreement – Section 4.5)

## **Ongoing Assistance**

During the operation of your Franchise:

1. Review Advertising. We will review any advertising or promotional programs or materials that you develop. (Franchise Agreement - Sections 7.3(b))
2. Marketing Fund Management. We will manage the Marketing Fund as described below in this Item. We will prepare an unaudited statement of contributions and expenditures for the Marketing Fund and make it available within 60 days after the close of our fiscal year to franchisees who make a written request for a copy. (Franchise Agreement - Section 7.2(a))
3. Requested Consulting Services. We will provide to you additional consulting services with respect to the operation of the Franchised Business upon your reasonable request and subject to the availability of our personnel at a mutually convenient time. We will make available to you information about new developments, techniques, and improvements in the areas of advertising, management, operations, and Franchised Business design. We may provide such additional consulting services through the distribution of printed or filmed material, an Intranet or other electronic forum, meetings or seminars, teleconferences, webinars, or in person. If such services are rendered in person other than at our offices, you must pay us a fee and our expenses. (Franchise Agreement - Section 5.6)
4. Relocation Review. We will evaluate sites to which you propose to relocate your Franchised Business in accordance with our then-current System Standards for Site locations. (Franchise Agreement - Section 4.6)

5. Pricing. If we determine that we may lawfully require you to charge certain prices for goods or services, certain minimum prices for goods or services, or certain maximum prices for goods or services, you must adhere to our pricing policies as set forth in the Manuals or otherwise in writing from time to time. We currently require you to charge rates equal to or in excess of a minimum pricing schedule, which we will provide and may revise from time to time. Otherwise, you are solely responsible for determining the prices that you charge customers and must provide us with your current price list upon our request. (Franchise Agreement – Section 6.5)

## **Advertising**

### Our Marketing

We may from time to time formulate, develop, produce, and conduct, at our sole discretion, advertising or promotional programs in such form and media as we determine to be most effective. We may make available for you to purchase approved advertising and promotional materials, including signs, posters, collaterals, etc. that we have prepared.

We have not conducted media advertising for the Smoker's Destiny Smoke Shop concept. If we conduct media advertising, we may use direct mail, print, radio, Internet, or television, which may be local, regional, or national in scope. We may produce the marketing materials in-house or employ a local, regional, or national advertising agency. We are not obligated to conduct any advertising or marketing programs within your market.

### Marketing Fund

We will establish the Smoker's Destiny Smoke Shop Marketing Fund, a segregated or independent fund into which all Marketing Fees will be paid (the "Marketing Fund"). Currently, we do not collect a Marketing Fee, but we may collect a Marketing Fee of up to 2% of your Gross Revenue from you for contribution to the Marketing Fund. We may use monies in the Marketing Fund and any earnings on the Marketing Fund account for any costs associated with advertising (media and production), branding, marketing, public relations and/or promotional programs and materials, and any other activities we believe would benefit the Smoker's Destiny Smoke Shop brand or the Franchised Businesses generally, including advertising campaigns in various media; creation, maintenance, and optimization of the System Website or other websites; keyword or adword purchasing programs; conducting and managing social media activities; direct mail advertising; market research, including, without limitation, secret shoppers and customer satisfaction surveys; branding studies; employing advertising and/or public relations agencies; purchasing promotional items; conducting and administering promotions, contests, giveaways, public relations events, and community involvement activities; and providing promotional and other marketing materials and services to our franchisees. We have the right to direct all marketing programs, with the final decision over creative concepts, materials, and media used in the programs and their placement. We do not guarantee that you will benefit from the Marketing Fund in proportion to your contributions to the Marketing Fund.

We will make any sales and other materials produced with Marketing Fund monies available to you without charge or at a reasonable cost, and we will deposit the proceeds of such sales into the Marketing Fund.

We will not use the Marketing Fund for anything whose sole purpose is the marketing of franchises; however, the Smoker's Destiny Smoke Shop website, public relations activities, community involvement activities, and other activities supported by the Marketing Fund may contain information about franchising opportunities.

We will not use any contributions to the Marketing Fund to defray our general operating expenses, except for reasonable administrative costs and overhead we incur in activities reasonably related to the administration of the Marketing Fund or the management of Marketing Fund-supported programs (including the pro-rata amount of salaries of our personnel who devote time to Marketing Fund activities

and retainers and fees for outside agencies). We may use monies in the Marketing Fund to pay for an independent audit of the Marketing Fund, if we elect to have it audited.

In no event will we be deemed a fiduciary with respect to any Marketing Fees we receive or administer. We are not required to have an independent audit of the Marketing Fund completed. We will prepare an unaudited statement of contributions and expenditures for the Marketing Fund and make it available within 60 days after the close of our fiscal year to franchisees who make a written request for a copy.

Our Company-Owned Outlets may not contribute to the Marketing Fund. All Franchised Businesses will contribute to the Marketing Fund in a uniform percentage of their Gross Revenue.

As we have just begun franchising, there were no Marketing Fund contributions or expenditures as of the issuance date of this Disclosure Document. Any sums in the Marketing Fund at the end of any year shall be applied toward the following year's expenditures. We will provide unaudited financial statements for review by the franchisee upon reasonable request.

### Local Area Marketing

You must use your best efforts to promote the use of the Mark in your market area. You must spend at least 1% of Gross Revenue per month on local advertising and promotional activities (the "Marketing Spending Requirement"). Your Marketing Spending Requirement is in addition to your Marketing Fee. We have the right to designate in the Manuals the types of expenditures that will or will not count toward the Marketing Spending Requirement. At our request, you must submit appropriate documentation to verify compliance with the Marketing Spending Requirement. If you fail to spend (or prove that you spent) the Marketing Spending Requirement in any month, then we may, in addition to and without limiting our other rights and remedies, require you to pay us the shortfall as an additional Marketing Fee or to pay us the shortfall for us to spend on local marketing for your Franchised Business.

You must participate in such advertising, promotional, and community outreach programs that we may specify from time to time, at your own expense. Any media advertising or direct mail marketing that you conduct must be predominantly focused within your Territory, unless we and franchisees in neighboring territories agree otherwise. You must ensure that all of your advertising, marketing, promotional, customer relationship management, public relations and other brand related programs and materials that you or your agents or representatives develop or implement relating to the Franchised Business is completely clear, factual and not misleading, complies with all applicable laws and regulations, and conforms to the highest ethical standards and the advertising and marketing policies that we periodically specify. Moreover, you must conduct all advertising in a dignified manner and in conformance with the standards and requirements we specify in the Manuals.

You must submit to us in writing for our prior approval all sales promotion materials and advertising that have not been prepared by or previously approved by us. If our written approval is not received within 14 days from the date we received the material, the material is deemed disapproved. We will have the final decision on all creative development of advertising and promotional messages. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

### Grand Opening Marketing Spend

In connection with the opening of the Franchised Business, you use flags, yard signs and flyers to promote opening in the four weeks prior to opening the Franchised Business and the four weeks after opening the Franchised Business in accordance with a plan that we will approve. We have the right to modify your grand opening plan, in our sole discretion, and may require you to use a public relations firm to assist with your grand opening. No amount paid by you for your grand opening will be credited toward the Marketing Spending Requirement. You must provide us with supporting documentation evidencing these expenditures upon request.

## Digital Marketing

We may, in our sole discretion, establish and operate websites, social media accounts (such as Facebook, Twitter, Instagram, Pinterest, etc.), applications, keyword or adword purchasing programs, accounts with websites featuring gift certificates or discounted coupons (such as Groupon, Living Social, etc.), mobile applications, or other means of digital advertising on the Internet or any electronic communications network (collectively, “Digital Marketing”) that are intended to promote the Marks, your Franchised Business, and the entire network of Franchised Businesses. We will have the sole right to control all aspects of any Digital Marketing, including those related to your Franchised Business.

Unless we consent otherwise in writing, you and your employees may not, directly or indirectly, conduct or be involved in any Digital Marketing that use the Marks or that relate to the Franchised Business or the network. If we do permit you or your employees to conduct any Digital Marketing, you or your employees must comply with any policies, standards, guidelines, or content requirements that we establish periodically and must immediately modify or delete any Digital Marketing that we determine, in our sole discretion, is not compliant with such policies, standards, guidelines, or requirements. If we permit your or your employees to conduct Digital Marketing, we will have the right to retain full control over all websites, social media accounts, mobile applications, or other means of digital advertising that we have permitted you to use. We may withdraw our approval for any Digital Marketing or suspend or terminate your use of any Digital Marketing platforms at any time.

You are not authorized to have a website for your Franchised Business or to have a webpage related to your Franchised Business in any third-party website, including, without limitation, social networking sites. As part of our Digital Marketing, we or one of our designees will operate and maintain the Smoker’s Destiny Smoke Shop website, which will include basic information related to the Franchised Business, the ability for customers to request information and solicit services at your Franchised Business, and access to the Franchised Business’s reservation system.

## Promotional Programs

You must participate in all in-Franchised Business promotional programs that we offer to franchisees. You will follow our guidelines concerning the acceptance and reimbursement of gift certificates, gift cards, coupons, corporate discounts, and other promotional programs as we set forth from time to time in the Manuals or otherwise in writing. You will not allow use of gift certificates, gift cards, or coupons (including Groupons and similar discounts) unless approved or offered by us.

## Advertising Cooperatives

We currently do not have any advertising cooperatives and have no plans to form such cooperatives in the immediate future. However, you must join and actively participate in any organizations or associations of franchisees or advertising cooperatives that we establish or that are established at our direction for the purpose of promoting, coordinating, and purchasing advertising in local, regional, or national areas where there are multiple Franchised Businesses, and you must abide by the bylaws, rules, and regulations duly required by such advertising cooperative, which we have the right to mandate or approve if and when we form such cooperative. If we form an advertising cooperative, we will have the right to determine how membership will be defined, whether company-owned or affiliate-owned Franchised Businesses will participate in the cooperative, and whether we, an affiliate, a franchisee, or a third party will administer the cooperative. If you join an advertising cooperative, we or the advertising cooperative may require you to spend additional funds on marketing programs conducted by the advertising cooperative, which may be in addition to your Marketing Fee or the Marketing Spending Requirement. There is no cap on this potential spending obligation. If we form an advertising cooperative, we will make any governing documents available to you for your review.

## Advertising Councils

We currently do not have an advertising council composed of franchisees to advise us on our advertising policies. We may decide to implement an advertising council in the future, at which point we will set policies related to such council. If we form an advertising council, we may appoint members, allow franchisees to elect members, or have a mix of appointed and elected positions. The advertising council may consist of both franchisees and our representatives. Any advertising council will be advisory and will not have any decision-making authority. We will have the right to modify or dissolve any advertising council that we create.

## **Computer System**

You must obtain, maintain, and use the Computer System that we specify periodically in the Manuals to (i) enter and track purchase orders and receipts, and customer information, (ii) update inventory, (iii) enter and manage your customer's contact information, (iv) generate sales reports and analysis relating to the Franchised Business, and (iv) provide other services relating to the operation of the Franchised Business.

The Computer System currently includes POS System software and hardware, a computer, iPad, copy printer, label printer, and price gun. Specifications for the brand, operating capabilities, and functionality of these hardware components will be set forth in the Manuals and is subject to change. At a minimum, the components of the Computer System must be connected to the Internet via a high-speed Internet connection and must be able to run our designated software programs and general business software such as email, word processing, and similar programs.

The Computer System will use third-party software from our approved vendors for point-of-sale functions, email marketing, and all customer management functions. For any proprietary software or third-party software that we require you to use, you must execute and be responsible for the fees associated with any software license agreements or any related software maintenance agreements that we or the licensor of the software require.

We estimate that the Computer System will cost between \$2,500 and \$5,000, which includes the cost of the hardware, software licenses, related equipment, and network connections, including related installation costs. We, or our approved suppliers, will act as vendors or suppliers of some or all of the components of the Computer System.

You must maintain the Computer System at your expense and must purchase any hardware or software maintenance or technical support programs that we require. You must replace, upgrade, or update the Computer System as we may require from time to time. We will establish reasonable deadlines for implementation of any changes to our Computer System requirements, but there are no contractual limitations on our right to require changes to the Computer System.

We currently do not require you to enter into, or expect that you will need to enter into, any maintenance, updating, upgrading, or support contracts related to the Computer System. We, our affiliates, and third-party vendors are not obligated to provide you with any ongoing maintenance, repairs, upgrades, or updates. Vendors may be able to offer optional maintenance, updating, upgrading, or support contracts to you, which we estimate may cost between \$300 to \$500 per year.

You, at all times, must give us unrestricted and independent electronic access (including users IDs and passwords, if necessary) to the Computer System for the purposes of obtaining the information relating to the Franchised Business. You must permit us to download and transfer data via a high-speed Internet connection or such other connection that we specify on a real-time basis. There are no contractual limitations on our right to access data stored in the Computer System.

You must dedicate your computer system for use as the Computer System only and use the Computer System in accordance with our policies and operational procedures. Your employees must complete any and all training programs we reasonably require for the proper operation and use of the Computer System. You may not use any other cash registers or computer systems in your Franchised Business.

## Manuals

As of the date of this Disclosure Document, the Manuals are still under development and have not been completed. The current Table of Contents of the Manuals is attached as Exhibit D to this Disclosure Document. The Manuals currently consist of 133 pages. We may amend, modify, or supplement the Manuals at any time, so long as such amendments, modifications, or supplements will, in our good faith opinion, benefit us and our existing and future franchisees or will otherwise improve the System. You must comply with revised standards and procedures within 30 days after we transmit the updates.

## Training

### Initial Training

Your Required Trainees must personally attend and satisfactorily complete our Initial Training before you open your Franchised Business. Initial Training currently consists of five consecutive days of in-person training at a location we designate, which may be in Langhorne, PA, at least 30 days prior to the opening of your Smoke Shop. The Initial Training may be conducted at one of our Company-Owned Outlets in Pennsylvania. We will conduct Initial Training at least six times per year but may conduct training sessions more frequently in our discretion. We reserve the right to modify the length, location, and timing of Initial Training. We may waive a portion of Initial Training or alter the training schedule if we determine that your Required Trainees have sufficient prior experience or training. Initial Training will be provided as soon as practicable after you sign your Franchise Agreement.

We will provide instructors, facilities, and materials for Initial Training for up to three of your representatives (including your Required Trainees) provided that all of your trainees are trained during the same training session. If space is available, you may bring more than three representatives to Initial Training. We reserve the right to charge a training fee of \$500, which we may increase upon 60 days' written notice to you, for (i) each person in excess of three trainees, (ii) each person who is repeating the course or replacing a person who did not pass, and (iii) each subsequent Operating Principal, Key Manager, or employee who attend the course. You are responsible for any travel and living expenses, wages, and other expenses incurred by your trainees during Initial Training or any other training programs. If you elect to have Initial training conducted at your Smoke Shop, you will be responsible for any travel and living expenses, wages, and other expenses incurred by our trainers during Initial Training.

Our Initial Training currently consists of the following:

### TRAINING PROGRAM

Subject	Virtual/Classroom Training	On-The-Job Training	Location
Establishing the Business	3	0	Our headquarters, online, your location, or any other location we designate
The Business and Background	5	0	Our headquarters, online, your location, or any other location we designate
Equipment and Systems	4	12	Our headquarters, online, your location, or any other location we designate

<b>Marketing and Sales</b>	3	0	Our headquarters, online, your location, or any other location we designate
<b>Operations and Management</b>	0	16	Our headquarters, online, your location, or any other location we designate
<b>Execution and Implementation</b>	1	0	Our headquarters, online, your location, or any other location we designate
<b>TOTALS:</b>	16 Hours	28 Hours	

The instructors for our initial training program all have experience working with us or similar businesses. The following individuals will lead our training programs: Harshad Patel, our and our affiliate's owner, has over 5 years' experience in the industry, and Dezmond Smith, a Supervisor who has worked at our affiliate for over one year. We may use or add other instructors and trainers in the future, and any trainer we hire will have at least 6 months' experience in their technical area.

Your Required Trainees must successfully complete Initial Training at least 30 days before the Opening Deadline. We will determine, in our discretion, what constitutes successful completion of the program. If your Required Trainees are unable to successfully complete, in our sole discretion, Initial Training for any reason, your Required Trainees must repeat Initial Training, or you must send replacement Required Trainees to complete Initial Training. If your Required Trainees have not, in our sole discretion, successfully completed Initial Training 30 days before the Opening Deadline, we may terminate the Franchise Agreement, in which case we will not refund any initial fees paid by you.

#### Additional Training

We may periodically conduct mandatory or optional training programs for your Required Trainees and/or your employees at our office or another location that we designate. There will be no charge for training programs that we require you or your employees to attend, but we may charge you a reasonable fee for optional training programs. We may provide additional training in person or via recorded media, teleconference, videoconference, the Internet, webinar, or any other means, as we determine. We may require your Required Trainees or employees to satisfactorily complete any additional training programs that we specify. We may require your Required Trainees to participate in refresher or advanced training each year.

If, in our sole judgment, you fail to maintain the quality and service standards set forth in the Manuals, we may, in addition to all of our other rights and remedies, assign trainers to the Franchised Business to retrain Franchised Business employees and restore service levels and/or require you or your employees to repeat Initial Training or attend additional training programs at a location that we designate. We may charge a reasonable fee for each trainer assigned to your Franchised Business and any remedial training, including our reasonable travel and living expenses related to providing remedial training.

If your Key Manager ceases to be employed by you at the Franchised Business and you are unable to immediately appoint and train a new manager, we may, in our sole discretion and for a reasonable fee, provide a Key Manager to work at your Franchised Business temporarily until a new Key Manager is appointed and trained.

#### Training by You

You and/or your Operating Principal and your Key Managers are responsible for training all of your other employees (and subsequent Key Managers) in accordance with our standards and training programs. If, in our sole judgment, you fail to properly train your employees in accordance with our standards, we may prohibit you from training additional employees and either require them to attend training at our headquarters or pay for our costs and expenses to send one of our representatives to train them at your Franchised Business.

## **ITEM 12. TERRITORY**

### **Franchise Program**

#### Site

Your franchise is for the specific Site that we approve. You must select a site that we have accepted within the non-exclusive Site Selection Area that we specify. The site will be added to the Franchise Agreement once we accept it and you secure it, usually within 14 days after signing the Franchise Agreement. Your Site Selection Area is not exclusive and is only intended to give you a general indication of the area within which you may locate the Site for the Smoke Shop.

#### Relocation of the Smoke Shop

If you would like to relocate your Smoke Shop, you must receive our written consent. Our approval will not be unreasonably withheld, provided (i) the new location for the Smoke Shop is satisfactory to us and within your Site Selection Area, (ii) your lease, if any, for the new location complies with our then-current requirements, (iii) you comply with our then-current requirements for constructing and furnishing the new location, (iv) the new location will not, as determined in our sole discretion, materially and adversely affect the Gross Revenue of any other Smoke Shop, (v) you have fully performed and complied with each provision of the Franchise Agreement within the last three years prior to, and as of, the date we consent to such relocation (the “Relocation Request Date”), (vi) you are not in default, and no event exists which with the giving of notice and/or passage of time would constitute a default, exists as of the Relocation Request Date, and (vii) you have met all of our then-current training requirements. If you lose your lease, you must secure our approval of another site and enter into a lease for the new approved site within 90 days after you lose your site lease. You must pay us a relocation fee as specified in Item 6.

#### Territory

Once you have secured the Site, we will provide you an area in which you will have protected rights (the “Territory”). Your Territory will typically be a three-mile radius around your Smoke Shop, unless your Smoke Shop is located in a major metropolitan downtown area or similarly situated/populated central business district (a “Central Business District”). If your Smoke Shop is located in a Central Business District, your Territory may be limited to a geographic area comprised of anywhere from a radius of two blocks to three miles around your Smoke Shop, as we deem appropriate in our discretion. The size of your Territory may vary from the territory granted to other franchisees based on the location and demographics surrounding your Smoke Shop.

The boundaries of your Territory may be described in terms of zip codes, streets, landmarks (both natural and man-made) or county lines, or otherwise delineated on a map. The sources we use to determine the population within your Territory will be publicly available population information (such as data published by the U.S. Census Bureau or other governmental agencies and commercial sources).

Because we retain certain “reserved rights” (described below) within your Territory, the Territory is not an exclusive territory. During the term of your Franchise Agreement, we will neither operate, nor award to another person a franchise to operate, another Franchised Business in your Territory, nor will we service, or authorize others to service, customers in your Territory, provided you are not in default under the

Franchise Agreement. Neither we or our affiliates operate, nor do we or our affiliates plan to operate or franchise businesses under a different trademark that will sell goods or services that are the same or similar to those that you will sell.

You will not receive exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

### Reserved Rights

Among other things, we and our affiliates have the right to (a) establish or license franchises and/or company-owned Franchised Businesses, or other businesses offering similar or identical products, services, classes, and programs and using the System or elements of the System (i) under the Marks anywhere outside of the Territory or (ii) under names, symbols, or marks other than the Marks anywhere, including inside and outside of the Territory; (b) sell or offer, or license others to sell or offer, any products, services, or classes using the Marks or other marks through any alternative distribution channels, including, without limitation, through e-commerce, in retail stores, via recorded media, via online videos, or via broadcast media, anywhere, including inside and outside of the Territory; (c) advertise, or authorize others to advertise, using the Marks anywhere, including inside and outside of the Territory; and (d) acquire, be acquired by, or merge with other companies with existing facilities or businesses anywhere (including inside or outside of the Territory) and, even if such businesses are located in the Territory: (x) convert the other businesses to the Smoker's Destiny Smoke Shop name, (y) permit the other businesses to continue to operate under another name, and/or (z) permit the businesses to operate under another name and convert existing Franchised Businesses to such other name. Neither the franchisor nor affiliate operates or plans to operate franchise businesses under a different trademark that will sell goods or services that are the same as or similar to those the franchisee will sell.

We will not compensate you for any of our activities in your Territory, even if they have an impact on your Franchised Business.

### Restriction on Rights

You do not have the right to open additional Franchised Businesses, nor do you have any rights of first refusal on any other location, nor do you have the right to solicit customers outside of the territory. You do not have the right to use the Marks or the System at any location other than the Territory or in any wholesale, e-commerce, or other channel of distribution besides the retail operation of the Franchised Business within the Territory without our prior written consent. Any media advertising or direct mail marketing that you conduct must be predominantly focused within your Territory, unless we agree otherwise.

We reserve the right to establish guidelines concerning the acceptance and reimbursement of gift certificates, gift cards, coupons, corporate discounts, and other promotional programs as we set forth from time to time in the Manuals or otherwise in writing, including policies related to the allocation of monies when a gift certificate is purchased at one Franchised Business and redeemed at another Franchised Business. We do not have these policies or procedures in place, however, as of the date of this Disclosure Document.

## **ITEM 13. TRADEMARKS**

We grant you the right to operate a Franchised Business under the "Smoker's Destiny Smoke Shop" mark, and other trademarks, service marks, associated designs, artwork, and logos (collectively the "Marks") that we specify from time to time. We may require you to use the Marks in conjunction with other words or symbols or in an abbreviated form.

The following Marks have applied for registration with the United States Patent and Trademark Office (“USPTO”) by our affiliate, Infinity Smoke Shop, LLC, and we have filed all required affidavits with respect to each of the Marks:

Mark	U.S. Application Serial Number	U.S. Application Date
SMOKER’S DESTINY	97622350	October 6, 2022

Through a license agreement between Infinity Smoke Shop, LLC and Smoker’s Destiny, LLC, we have the right to use the Marks. The License Agreement does not contain any significant limitations on our right to use or license the Marks to you and is perpetual in duration and may be terminated unilaterally by either party only upon a material breach of the License Agreement.

At this time, we do not have a registration for these trademarks, nor have we renewed any registration. Therefore, these trademarks do not have many of the legal benefits and rights as a federally registered trademark. If your right to use these trademarks is challenged, you may have to change to an alternative trademark which will increase your expenses.

We claim common law rights to the Marks and other terms and phrases used regularly in connection with the Smoke Shop. We also claim common law rights to our designs, logos, and trade dress items, including color schemes and appearance, as well as copyright where applicable, but there have not been judicial determinations of the existence, validity, or extent of our rights. We claim and intend to rely on common law and/or statutory trade secret and unfair competition protection for the proprietary materials and information you are awarded a license to use under the Franchise Agreement.

There are no currently effective determinations of the USPTO, Trademark Trial and Appeal Board, the Trademark Administrator of any state, or any court; nor is there any pending infringement, opposition or cancellation proceedings, or material litigation, involving any of the Marks. We do not know of any superior prior rights or infringing uses that could materially affect your use of any of the Marks. There are no currently effective agreements that significantly limit our rights to use or license the use of the Marks listed above in a manner material to the franchise.

You may also use certain other Marks owned by or licensed to us in the operation of your Franchised Business. You must use the Marks only in strict accordance with the Franchise Agreement and Operations Manual. You may not use any Mark (i) as part of any corporate or legal business name, (ii) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos we have licensed to you), (iii) in selling any unauthorized services or products, (iv) as part of any domain name, electronic address, metatag, social media account, or otherwise in connection with any website or other electronic medium without our consent, or (v) in any other manner we have not expressly authorized in writing. You must display the Marks in a manner that we specify on signage at the Franchised Business and on all written materials, forms, advertising, promotional materials, supplies, employee uniforms, business cards, receipts, letterhead, contracts, stationary, and other materials we designate. Upon receipt of notice from us, you must discontinue, alter, or substitute any of the Marks as we direct.

You must display in a conspicuous location in or upon the Franchised Business, or in a manner that we specify, a sign containing the following notice (or an alternative notice that we specify): "This business is owned and operated independently by [name of franchisee] who is an authorized licensed user of the trademark “Smoker’s Destiny Smoke Shop,” which is a trademark owned by Smoker’s Destiny, LLC." You must include this notice or other similar language that we specify on all forms, advertising, promotional materials, business cards, receipts, letterhead, contracts, stationary, and other written materials we designate.

You must promptly notify us if any other person or Entity attempts to use any of the Marks or any colorable imitation of any of the Marks. You must immediately notify us of any infringement of or challenge to your use of any of the Marks. We will have the right to take any action that we deem appropriate, but the

Franchise Agreement does not require us to take any action to protect your right to use any of the Marks or to participate in your defense and/or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving any of the Marks. We will have the right to control any administrative proceeding or litigation related to the Marks. We will be entitled to retain any and all proceeds, damages, and other sums, including attorneys' fees, recovered, or owed to us or our affiliates in connection with any such action. You agree to execute all documents and, render any other assistance we may deem necessary to any such proceeding or any effort to maintain the continued validity and enforceability of the Marks.

If we decide that you should modify or discontinue using any of the Marks, or use one or more additional or substitute service marks or trademarks, you must comply with our directions in the time that we reasonably specify (which will be in proportion to the scope of the rebranding), and neither we nor any of its affiliates will have any obligation to reimburse you for the cost of complying with our directions.

#### **ITEM 14.**

#### **PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

We own no rights in, or licenses to, any patents or patent applications.

Except as provided below, we own no rights in, or licenses to, any copyrights. We have not registered any copyrights with the United States Copyright Office. However, we claim copyrights with respect to our advertising materials and Operations Manual, as well as other materials we may periodically develop. There are no determinations of the Copyright Office or any court regarding any of our copyrights. There are no agreements limiting the use of any copyrights by us.

Any copyrights used by you in the Franchised Business belong solely to us or our affiliates. You agree to notify us in writing of any suspected infringement of our or our affiliates' copyrights. We and our affiliates have exclusive rights to bring an action for infringement and retain any amounts recovered with respect to such action, and to control any infringement proceeding whether brought by or against us or you. We have no obligation to defend or otherwise protect you against any claims involving any copyright, including without limitation any copyright infringement claim, or to indemnify you for any losses you may incur as a result of our copyrights infringing the rights of any other copyright owner. If so requested by us, you will discontinue the use of the subject matter covered by any copyright used in connection with the Franchised Business.

During the term of your Franchise Agreement, we or our affiliates may disclose in confidence to you, either orally or in writing, certain trade secrets, know-how, and other confidential information relating to the System, our business, our vendor relationships, our classes, or the construction, management, operation, or promotion of the Franchised Business (collectively, "Proprietary Information"). You may not, nor may you permit any person or Entity to, use or disclose any Proprietary Information (including any portion of the Operations Manual) to any other person, except to the extent necessary for your employees to perform their functions in the operation of your Franchised Business. You must take reasonable precautions necessary to protect Proprietary Information from unauthorized use or disclosure, including conducting orientation and training programs for your employees to inform them of your obligation to protect Proprietary Information and their related responsibilities and obligations. If we or our affiliates so request, you must obtain from your officers, directors, Owners, Key Managers, and employees confidentiality agreements in a form satisfactory to us or our affiliates. You will be responsible for any unauthorized disclosure of Proprietary Information by any person to whom you have disclosed Proprietary Information.

#### **ITEM 15.**

#### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You must designate an Owner with at least a 10% ownership interest in your Entity as the "Operating Principal." The Operating Principal must have authority over all business decisions related to your

Franchised Business and must have the power to bind you in all dealings with us. In addition, you must appoint a trained manager (the “Key Manager”) to manage the day-to-day business of your Franchised Business, who may also be the Operating Principal.

At all times that your Franchised Business is open for business, it must be under the personal supervision of either you, your Operating Principal, your Key Manager, or a trained attendant. Your Key Manager or another trained manager must be available at all times the Franchised Business is open for business. You or your Operating Principal and your Key Manager must successfully complete our training program and any other training programs that we may require. For the first six (6) months your Franchised Business is open for operations, you or your Operating Principal must be personally involved in the day-to-day operations. You may not permit your Franchised Business to be operated, managed, directed, or controlled by any other person without our prior written consent.

Your Operating Principal must have authority over all business decisions related to your Franchised Business and must have the power to bind you in all dealings with us. In addition, you must appoint a Key Manager to manage the day-to-day business of your Franchised Business, who may also be the Operating Principal. The Key Manager is not required to have an ownership interest in your Entity. You must provide us with written notice of your Operating Principal and Key Manager at least 60 days prior to opening and may not change your Operating Principal and Key Manager without our prior approval.

We may also require you to obtain from your officers, directors, Key Managers, instructors, your Owner’s spouses, and other individuals that we may designate executed agreements containing nondisclosure and noncompete covenants in a form acceptable to us, which specifically identify us as having the independent right to enforce them.

Each Owner, including the Operating Principal, must sign the Payment and Performance Guarantee (the “Guarantee”) attached to the Franchise Agreement, assuming and agreeing to discharge all obligations of the franchisee under the Franchise Agreement and agreeing to comply with the confidentiality, indemnification, covenant not to compete, and assignment provisions of the Franchise Agreement. If you are a party to a Development Agreement, each individual with a direct or indirect ownership interest in your Entity must sign the Guarantee attached to the Development Agreement.

#### **ITEM 16.**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You may offer for sale in the Franchised Business only the products and services that we have approved in writing. In addition, you must offer the specific products and services that we require in the Manuals or otherwise in writing. We may designate specific products or services as optional or mandatory. You must offer all products or services that we designate as mandatory. You may sell products only in the varieties, forms, and packages that we have approved. You must maintain a sufficient supply of required products to meet the inventory standards we prescribe in the Manuals (or to meet reasonably anticipated customer demand if we have not prescribed specific standards).

We may, without limitation, change the types, amounts, or specifications of the goods or services that you may offer. We may, without limitation and in our sole discretion, revoke approval of a previously approved product or service that you have been selling, in which case, you must immediately discontinue offering the service and may continue to sell the product only from your existing inventory for up to 30 days following our disapproval. We have the right to shorten this period if, in our opinion, the continued sale of the product would prove detrimental to our reputation. After the 30-day period, or such shorter period that we may designate, you must dispose of your remaining formerly approved inventory as we direct.

We impose no restriction on the retail customers that you may serve at your Franchised Business, but you may not make any sales of products or services outside of the Franchised Business or use vendor relationships that you establish through your association with us or the Smoker’s Destiny Smoke Shop brand for any other purpose besides the operation of the Franchised Business, unless we consent in writing.

You agree to purchase products solely for resale to retail customers, and not for resale or redistribution to any other party, including other Smoker's Destiny Smoke Shop franchisees.

You must ensure that all services you provide are accounted for through the Computer System, make payments through the Computer System, and sign contracts for services on a form that we prescribe or approve.

You may not offer products or services in connection with the Marks on any website on the Internet or any other electronic communication network unless we consent in writing. Any media advertising or direct mail marketing that you conduct must be predominantly focused within your Territory, unless we agree otherwise.

## ITEM 17. RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

### THE FRANCHISE RELATIONSHIP

**The table below lists certain important provisions of the Franchise Agreement. You should read these provisions in the form Franchise Agreement attached to this Disclosure Document.**

	Provision	Section in Franchise Agreement	Summary
a.	Length of the franchise term	Section 2.1	Begins on the Effective Date of your Franchise Agreement and continues for ten years from the date you open your Franchised Business for business.
b.	Renewal or extension of the term	Section 2.2	If you meet the conditions, you may enter into two successor ten-year terms.
c.	Requirements for franchisee to renew or extend	Section 2.2	You have notified us of your intent to renew at least six months in advance but no more than 12 months in advance; you have signed our then-current form of franchise agreement, which may have materially different terms and conditions than your original Franchise Agreement; you have refurbished the Franchised Business to our then-current specifications; you have executed a general release in favor of us and our affiliates; you, your Operating Principal, and Key Manager have completed our then-current training requirements; you have substantially complied with the Franchise Agreement during the term; no Event of Default (as defined in the Franchise Agreement) or event which, with the giving of notice or passage of time or both, would become an Event of Default, exists; and you have paid us the Successor Fee.
d.	Termination by franchisee	Section 14.3	If we commit a material breach of the Franchise Agreement and we fail to cure the breach or take reasonable steps to begin curing the breach within 60 days after receiving notice from you, you may terminate the Franchise Agreement.
e.	Termination by us without cause	Not applicable	None.
f.	Termination by us with cause	Section 14.1	We can terminate only if you default under the Franchise Agreement
g.	"Cause" defined – curable defaults	Section 14.1	You have 10 days to cure the non-payment of any amounts owed to us or our affiliates or your failure to make sufficient funds available to us; 24 hours to cure non-compliance with any law, regulation or ordinance which results in a threat to the public's health or safety; and 30 days to cure a failure to

	Provision	Section in Franchise Agreement	Summary
			comply with any other provision of the Franchise Agreement not described above or in (h) below.
h.	“Cause” defined – non-curable defaults	Section 14.1	<p>You make a material misrepresentation to us; your Required Trainees fail to satisfactorily complete initial training; you fail to open on time; you fail to timely refurbish your Franchised Business; you fail to rebuild your Franchised Business after its destruction; you suspend operations of the Franchised Business for more than five days without our consent; you fail to communicate with us; you miss two or more required meetings; you or any of your Owners or officers or directors is convicted or pleads nolo contendere to a crime involving moral turpitude or consumer fraud or any other crime or offense or engages in any activities which impairs the goodwill associated with the Marks; you misuse the Marks; you disclose Proprietary Information; you or your Owners make an improper transfer; you or your Owners violate the noncompete covenants of the Franchise Agreement; you become insolvent or bankrupt;</p> <p>you fail to pay suppliers and trade creditors an amount exceeding \$2,000 for more than 60 days; you fail to pay your taxes; you underreport Gross Sales by more than 2% twice in a two-year period or by 5% in any period; you fail to permit us to inspect or audit your books and records; you fail to timely file reports three times in 12 months; you default under any other agreement with us or our affiliates if such default would permit the termination of that agreement; or you are in default three or more times within any 18-month period.</p>
i.	Franchisee’s obligations on termination/non-renewal	Section 15	Pay all amounts due to us or our affiliates; discontinue use of the Marks and the System; return Proprietary Information, customer data, and Manuals; close vendor accounts; cancel assumed name registration; cancel or transfer telephone number, post office boxes, domain names, social media accounts, and directory listings; complete de-identification of the Site; reimburse customers; refrain from disclosing Proprietary Information; and comply with noncompete covenants (also see (o) and (r) below).
j.	Assignment of contract by us	Section 13.1	No restriction on our right to assign.
k.	“Transfer” by franchisee – definition	Section 13.2	Includes transfer of the Franchise Agreement, any interest in the Franchise Agreement, the license to use the System and the Marks, the Franchised Business or substantially all of the assets of the Franchised Business, or an interest in the ownership of the Franchised Business (if you are an Entity).
l.	Our approval of transfer by franchisee	Section 13.3	We have the right to approve all transfers.
m.	Conditions for our approval of transfer	Section 13.4	You pay us a non-refundable deposit to review the transfer; you pay us the Transfer Fee; all of your monetary obligations are satisfied; you are not in default; you and your Owners sign a general release; you and your Owners remain liable for obligations incurred or arising prior to transfer; you comply with noncompetition and confidentiality provisions; your

	<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
			landlord consents to the transfer of your lease; new franchisee agrees to discharge all of your obligations; new franchisee qualifies, meets training requirements, and signs then-current franchise agreement; new franchisee upgrades the Franchised Business to our then-current specifications; new franchisee covenants to continue to operate the Franchised Business under the Marks; new franchisee's owners execute our then-current form of personal guarantee; and we determine purchase price acceptable and financing arrangements are subordinate to our interests.
n.	Our right of first refusal to acquire franchisee's business	Section 13.9	We can match any offer for your Franchised Business, the Franchised Business's assets, or any ownership interest, except for certain transfers to spouses, children, or existing Owners.
o.	Our option to purchase your business	Section 15.5	For 15 days after the Franchise Agreement terminates or expires, we can purchase any or all of the inventory, supplies, Operating Assets, and other assets related to the operation of your Franchised Business for the fair market value of the assets, less any amounts then owing to us. We also may assume your lease or sublease or equipment leases.
p.	Death or disability of franchisee	Section 13.8	Executor or representative must transfer your interest to a third party approved by us within 120 days.
q.	Non-competition covenants during the term	Section 12.1	You and your Owners may not: own, manage, engage in, be employed by, advise, make loans to, or have any other interest in (i) any business which provides or offers smoking related products for tobacco, nicotine, and other legal herbal use, any other Approved Products and Services that we grant you the right to offer during the Term of your Franchise Agreement (ii) any entity that grants franchises or licenses for any of these types of businesses (a "Competitive Business") in the United States; divert or attempt to divert any business or customer or potential business or customer of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise; perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the System; use any vendor relationship established through your association with us for any purpose other than to purchase products or equipment for use or retail sale in the Franchised Business; or directly or indirectly solicit for employment any person who at any time within the immediate past 12 months has been employed by us, or our affiliates, or by any of our franchisees.
r.	Non-competition covenants after the Franchise Agreement is terminated or expires	Section 12.2	For two years after the expiration of termination of your Franchise Agreement, you and your Owners may not be involved in any Competitive Business that is (or is intended to be) located within a 10-mile radius of your former Franchised Business or any other Franchised Business that is operating or under development at that time and may not solicit for employment individuals employed during the past 12 months by us, our affiliates, or our franchisees.

	Provision	Section in Franchise Agreement	Summary
s.	Modification of the agreement	Section 17.2	Except for modifications to the Manuals, no modifications unless agreed to in writing by both parties.
t.	Integration/merger clause	Section 17.1	Only the terms of the Franchise Agreement are binding (subject to state law). Any other promises made outside of this Disclosure Document and the Franchise Agreement may not be enforceable. Notwithstanding the foregoing, nothing in this or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.
u.	Dispute resolution by arbitration or mediation	Section 16.1	Prior to filing most proceedings, a party must submit the dispute to non-binding mediation.
v.	Choice of forum	Section 16.2	Subject to applicable state laws, you and your Owners must, and we may, bring claims in federal or state courts located in Langhorne, Pennsylvania (or the city in which our principal place of business is then located, if we no longer have an office in Pennsylvania).
w.	Choice of law	Section 16.3	Subject to applicable state laws, Pennsylvania law applies, without regard to Pennsylvania conflict-of-laws rules, excluding the Pennsylvania Franchise Act except with respect to Smoke Shops which are physically located in Pennsylvania.

## ITEM 18. PUBLIC FIGURES

We do not use any public figure to promote our Franchises but may do so in the future.

*[Remainder of page intentionally left blank. Item 19 begins next page.]*

## ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

This financial performance representation is based upon the historic operating revenue and certain expenses of the “Company-Owned Outlets” operated by our affiliates in Pennsylvania area for the periods from January 1, 2021 to December 31, 2021 (FY 2021) and January 1, 2022 to December 31, 2022 (FY 2022), each a “Measuring Period.” Our affiliates had 1 location, in Morrisville, Pennsylvania (Company-Owned Outlet #1) open for the entire Measuring Periods FY 2021 and FY 2022, as displayed in Table 1. Company-Owned Outlet #2, located in Langhorne, Pennsylvania, was opened in November 2021 but operated for less than the entire FY 2021 Measuring Period so we have only disclosed its financials for the FY 2022 Measuring Period, as displayed in Table 2. Both Company-Owned Outlets operated for the entire Measuring Periods under the tradename “Infinity Smoke Shop” but are in the process of rebranding to align with the Marks we are licensing in this Disclosure Document. We obtained these historical financial results from the profit and loss reports submitted by the Company-Owned Outlet. There are no other outlets operated by us or our affiliates, and there are no Franchised Businesses operated by franchisees as of the issuance date of this Disclosure Document.

Except as discussed in this Item, all Company-Owned Outlets operate in a substantially similar manner to how your Shop will operate. The explanatory notes included with the following charts are an integral part of this financial performance representation and should be read in their entirety for a full understanding of the information contained in the following chart.

**Table 1: Gross Revenue and Certain Operating Expenses for Company-Owned Outlet #1**

<b>Company-Owned Outlet #1</b>		
<b>Item</b>	<b>FY 2021</b>	<b>FY 2022</b>
Gross Revenue <sup>1</sup>	\$2,937,632	\$2,434,613
COGS <sup>2</sup>	\$1,676,049	\$1,347,524
Gross Profit <sup>3</sup>	\$1,261,583	\$1,087,088
Advertising <sup>4</sup>	\$4,586	\$3,677
Payroll <sup>5</sup>	\$130,000	\$138,115
Rent <sup>6</sup>	\$56,091	\$48,700
Credit Card Processing Fees <sup>7</sup>	\$38,735	\$40,903
Other Operating Expenses <sup>8</sup>	\$184,033	\$155,388
Royalties <sup>9</sup>	\$229,057	\$194,769
Technology Fees <sup>10</sup>	\$2,400	\$2,400
<b>EBITDA (if franchised)<sup>11</sup></b>	<b>\$799,346</b>	<b>\$503,136</b>
<b>Margin<sup>12</sup></b>	<b>27.2%</b>	<b>20.6%</b>

**Table 2: Gross Revenue and Certain Operating Expenses for Company-Owned Outlet #2**

<b>Company-Owned Outlet #2</b>	
<b>Item</b>	<b>FY 2022</b>
Gross Revenue <sup>1</sup>	\$1,665,052
COGS <sup>2</sup>	\$862,115
Gross Profit <sup>3</sup>	\$802,937
Advertising <sup>4</sup>	\$3,130
Payroll <sup>5</sup>	\$126,731
Rent <sup>6</sup>	\$77,987
Credit Card Processing Fees <sup>7</sup>	\$24,714
Other Operating Expenses <sup>8</sup>	\$128,345
Royalties <sup>9</sup>	\$133,204
Technology Fees <sup>10</sup>	\$2,400
<b>EBITDA (if franchised)<sup>11</sup></b>	<b>\$306,427</b>
<b>Margin<sup>12</sup></b>	<b>18.4%</b>

**Notes Regarding the Tables Above:**

1. “Gross Revenue” means all revenue that you receive or otherwise derive from operating the Franchised Business whether from cash, check, credit or debit card, gift card or gift certificate, or other credit transactions. If you receive any proceeds from any business interruption insurance applicable to loss of revenue at the Franchised Business, there shall be added to Gross Revenue an amount equal to the imputed gross revenue that the insurer used to calculate those proceeds. Gross Revenue includes promotional allowances or rebates paid to you in connection with your purchase of products or supplies or your referral of customers. In the case where you receive only a commission from a business activity rather than the gross revenues from such activity (e.g., lottery ticket sales, ATMs, and the like), only the commission received by you shall be included in Gross Sales provided that such commissions are reasonable and customary. Gross Revenue does not include (i) any bona fide returns and credits that are actually provided to customers, (ii) any bone fide shipping charges that you collect from a customer and actually pay to a third-party shipping or logistics company for the delivery of items to customers, and (iii) any sales or other taxes that you collect from customers and pay directly to the appropriate taxing authority . You may not deduct payment provider fees (i.e., bank or credit card company fees and gift card vendor fees) from your Gross Revenue calculation.

2. “COGS” or “Costs of Goods Sold” includes the purchase of supplies used in the sales of goods and performance of services to customers. COGS does not include labor costs attributable to the product or service sales, which are included in the Payroll and Other Operating Expenses categories.

3. “Gross Profit” means your Gross Revenue minus Cost of Goods Sold.

4. “Advertising” means expenditures for local advertising, marketing, and promotions.

5. “Payroll” means the total cost of wages, payroll processing fees, and payroll taxes.

6. “Rent” means the expense to lease the location where the Company-Owned Outlet operates.

7. “Credit Card Processing Fees” means the amount paid to the payment processing company for credit card purchases by customers.
8. “Other Operating Expenses” means other expenses attributable to the operation of the Company-Owned Outlet, including insurance, software fees, banking charges, business licenses & permits, office expenses, dues & subscriptions, meals and entertainment, mileage, charitable contributions, postage and delivery, and other miscellaneous expenses.
9. “Royalties” means an amount equal to eight percent (8%) of the Gross Revenue for each outlet. Although the Company-Owned Outlets do not pay us a Royalty, we have included the actual royalty rate that would have been paid by the Company-Owned Outlets if they were operating under our current form of Franchise Agreement.
10. “Technology Fee” means an amount equal to two-hundred dollars (\$200) per month for each month of operation during the Measuring Period. Although the Company-Owned Outlets did not pay us a Technology Fee during the Measuring Period, we have included the actual Technology Fee amount that would have been paid by each Company-Owned Outlet if they were operating under our current form of Franchise Agreement.
11. “EBITDA (If Franchised)” means Gross Profit minus Advertising, Payroll, Rent, Credit Card Processing Fees, and Other Operating Expenses, Royalty, and Technology Fees. “EBITDA (If Franchised)” does not include interest paid on debt, taxes, depreciation, or amortization expenses. To the extent the outlet disclosed does not pay a salary to the owner-operator, the owner-operator’s pay is reflected in “EBITDA (If Franchised)” for the outlet.
12. “Margin” equals EBITDA (If Franchised) divided by Gross Revenue.

**Notes Regarding the Company-Owned Outlets and Item 19 Generally:**

1. The figures in the tables above use the historical information that the Company-Owned Outlet provided to us. Upon your reasonable request, we will provide written substantiation for this financial performance representation.
2. Written substantiation to support the information appearing in this financial performance representation is available to you upon reasonable request.

**Some outlets have sold this much. Your individual results may differ. There is no assurance you’ll sell as much.**

Other than the preceding financial performance representation, we do not make any representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing business, however, we may provide you with the actual records of that business. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Harshad Patel at 1236 E Lincoln Hwy, Langhorne, Pennsylvania 19047; (215) 989-8112; hnv.infinity@gmail.com, the Federal Trade Commission, and the appropriate state regulatory agencies.

*[Remainder of page intentionally left blank. Item 20 begins next page.]*

**ITEM 20.**  
**OUTLETS AND FRANCHISEE INFORMATION**

Our fiscal year ends on December 31st of each year.

**Table No. 1**  
**Systemwide Outlets Summary**  
**For years 2020 to 2022**

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2020	0	0	0
	2021	0	0	0
	2022	0	0	0
Company-Owned	2020	1	1	0
	2021	1	2	+1
	2022	2	2	0
<b>Total</b>	<b>2020</b>	<b>1</b>	<b>1</b>	<b>0</b>
	<b>2021</b>	<b>1</b>	<b>2</b>	<b>+1</b>
	<b>2022</b>	<b>2</b>	<b>2</b>	<b>0</b>

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners (other than to us)**  
**For years 2020 to 2022**

State	Year	Number of Transfers
<b>Total</b>	<b>2020</b>	<b>0</b>
	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>0</b>

**Table No. 3**  
**Status of Franchised Outlets**  
**For years 2020 to 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
<b>Total</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For years 2020 to 2022**

State	Year	Company-Owned Outlets at Start of Year	Company-Owned Outlets Opened	Company-Owned Outlets Reacquired From Franchisee	Company-Owned Outlets Closed	Company-Owned Outlets Sold to Franchisee	Company-Owned Outlets at End of the Year
PA	2020	1	0	0	0	0	1
	2021	1	1	0	0	0	2
	2022	2	0	0	0	0	2
<b>Totals</b>	<b>2020</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2021</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
	<b>2022</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>

**Table No. 5**  
**Projected Openings as of December 31, 2022**  
**For following 12-month Period**

State	Franchise Agreements Signed But Franchised Business Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Pennsylvania	0	2	1
<b>Total</b>	<b>0</b>	<b>2</b>	<b>1</b>

### **Current and Former Franchisees**

Set forth on Exhibit C are the (i) names of all current franchisees and the address and telephone number of each of their Franchised Businesses, and (ii) names, city and state, and the current business telephone number, or, if unknown, the last known home telephone number of every franchisee who had a Franchised Business terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under any Franchise Agreement during the most recently completed fiscal year or who has not communicated with us within 10 weeks of this Disclosure Document's issuance date.

If you buy this Franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

### **Confidentiality Agreements**

We have not signed any confidentiality clauses with current or former franchisees.

### **Trademark-Specific Franchisee Organizations**

As of the date of this Disclosure Document, there are no trademark-specific franchisee organizations associated with our franchise system.

**ITEM 21.**  
**FINANCIAL STATEMENTS**

Attached as Exhibit A to this Disclosure Document is our unaudited opening balance sheet as of July 28, 2023. As we were formed in December 2022 and will begin offering franchises upon issuance of this Disclosure Document, we have not been in business for three years or more and cannot include all of the financial statements required by the FTC Rule for our last three fiscal years. Our fiscal year ends on December 31.

THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAD AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.

**ITEM 22.**  
**CONTRACTS**

The following agreements are attached as exhibits to this Disclosure Document:

<b>Contract</b>	<b>Location in Document</b>
Franchise Agreement	Exhibit E
Franchisee Disclosure Questionnaire	Attachment F to FA
Form of General Release	Exhibit G
Form of Nondisclosure and Noncompete	Exhibit H
State-Required Agreement Riders	Exhibit I

**ITEM 23.**  
**RECEIPT**

Attached as the last two pages of this Disclosure Document are copies of the Receipt which you will be required to sign. One signed copy of the Receipt must be returned to us, as provided on the Receipt.

## **EXHIBIT A**

### **FINANCIAL STATEMENTS**

Maryland Franchise Regulation (COMAR) 02.02.08.13D states that unaudited financial information must be accompanied by the following written statement: "These Financial Statements Have Been Prepared without an Audit. Prospective Franchisees or Sellers of Franchises Should be Advised that No Independent Certified Public Accountant Has Audited These Figures or Expressed an Opinion with Regard to their Content or Form."

THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAD AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.

# **Smokers Destiny LLC**

**(A Pennsylvania Limited Liability Company)**

**Balance Sheet with Report of Independent Auditors  
December 31, 2022**

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Report of Independent Auditors

To the Partners of  
Smokers Destiny LLC:

*Report on the Financial Statements*

We have audited the accompanying financial statements of Smokers Destiny LLC, a Pennsylvania limited liability company, which comprise the balance sheet as of December 31, 2022, and the related notes to the financial statements.

*Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

*Auditors' Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Smokers Destiny LLC as of December 31, 2022 in accordance with accounting principles generally accepted in the United States of America.

*DA Advisory Group*

Troy, MI  
April 27, 2023

**Smokers Destiny LLC**  
**(A Pennsylvania Limited Liability Company)**  
**Balance Sheet**  
**As of December 31, 2022**

	<u>12/31/2022</u>
<b>Assets</b>	
<b>Current Assets</b>	
Cash and cash equivalents	\$ 3,473
<b>Total Current Assets</b>	<u>3,473</u>
<b>Total Assets</b>	<u><u>\$ 3,473</u></u>
<b>Liabilities &amp; Partners' Equity</b>	
<b>Total Liabilities</b>	-
<b>Partners' Equity</b>	<u>3,473</u>
<b>Total Liabilities and Partners' Equity</b>	<u><u>\$ 3,473</u></u>

The accompanying notes are an integral part of the financial statements.

Smokers Destiny LLC  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2022

1. Organization

Smokers Destiny LLC (the “Company”) is a Pennsylvania limited liability company formed on November 29, 2022, for the purpose of offering franchises for tobacco and vape stores. The Company is owned by two individuals (“Partners”). Total Partner contributions to the Company for the year ended December 31, 2022 were \$3,473.

2. Summary of significant accounting policies and nature of operations

Basis of accounting

The Company prepares its financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Revenue and expenses

Operating income consists of contractual franchise royalties based on a percentage of monthly sales which are recognized as revenue in the month earned as well as revenue from other contractual agreements. For the year ended December 31, 2022, no royalties were earned.

Initial franchise fees are recognized as revenue once substantially all of the initial services of the Company required by franchise agreement have been performed and no other material conditions or obligations related to the determination of substantial performance exist. For the year ended December 31, 2022, initial franchise fees were \$0.

Cash and cash equivalents

Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

The Company maintains its cash in bank deposit accounts which, could exceed federally insured limits. The Company has not experienced an instance where cash held in the account exceeded insured limits since their inception and have not had losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

Income taxes

Income taxes on Company income are levied on the Partners at the individual level. Accordingly, all profits and losses of the Company are recognized by the Member on their respective tax return.

Subsequent events

Subsequent events have been evaluated through April 27, 2023, which is the date the financial statements were available to be issued. No significant events or transactions were identified that would require adjustment to the balance sheet or disclosure.

**Smoker's Destiny LLC**  
(A Pennsylvania Limited Liability Company)  
**Balance Sheet**  
As of July 28, 2023

	<u>Total</u>
<b>ASSETS</b>	
Current Assets	
Cash and cash equivalents	3,473.00
Total Bank Accounts	<u>\$ 3,473.00</u>
Other Current Assets	
Uncategorized Asset	0.00
Total Other Current Assets	<u>\$ 0.00</u>
Total Current Assets	<u>\$ 3,473.00</u>
<b>TOTAL ASSETS</b>	<u>\$ 3,473.00</u>
<b>LIABILITIES AND EQUITY</b>	
Total Liabilities	
Equity	
Opening Balance Equity	3,473.00
Owner's Pay & Personal Expenses	0.00
Retained Earnings	0.00
Net Income	
Total Equity	<u>\$ 3,473.00</u>
<b>TOTAL LIABILITIES AND EQUITY</b>	<u>\$ 3,473.00</u>

Monday, Aug 28, 2023 12:34:19 PM GMT-7 - Accrual Basis

**EXHIBIT B**

**LIST OF STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS**

## List of State Regulatory Administrators

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

<b>LIST OF STATE ADMINISTRATORS</b>	
<b><u>CALIFORNIA</u></b> Department of Financial Protection and Innovation 320 West 4th Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free (866) 275-2677	<b><u>CONNECTICUT</u></b> State of Connecticut Department of Banking Securities & Business Investments Division 260 Constitution Plaza Hartford, Connecticut 06103-1800 (860) 240-8230
<b><u>HAWAII</u></b> Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	<b><u>ILLINOIS</u></b> Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465
<b><u>INDIANA</u></b> Indiana Secretary of State Franchise Section 302 Washington Street, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	<b><u>MARYLAND</u></b> Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360
<b><u>MICHIGAN</u></b> Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 W. Ottawa Street G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, Michigan 48933 (517) 373-7117	<b><u>MINNESOTA</u></b> Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 539-1600
<b><u>NEW YORK</u></b> New York State Department of Law Investor Protection Bureau 28 Liberty Street, 21 <sup>st</sup> Floor New York, NY 10005 (212) 416-8222	<b><u>NORTH DAKOTA</u></b> North Dakota Securities Department State Capitol Department 414 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505 (701) 328-4712
<b><u>OREGON</u></b> Department of Business Services Division of Finance and Corporate Securities Labor and Industries Building 350 Winter Street, NE Room 410 Salem, Oregon 97310 (503) 378-4387	<b><u>RHODE ISLAND</u></b> Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
<b><u>SOUTH DAKOTA</u></b> Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563	<b><u>VIRGINIA</u></b> State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051
<b><u>WASHINGTON</u></b> Department of Financial Institutions Securities Division, P.O. Box 9033 Olympia, Washington 98507 (360) 902-8760	<b><u>WISCONSIN</u></b> Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

## List of Agents for Service of Process

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states:

<b>LIST OF STATE AGENT FOR SERVICE OF PROCESS</b>	
<b><u>CALIFORNIA</u></b> Commissioner Department of Financial Protection and Innovation 320 West 4 <sup>th</sup> Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free (866) 275-2677	<b><u>CONNECTICUT</u></b> Banking Commissioner Department of Banking Securities & Business Investments Division 260 Constitution Plaza Hartford, Connecticut 06103-1800 (860) 240-8230
<b><u>HAWAII</u></b> Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	<b><u>ILLINOIS</u></b> Illinois Attorney General Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465
<b><u>INDIANA</u></b> Indiana Secretary of State Franchise Section 302 West Washington Street, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	<b><u>MARYLAND</u></b> Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360
<b><u>MICHIGAN</u></b> Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 W. Ottawa Street G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, Michigan 48933 (517) 373-7117	<b><u>MINNESOTA</u></b> Minnesota Commissioner of Commerce Minnesota Department of Commerce 85 7th Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 539-1600
<b><u>NEW YORK</u></b> New York Secretary of State New York Department of State One Commerce Plaza 99 Washington Avenue, 6th Floor Albany, NY 12231 (518) 472-2492	<b><u>NORTH DAKOTA</u></b> North Dakota Securities Commissioner State Capitol 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505 (701) 328-4712
<b><u>OREGON</u></b> Secretary of State Corporation Division - Process Service 255 Capitol Street NE, Suite 151 Salem, OR 97310-1327 (503) 986-2200	<b><u>RHODE ISLAND</u></b> Director of Department of Business Regulation Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
<b><u>SOUTH DAKOTA</u></b> Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563	<b><u>VIRGINIA</u></b> Clerk of the State Corporation Commission 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, Virginia 23219 (804) 371-9733
<b><u>WASHINGTON</u></b> Director, Department of Financial Institutions Securities Division, 3rd Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760	<b><u>WISCONSIN</u></b> Administrator, Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

**EXHIBIT C**

**LIST OF CURRENT FRANCHISEES**

**CURRENT FRANCHISEES**

**NONE.**

**FORMER FRANCHISEES**

**NONE.**

## EXHIBIT D

### OPERATIONS MANUAL TABLE OF CONTENTS

The Operations Manual is still under development; therefore, these numbers are estimates based on what has currently been developed and are subject to change.

Chapter	Pages
Introduction	12
Start-Up	20
Accounting & Administration	16
Human Resources	32
Marketing & Social Media	18
Daily Business Operations	10
Safety & Security	25
<b>Total</b>	<b>133</b>

**EXHIBIT E**

**FRANCHISE AGREEMENT**  
**WITH ATTACHMENTS**



**FRANCHISE AGREEMENT**

**between**

**SMOKER'S DESTINY, LLC**

**and**

---

**FRANCHISEE**

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## ATTACHMENTS

Attachment A – Franchisee-Specific Terms  
Attachment B – Payment and Performance Guaranty  
Attachment C – Form of General Release  
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Attachment F – Franchisee Compliance Questionnaire

## **SMOKER'S DESTINY, LLC**

### **FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the date set forth on Attachment A of this Agreement (the "Effective Date") (Attachment A and all attachments and schedules attached to this Agreement are hereby incorporated by this reference) between Smoker's Destiny, LLC, a Pennsylvania limited liability company with its principal place of business at 1236 E Lincoln Hwy Langhorne, Pennsylvania 19047 ("Smoker's Destiny"), and the person or entity identified on Attachment A as the franchisee ("Franchisee") with its principal place of business as set forth on Attachment A. In this Agreement, "we," "us," and "our" refer to Smoker's Destiny, LLC. "You" and "Your" refer to Franchisee.

### **RECITALS**

A. We and our affiliates have accumulated knowledge and experience in running a modern smoke shop that offers tobacco, nicotine, and other legal herbal use and of which we have developed and will continue to develop a distinctive business format and set of specifications and operating procedures (collectively, the "System") for the operation of smoke shops that operate under the Smoker's Destiny Smoke Shop mark.

B. The distinguishing characteristics of the System include, but are not limited to, our Shop (as defined in Recital E) designs, layouts, and identification schemes (collectively, the "Trade Dress"), our specifications for equipment, inventory, and accessories; our website or series of websites for the Shops (the "System Website"); our relationships with vendors; our software and computer programs; our online booking system; our reservation procedures; any programs that we have developed or may develop; the accumulated experience reflected in our training program, operating procedures, customer service standards methods, and marketing techniques; and the mandatory and suggested policies, procedures, standards, specifications, rules, and requirements ("System Standards") set out in our operations manuals ("Manuals") and otherwise in writing. We may change, improve, add to, and further develop the elements of the System from time to time.

C. We identify the Shops operating under the System by means of the Smoker's Destiny, LLC mark and certain other trademarks, service marks, trade names, signs, associated designs, artwork, and logos (collectively, the "Marks"). We may designate for your use other trade names, service marks, and trademarks as Marks from time to time. These marks which will also be included in the term the "Marks."

D. If you are a corporation, limited liability company, partnership, or other entity (collectively, an "Entity"), all of your owners of a legal and/or beneficial interest in the Entity (the "Owners") are listed on Attachment A. If you are an Entity, the individual owner who you must appoint to have authority over all business decisions related to your business and to have the power to bind you in all dealings with us will be referred to as your "Operating Principal."

E. You desire to open and operate a Smoker's Destiny Smoke Shop store using the Marks and the System (a "Shop"), and we are willing to grant to you a license to open and operate a shop on the terms and conditions of this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing promises and the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Section 1        Rights Granted.**

1.1     Grant of Franchise. Upon the terms and conditions of this Agreement, we grant to you a non-exclusive license (the “License”) to operate one Shop using the Marks and the System. The Shop will be located at a site to be mutually agreed upon subsequent to the execution of this Agreement, pursuant to Section 4.1 (Site Selection) (the “Site”), within the area set forth on Attachment A (the “Site Selection Area”). You have no right to (i) sublicense the Marks or the System to any other person or entity, (ii) use the Marks or the System at any location other than the Site, or (iii) to use the Marks or the System in any wholesale, e-commerce, or other channel of distribution besides the operation of the Shop at the Site.

1.2     Acceptance of License. You hereby accept the License and agree to operate the Shop according to the provisions of this Agreement for the entire Term, as defined in Section 2.2 (Successor Term).

1.3     Limited Territorial Protection. Once you have selected and we have accepted a Site in the Site Selection Area in accordance with Section 4.1 (Site Selection), we will designate an area within the confines of the Site Selection Area as your protected territory (the “Territory”). You do not have any territorial protection in your Site Selection Area, unless and until we identify your Territory, as explained in Section 4.3 (Definition of the Territory). Except as provided in this Section 1.3, we and our affiliates will not open, or license a third party to open, a Shop within your Territory. Except for the foregoing sentence, we and our affiliates have the right to conduct any business activities, under any name, in any geographic area, and at any location, regardless of the proximity to or effect on your Shop. For example, without limitation, we have the right to:

- (a)     establish or license franchises and/or company-owned Shops or businesses offering similar or identical products, services, and programs and using the System or elements of the System (i) under the Marks anywhere outside of the Territory or (ii) under names, symbols, or marks other than the Marks anywhere, including inside and outside of the Territory;
- (b)     sell or offer, or license others to sell or offer, any products or services using the Marks or other marks through any alternative distribution channels, including, without limitation, through e-commerce, in retail stores, via recorded media, via online videos, or via broadcast media, anywhere, including inside and outside of the Territory;
- (c)     advertise, or authorize others to advertise, using the Marks anywhere, including inside and outside of the Territory; and
- (d)     acquire, be acquired by, or merge with other companies with existing facilities or businesses anywhere (including inside or outside of the Territory) and, even if such businesses are located in the Territory, (i) convert the other businesses to the Smoker’s Destiny, LLC name, (ii) permit the other businesses to continue to operate under another name, and/or (iii) permit the businesses to operate under another name and convert existing Shops to such other name.

1.4     Operating Principal and Key Manager. If you are an Entity, you must appoint an individual owner as your Operating Principal who must have authority over all business decisions related to your Shop and must have the power to bind you in all dealings with us. In addition, you must appoint a manager to manage the day-to-day business of your Shop (the “Key Manager”). Your Operating Principal may serve as your Key Manager, unless we believe that he or she does not have sufficient experience or qualifications. Your Operating Principal must have at least a 10% ownership interest in your Entity, but your Key Manager is not required to have an ownership interest in your Entity. Your Operating Principal and Key Manager (if known at the time of signing) shall be listed on Attachment A. You must provide us with written notice of your Operating Principal and Key Manager(s) at least 60 days prior to opening and may not change your Operating Principal and Key Manager without our prior written approval.

## 1.5 Ownership and Guarantee.

(a) Owners of Equity. If you are an Entity, each of your Owners must execute the “Payment and Performance Guarantee” that is attached in Attachment C (the “Guarantee”). By executing the Guarantee, each Owner will be bound by the provisions contained in this Agreement, including without limitation the restrictions set forth in Section 12 (Your Covenant Not to Compete). Further, a violation of any of the provisions of this Agreement, including the covenants contained in Section 12, by any Owner will also constitute a violation by you of your obligations under this Agreement. You represent that the individuals executing this Agreement under the Guarantee represent that they are your sole owners.

(b) Governing Documents. If you are (or Transfer this Agreement to) an Entity, upon our request, you agree to furnish us with a list of holders of direct or indirect equity interests and their percentage interests, as well as copies of your governing documents and any other corporate documents, books, or records, including certificates of good standing from your state. The Owners may not enter into any shareholders’ agreement, management or operating agreement, voting trust, or other arrangement that gives a third party the power to direct and control your affairs without our prior written consent. During the Term, your governing documents must provide that no transfer of any ownership interest may be made, except in accordance with Section 13 (Transfer and Assignment) of this Agreement. Any securities that you issue must bear a conspicuous printed legend to that effect.

## **Section 2      Initial Term and Successor Term.**

2.1 Initial Term. The initial term (the “Initial Term”) of the License begins on the Effective Date and ends ten years from the date that your Shop opens for business (the “Opening Date”) unless this Agreement is terminated sooner as provided in other sections of this Agreement.

2.2 Successor Term. Upon the expiration of the Initial Term, if you (i) are not in default under this Agreement, (ii) have substantially complied with this Agreement throughout the Term, (iii) have timely paid all monies due to us or our affiliates, and (iv) comply with this Section 2.2, you may, at your option, obtain two additional consecutive successor terms of ten years each (each, a “Successor Term”). The Initial Term and Successor Terms are referred collectively in this Agreement as the “Term.” You may only exercise this right to obtain a Successor Term by:

(a) giving us written notice of your desire to obtain a successor License at least six, but no more than 12, months before the expiration of the then-current Initial Term or Successor Term;

(b) delivering to us a fully executed franchise agreement on our then-current form of franchise agreement, which you acknowledge may contain terms materially different than those contained in this Agreement, including, but not limited to, (i) higher rates of Royalty Fees and Marketing Fees (as herein defined) and other fees and charges and (ii) a modified Territory;

(c) refurbishing or renovating the Shop, at your expense, to conform the decor, color schemes, storefront, signage, and presentation of the Marks to our then-current image and, if necessary, in our sole opinion, to update and replace the equipment, furniture, signage, and fixtures to meet our then-current specifications;

(d) executing a general release, in a form we prescribe, of any and all claims against us, our Area Representatives, our affiliates, and our and their past, present, and future officers, directors, shareholders, and employees arising out of, or relating to, your Shop;

(e) completing, and having your Operating Principal and Key Manager complete, all of our then-current training requirements, including any additional training that we may require;

- (f) securing the right from your landlord to continue operating at the Site for the remainder of such Successor Term;
- (g) substantially and timely complying with each provision of this Agreement or any other agreement with us, our affiliates, or your landlord throughout the Initial Term and having no Event of Default (as defined in Section 14.1 (Events of Default)), or event which with the giving of notice and/or passage of time would constitute an Event of Default, in existence as of the expiration of the Initial Term; and
- (h) paying to us the Successor Fee (as defined in Section 3.5 (Successor Fee)).

### **Section 3 Fees.**

3.1 Franchise Fee. You must pay us an initial franchise fee as set forth on Attachment A (the “Franchise Fee”) upon execution of this Agreement. The initial Franchise Fee is paid in consideration of the rights granted in Section 1 (Rights Granted) and will be deemed fully earned at the time paid. You acknowledge that we have no obligation to refund the Franchise Fee, in whole or in part, for any reason.

(a) Escrow of Initial Fees. Based upon Franchisor’s financial condition, South Dakota has required an Escrow Agreement to be executed in pursuant of State Code and on file at the State’s Attorney General Office.

(b) Fee Deferral. Based upon Franchisor’s financial condition, Illinois requires the payment of the initial franchise fee to be deferred until the franchisor has satisfied its pre-opening obligations to franchisee and the franchisee has commenced business operations. The Illinois Attorney General’s Office imposed this deferral requirement due to Franchisor’s financial condition.

### **3.2 Royalty Fee.**

(a) Amount of Royalty Fee. You must pay us a weekly royalty fee (the “Royalty Fee”) equal to 8% of Gross Revenue (as defined in Section 3.2(b)) for the previous week. The Royalty Fee is non-refundable and is paid in consideration of the ongoing right to use the Marks and the System in accordance with this Agreement and not in exchange for services rendered by us.

(b) Gross Revenue. “Gross Revenue” means all revenue that you receive or otherwise derive from operating the Shop, including any revenue derived from organizing and hosting off-site events, whether from cash, check, credit or debit card, gift card or gift certificate, or other credit transactions, and regardless of collection or when you actually provide the products or services in exchange for the revenue. If you receive any proceeds from any business interruption insurance applicable to loss of revenue at the Franchised Business, there shall be added to Gross Revenue an amount equal to the imputed gross revenue that the insurer used to calculate those proceeds. Gross Revenue includes promotional allowances or rebates paid to you in connection with your purchase of products or supplies or your referral of customers. Gross Revenue does not include (i) any bona fide returns and credits that are actually provided to customers, (ii) any bone fide shipping charges that you collect from a customer and actually pay to a third-party shipping or logistics company for the delivery of items to customers, and (iii) any sales or other taxes that you collect from customers and pay directly to the appropriate taxing authority. You may not deduct payment provider fees (i.e., bank or credit card company fees and gift card vendor fees) from your Gross Revenue calculation.

(c) CPI Increase. To calculate the “CPI Increase” on any amount, multiply that amount by a fraction, the numerator of which is the Inflation Index on the first day of the year for which the increase is to apply, and the denominator for which is the Inflation Index on January 1 of the year of the Effective Date or the effective date of the most recent CPI Increase, whichever is more recent. The “Inflation Index” means the U.S. City Average Price Index for All Urban Consumers for All Items (Base Year 1982-84), as published by the United States Department of Labor, Bureau of Labor Statistics, or, if such index is discontinued or unavailable, such other comparable index for calculating changes in the cost of living or purchasing power for consumers in the United States that we reasonably designate.

3.3 Marketing Fee. We reserve the right to develop a Marketing Fund and charge you a Marketing Fee of up to 2% of Gross Revenue. In addition to your Marketing Fee, beginning in the first full month after the date the Franchised Business opens, you must spend a minimum of 1% of Gross Revenue per month on local advertising and promotional activities, which shall be payable directly to third party vendors. If you fail to pay the required amount in any quarter, we may require you to pay us the shortfall as an additional Marketing Fee or to pay us the shortfall for us to spend on local marketing for your Franchised Business.

3.4 Technology Fee. You must pay to us, or a third party that we designate, a technology fee for various technology services that we will provide or arrange for third parties to provide, which services are subject to change over time (a "Technology Fee"). Currently, the Technology Fee is \$200 per month from the date that you begin receiving the technology services. The first month will be assessed pro rata from the date on which you begin receiving the technology services. We reserve the right to increase the fee by providing you with written notice of any change at least 30 days prior to the implementation of the new fee amount. The Technology Fee currently includes fees related to your access to and usage of our system, our intranet, any mobile applications we develop, and the System Website. We may add, delete, or otherwise modify the products and services that are included in the Technology Fee.

3.5 Successor Fee. Upon your execution of a successor franchise agreement pursuant to Section 2.2 (Successor Term), you will pay to us a successor fee equal to twenty-five percent (25%) of our then-current franchise fee for new franchisees (the "Successor Fee").

3.6 Transfer Fee. If you Transfer (as defined in Section 13.2 (Definition of Transfer)) your Shop or this Agreement, you must pay us a Transfer Fee equal to \$10,000. \$2,500 deposit due with written notice of proposed transfer, full balance due at closing. No transfer fee is due for transfers upon death or incapacity.

3.7 Relocation Fee. If you relocate your Shop from the Site to a new location, you will pay to us a relocation fee equal to \$2,500 plus our administrative and legal expenses in evaluating the relocation (the "Relocation Fee").

3.8 Payments of Fees. Your Royalty Fees, Marketing Fees, and Technology Fees (the "Operating Fees") are due to us and must be reported to us at the times and in the manner that we specify from time to time in the Manuals or otherwise. Currently, you must pay us your Royalty Fees and Marketing Fees within three (3) business days after the end of each calendar month, based on your Gross Revenue for the preceding month. All other fees and payments due to us must be paid to us within ten days of your receipt of an invoice from us.

3.9 Methods of Payment. You must make all payments to us by the method or methods that we specify from time to time in the Manuals, which may include payment via wire transfer or electronic debit to your bank account. You must furnish us and your bank with all authorizations necessary to effect payment by the methods we specify. We currently require you to make payment by electronic debit from your specified checking or savings account, and you must complete and sign an Authorization Agreement for Preauthorized Payments for this purpose. You must deliver a copy of the Authorization to us within five business days of our request. You must maintain sufficient funds in your account to permit us to withdraw the Operating Fees due from time to time. You may not, under any circumstances, set off, deduct or otherwise withhold any Operating Fees, interest charges, or any other monies payable under this Agreement on grounds of our alleged non-performance of any obligations or for any other reason. We may require you to purchase merchant processing services from us, our affiliates, or a vendor that we have approved or designated, each of whom may charge a reasonable monthly fee and reasonable per transaction fee. The payment processor may process all credit card payments related to your Shop, and remit payment to you of all monies owed, after withholding any Operating Fees payable to us and any payment processing fees payable to such processor. If you fail to timely report your Gross Revenue, or we are otherwise unable to access your Gross Revenue, we may estimate the amount of fees due and make a corresponding withdrawal from your bank account based on our estimate, plus 20% of our estimate. If we underestimate any fees due,

you will remain obligated to pay the total amount of fees due, which, if we institute an automatic debit program, we may debit from your account automatically. If we overestimate any fees due, we will credit the fees paid (without interest) against fees due in the next payment period after we receive accurate records regarding your Gross Revenue.

3.10 Interest; Late Fee. If any payment due to us is not received in full by the due date, you agree to pay us daily interest on the amount owed, calculated from the due date until paid, at the rate of 18% per annum (or the maximum rate permitted by law, if less than 18%). You also agree to pay us a late fee in the amount of \$25 for each day that a payment is paid after the applicable due date. This late fee is subject to increase upon 60 days' prior written notice but will not be increased more than once in any 12-month period. You acknowledge that this Section 3.13 is not our agreement to accept any payments after they are due and that any late payments are a default under this Agreement.

3.11 Taxes. You are responsible for all taxes, assessments, and government charges levied or assessed on you in connection with your business activities under this Agreement. In addition, as part of the Royalty Fee, Marketing Fee, Training Fee, Technology Fee, or any other fees that we charge, you will pay to us the amount of any taxes imposed on us or our affiliates (and any taxes imposed on us or our affiliates as a result of such imposition) by federal, state, or local taxing authorities as a result of our receipt of any such fees, not including any tax measured on our income.

## **Section 4      Project Management, Site Selection, Development, and Opening of Shop**

4.1 Site Selection. If you identify a site in the Site Selection Area on your own that is reasonably suited for the conduct of the Shop and is consistent with any site selection guidelines that we may provide, before entering into any lease or purchase agreement for the site, you must submit a site proposal package describing details about the proposed site and provide any other information that we reasonably require. We will review each site that we, the Real Estate Project Manager, our designated broker, or you identify and determine whether to accept it using our proprietary site selection assistance criteria. You acknowledge that we may refuse to accept a proposed site for any reason. If we accept the proposed site and you obtain it, we will insert a description of the specific location on Schedule 1 to Attachment A. **YOU ACKNOWLEDGE AND AGREE THAT OUR ACCEPTANCE OR PROPOSAL OF A PROPOSED SITE IS NOT A WARRANTY OR REPRESENTATION OF ANY KIND AS TO THE POTENTIAL SUCCESS OR PROFITABILITY OF YOUR SHOP. WHILE WE MAY PROVIDE ASSISTANCE AND GUIDANCE, IT IS SOLELY YOUR RESPONSIBILITY TO SELECT A SUITABLE SITE FOR THE SHOP.** The address listed on Schedule 1, if completed and signed by us, will be the "Site" referred to in this Agreement. A site is not accepted until you have received our acceptance in writing, as indicated by our delivery of the completed and signed Schedule 1.

4.2 Definition of the Territory. Once the Site has been accepted, we will identify your Territory in Schedule 1 to Attachment A based on the factors that we deem relevant, in our sole discretion, which might include demographics, the character and location of the Site, and nearby businesses and residences. Once we have defined the Territory, you will have no territorial or other rights in those portions of the Site Selection Area that are outside the Territory. You must return to us upon our request a signed copy of Schedule 1 to Attachment A acknowledging the Territory we have designated.

4.3 Site Acquisition. Before you or an affiliate make a binding commitment to purchase, lease, or sublease a site, we must accept the location in writing and approve in writing the proposed lease or purchase agreement or any letter of intent between you and the third-party seller or lessor. If you or your affiliate leases the Site, unless we waive the requirement in writing, you must arrange for the execution of the Lease Addendum in the form of Attachment D by you and your landlord in connection with any lease or sublease for your Site ("Site Lease") and any other provisions that we may reasonably require. Our review of the Site Lease is for our own benefit only and is not intended to supplement or replace a review by your attorney. We may require you to engage an attorney to review your Site Lease or purchase agreement for the Site that we have accepted and to supply us with reasonable documentation in connection with such review, Smoker's Destiny, LLC  
2023 Franchise Agreement

including a lease abstract and confirmation that the terms in the agreement reflect the terms in any letter of intent between you and the third-party seller or lessor. You must secure a Site that we have approved by signing a Site Lease or purchase agreement within 90 days after the Effective Date (the “Site Acquisition Deadline”). We may extend the Site Acquisition Deadline by 90 days in our sole discretion, and we may require you to execute a general release as a condition of us agreeing to grant such extension. If we have accepted a site for your Shop and you are unable or unwilling to acquire such site or an alternative site that we accept by the Site Acquisition Deadline, we may terminate the Franchise Agreement. You must deliver to us the completely executed purchase agreement or Site Lease and Lease Addendum within 10 days after execution of the Site Lease or purchase agreement, and you may not amend or renew any Site Lease without our written consent. You must comply with the terms and conditions of your Site Lease. We are not obligated to execute your lease or guarantee a lease for you.

#### 4.4 Site Construction.

(a) Construction Project Manager. You must use a construction project manager that we designate or approve (the “Construction Project Manager”) to manage and lead the design and construction of your Shop. We will make available to the Construction Project Manager a set of prototype plans and specifications (not for construction) for the Shop and for the exterior and interior design and layout. The Construction Project Manager will engage designers, architects, and engineers to adapt for the Site our standard plans and specifications for the exterior and interior design and layout, fixtures, furnishings, signs, Trade Dress, and equipment for the Shop. We will review the architectural drawings and specifications for the construction of the Shop showing all leasehold improvements, interior designs, and elevations developed by the Construction Project Manager and its designees (collectively “Plans”), which we must approve prior to their submission for permitting. After we have accepted the final Plans, you may not modify the Plans without our prior written consent. You may not engage any project managers, architects, engineers, or designers other than the Construction Project Manager and those selected by the Construction Project Manager without our prior written consent.

(b) Permit, Licenses, and Compliance. Before beginning any construction, you, at your expense, must obtain all necessary government permits and licenses for the lawful construction and operation of your Shop. You must abide by your landlord’s rules and guidelines. It is your responsibility to ensure that all Plans comply with the Americans with Disabilities Act (the “ADA”) and similar rules governing public accommodations for persons with disabilities, other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions. Our review of your Plans is limited to ensuring your compliance with our design requirements and is not designed to assess compliance with applicable federal, state, and local laws, rules, regulations, and ordinances in your Territory (“Applicable Laws”) or your Lease.

(c) Construction Phase. You must provide us with written notice identifying your proposed general contractor, and you must ensure that the contractor is duly licensed in your jurisdiction and adequately insured. You may not begin construction until we have given you written approval of the Plans and we or the Construction Project Manager has approved in writing your choice of general contractor. We may require you to use only general contractors that we have pre-approved, provided that we have pre-approved one in your Site Selection Area. You must notify us in writing promptly when construction begins and must maintain continuous construction until the Shop is completed. You agree to complete the construction of your Shop in accordance with the approved Plans at your expense. We, the Construction Project Manager, our and their employees, and our and their agents may inspect the construction at all reasonable times. After completion of construction, you must promptly obtain a certificate of occupancy and provide a copy of the certificate to us.

4.5 Opening Deadline. You must complete construction of and open your Shop for business no later than 90 days after possession of the Site is delivered to you by your landlord and no later than 180 days after the Effective Date (the “Opening Deadline”), unless we grant you an extension in writing. We may, in our sole discretion, extend the Opening Deadline, which we may condition on you agreeing to pay an Smoker’s Destiny, LLC

extension fee of \$2,500 for each month (or portion of a month) for which the Opening Deadline is extended and you executing a general release. You may not open the Shop until you have received our written approval, which we will not provide until (i) we have viewed the certificate of occupancy, (ii) confirmed that you have complied with the Plans, and (iii) confirmed that you have complied with the pre-opening marketing obligations set forth in this Agreement and have done so in accordance with our System Standards as set forth in the Manuals. You must open the Shop for business to the public within ten days from the date we give our written approval. Time is of the essence in constructing the premises for and opening the Shop.

4.6 Relocation. You may not relocate the Shop without our prior written consent. Such approval will not be unreasonably withheld, provided that (i) the new location for the Shop premises is satisfactory to us and you comply with our then-current real estate project management requirements, (ii) your lease, if any, for the new location complies with our then-current requirements and you and your landlord execute the Lease Addendum, (iii) you comply with our then-current requirements for constructing and furnishing the new location, (iv) the new location will not, as determined in our sole discretion, materially and adversely affect the Gross Revenue of any other Shop, (v) you have fully performed and complied with each provision of this Agreement within the last three years prior to, and as of, the date we consent to such relocation (the “Relocation Request Date”), (vi) no Event of Default (as herein defined), or event which with the giving of notice and/or passage of time would constitute an Event of Default, exists as of the Relocation Request Date, and (vii) you have met all of our then-current training requirements. If your Site Lease expires or is otherwise terminated, you must secure our approval of another site and enter into a Site Lease for the new approved site within 90 days. You agree to pay us the Relocation Fee upon notifying us of your intent to relocate the Shop to a new Site, whether or not the new Site is approved. We reserve the right to terminate this Agreement if you fail to secure a new approved site within 90 days after you lose the Site Lease.

## **Section 5      Training and Assistance**

5.1 Initial Training. Your Required Trainees must personally attend and satisfactorily complete our Initial Training before you open your Franchised Business. Initial Training currently consists of (i) three consecutive days of in person training at a location you designate at least 10 days prior to the opening of your Smoke Shop; and (ii) two to three days of online and virtual instruction via live and pre-recorded webinars, online learning management tools, and reading materials and guides, including our Manual. At your option, the Initial Training may be conducted at our Company-Owned Outlet in Langhorne, Pennsylvania or at your Studio Smoke Shop prior to opening. We may provide on-site follow-up training, as we, in our sole discretion, deem necessary, to be conducted four to six weeks after your Franchised Business opens for business. We will conduct Initial Training at least six times per year but may conduct training sessions more frequently in our discretion. We reserve the right to modify the length, location, and timing of Initial Training. We may waive a portion of Initial Training or alter the training schedule if we determine that your Required Trainees have sufficient prior experience or training. Initial Training will be provided as soon as practicable after you sign your Franchise Agreement.

(a) Cost. We will provide instructors, facilities, and materials for Initial Training for up to three of your representatives (including your Required Trainees) provided that all of your trainees are trained during the same training session. If space is available, you may bring more than three representatives to Initial Training. We reserve the right to charge a training fee of \$500, which we may increase upon 60 days’ written notice to you, for (i) each person in excess of three trainees, (ii) each person who is repeating the course or replacing a person who did not pass, and (iii) each subsequent Operating Principal, Key Manager, or employee who attend the course. You are responsible for any travel and living expenses, wages, and other expenses incurred by your trainees during Initial Training or any other training programs. If you elect to have Initial Training conducted at your Smoke Shop, you will be responsible for any travel and living expenses, wages, and other expenses incurred by our trainers during Initial Training.

(b) Completion of Initial Training. Your Required Trainees must successfully complete Initial Training at least 10 days before the Opening Deadline. We will determine, in our discretion, what constitutes successful completion of the program. If your Required Trainees are unable to successfully complete, in

our sole discretion, Initial Training for any reason, your Required Trainees must repeat Initial Training, or you must send replacement Required Trainees to complete Initial Training. If your Required Trainees have not, in our sole discretion, successfully completed Initial Training ten days before the Opening Deadline, we may terminate the Franchise Agreement, in which case we will not refund any initial fees paid by you.

5.2 Opening Advice. Prior to opening your Shop, we will advise you as to development of class schedules and local marketing and networking efforts.

5.3 Additional Training. We may periodically conduct mandatory or optional training programs for your Required Trainees and/or your employees at our office or another location that we designate. There will be no charge for training programs that we require you or your employees to attend, but we may charge you a reasonable fee for optional training programs. We may provide additional training in person or via recorded media, teleconference, videoconference, the Internet, webinar, or any other means, as we determine. We may require your Required Trainees or employees to satisfactorily complete any additional training programs that we specify. We may require your Required Trainees to participate in refresher or advanced training each year.

5.4 Remedial Training. If, in our sole judgment, you fail to maintain the quality and service standards set forth in the Manuals, we may, in addition to all of our other rights and remedies, assign trainers to the Franchised Business to retrain Franchised Business employees and restore service levels and/or require you or your employees to repeat Initial Training or attend additional training programs at a location that we designate. We may charge a reasonable fee for each trainer assigned to your Franchised Business and any remedial training, including our reasonable travel and living expenses related to providing remedial training.

5.5 Training by You. You and/or your Operating Principal and your Key Managers are responsible for training all of your other employees (and subsequent Key Managers) in accordance with our standards and training programs. If, in our sole judgment, you fail to properly train your employees in accordance with our standards, we may prohibit you from training additional employees and either require them to attend training at our headquarters or pay for our costs and expenses to send one of our representatives to train them at your Franchised Business.

5.6 Requested Consulting Services. We will provide to you additional consulting services with respect to the operation of the Shop upon your reasonable request and subject to the availability of our personnel or the personnel of any Area Representative. We will make available to you information about new developments, techniques, and improvements in the areas of merchandising, advertising, management, operations, and Shop design. We may provide such additional consulting services through the distribution of printed or filmed material, an intranet or other electronic forum, meetings or seminars, teleconferences, webinars, or in person. If such services are rendered in person other than at our offices, you must pay us a consulting fee of \$500 for each of such employees or agents for each day or partial day services are rendered. We may increase the amount to be charged for such requested consulting services upon 60 days' prior written notice. Such additional consulting services will be rendered at a mutually convenient time.

5.7 Travel and Living Expenses. You are responsible for any travel and living expenses (including meals, transportation, and accommodations), wages, and other expenses incurred by your trainees. You are responsible for reimbursing us for any travel and living expenses incurred by our employees or agents related to providing any Initial Training, additional training, remedial training, or consulting services at your Store.

## **Section 6      Shop Operation and System Standards**

### **6.1      Manuals.**

(a) Compliance with the Manuals. We will furnish you with electronic access to our Manuals, on loan for as long as this Agreement or a successor franchise agreement remains in effect. We reserve the right to

furnish all or part of the Manuals to you in electronic form and to establish terms of use for access to any restricted portion of our website. You must comply with and abide by each required System Standard contained in the Manuals, as they may be amended, modified, or supplemented periodically and such other written or electronically transmitted System Standards that we may issue periodically. You acknowledge that we may amend, modify, or supplement the Manuals at any time, so long as such amendments, modifications, or supplements will, in our good faith opinion, benefit us and our existing and future franchisees or will otherwise improve the System. You must comply with revised mandatory System Standards within 30 days after we transmit the updates, unless otherwise specified.

(b) Use of the Manuals. You agree to keep your copy of the Manuals up-to-date. If there is any dispute as to the current contents of the Manuals, the terms of our master copy maintained at our headquarters will control. You acknowledge that we own the copyright in the Manuals and that your copy of the Manuals remains our property and will be returned to us immediately upon expiration or termination of this Agreement. You will treat the Manuals, and the information contained therein, as confidential and will maintain the confidentiality of such information. You will not, without our prior written consent, copy, duplicate, record, use, or otherwise reproduce in any way the Manuals, in whole or in part, or otherwise make their contents available to any unauthorized person, except as provided in Section 10 (Proprietary Information).

## 6.2 Management and Personnel.

(a) Shop Management. Unless otherwise specified in the Manuals, at all times that your Shop is open for business, including during Shop Events, it must be under the personal, on-premises supervision of either you, your Operating Principal, your Key Manager, or a trained attendant. Your Key Manager or another trained manager must be available at all times the Shop is open for business. You may not permit your Shop to be operated, managed, directed, or controlled by any other person or entity without our prior written consent.

(b) Employment Decisions and Policies. You are solely responsible for all labor and employment-related matters and decisions related to your Shop, including hiring, firing, promoting, demoting, and compensating (including through wages, bonuses, or benefits) your employees. You must ensure that your employees are qualified to perform their duties in accordance with our System Standards and successfully pass a background check. We do not require you to implement any employment-related policies or procedures or security-related policies or procedures that we (at our option) may make available to you in the Manuals or otherwise for your optional use. You shall determine to what extent, if any, these policies and procedures may be applicable to your operations at the Shop.

(c) Replacement Key Manager. If your Key Manager ceases to be employed by you at the Shop, you must hire a new Key Manager, and have them successfully complete Initial Training, within 30 days after your former Key Manager's employment at the Shop ends. If you are unable to immediately appoint and train a Key Manager, we may, in our sole discretion, provide a Key Manager to work at your Shop temporarily until a new Key Manager is appointed and trained. In such instances you will pay to us our actual costs and expenses for such temporary Key Manager so assigned to the Shop, including, without limitation, such Key Manager's salary and travel and living expenses. In addition, we may charge you a reasonable fee for this service.

6.3 Operation of the Shop. You will not use the Site for any purpose other than the operation of the Shop in compliance with the System and the Manuals. You will not lease, sublease, or assign the Site Lease for all or any portion of the Site, without our prior written consent.

(a) Restricted Uses. You, your Owners, and your affiliates may not provide any unapproved services to your Shop's customers (whether those services are provided at the Shop or any other location) without our prior written approval, which we may withhold in our sole discretion. You, your Owners, and your

affiliates may not operate any retail location providing any products or services that are ancillary to the Shop's business to customers from a location at or near the Site.

(b) Operating Hours. You must keep the Shop open for business to the public at least during the hours we prescribe from time to time in the Manuals or otherwise approve, unless prohibited by Applicable Laws or by the Site Lease (if any) for the Shop premises.

(c) Notice of Independent Contractor. During the Term, you agree to hold yourself out to the public as an independent contractor operating your Shop under license from us, and you must display in a conspicuous location in or upon the Shop, or in a manner that we specify, a sign containing the following notice or an alternative notice that we specify: "This business is owned and operated independently by [name of franchisee] who is an authorized licensed user of the trademark Smoker's Destiny Smoke Shop, which is a trademark owned by Smoker's Destiny, LLC." You must include this notice or other similar language that we specify on all forms, advertising, promotional materials, business cards, receipts, letterhead, contracts, stationary, and other written materials we designate.

(d) Upkeep of the Shop. You must keep the exterior (including parking lot) and interior of your Shop and all fixtures, furnishings, signs, and equipment (the "Operating Assets") in the highest degree of cleanliness, orderliness, sanitation, and repair in accordance with the Manuals. You must place or display at the Site (interior and exterior) only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that we periodically require or authorize. You may not make any material alteration, addition, replacement, or improvement to your Shop, including its Operating Assets, without our prior written consent.

6.4 Refurbishing and Renovations. You agree to take, without limitation, the following actions during the Term at your expense: (i) thorough cleaning, repainting and redecorating of the interior and exterior of the Shop at intervals that we may periodically designate and at our direction; (ii) interior and exterior repair of the Shop as needed; and (iii) repair or replacement, at our direction, of damaged, worn-out or obsolete Operating Assets at intervals that we may periodically specify (or, if we do not specify an interval for replacing any item, as that item needs to be repaired or replaced). Upon our written request, you must refurbish the Shop at your expense to conform the decor, Trade Dress, color schemes, signage, and presentation of the Marks to our then-current image. Such refurbishing may include, as we deem necessary, remodeling, redecoration, and other modifications to existing improvements and updating or replacing any Operating Assets. You acknowledge that this obligation could result in your making extensive structural changes to, and significantly remodeling and renovating, the Shop, and/or in your spending substantial amounts for new Operating Assets, and you agree to incur, without limitation, any capital expenditures required in order to comply with this obligation and our requirements (even if those expenditures cannot be amortized over the remaining Term). Within 60 days after receiving written notice from us, you must have plans prepared according to the System Standards we prescribe and, if we require, using architects and contractors we approve, and you must submit those plans to us for our approval. You must complete all work according to the plans we approve within the time period that we reasonably specify.

6.5 Pricing. If we determine that we may lawfully require you to charge certain prices for goods or services, certain minimum prices for goods or services, or certain maximum prices for goods or services, you must adhere to our pricing policies as set forth in the Manuals or otherwise in writing from time to time. Currently, we require you to charge Members and customers rates equal to or in excess of our minimum pricing schedule, as set forth in the Manuals, which we may change from time to time in writing. Otherwise, you are solely responsible for determining the prices that you will charge Members and customers. You must provide us with your current price list upon our request.

#### 6.6 Products, Supplies, Operating Assets, and Services.

(a) Purchases. We have the right to require that products, supplies, Operating Assets, and services that you purchase for resale or purchase or lease for use in your Shop: (i) meet specifications that we establish

from time to time; (ii) be a specific brand, kind, or model; (iii) be purchased or leased only from suppliers or service providers that we have expressly approved; and/or (iv) be purchased or leased only from a single source that we designate (which may include us or our affiliates or a buying cooperative organized by us or our affiliates). To the extent that we establish specifications, require approval of suppliers or service providers, or designate specific suppliers or service providers for particular items or services, we will publish our requirements in the Manuals.

(b) Products and Services You May Offer. You may offer in the Shop to customers only the products and services that we have approved in writing. In addition, you must offer the specific products and services that we require in the Manuals or otherwise in writing. We may change these specifications periodically, and we may designate specific products or services as optional or mandatory. You must offer all products and services that we designate as mandatory. You may sell products and services only in the varieties, forms, and packages that we have approved in accordance with our System Standards. You must maintain a sufficient supply of required products to meet the inventory standards we prescribe in the Manuals (or to meet reasonably anticipated customer demand, if we have not prescribed specific standards).

(c) Revenue from Purchases. You acknowledge and agree that we and/or our affiliates may derive revenue based on your purchases and leases, including from charging you for products and services we or our affiliates provide to you and from promotional allowances, volume discounts, and other payments made to us by suppliers and/or distributors that we designate or approve for some or all of our franchisees. We and our affiliates may use all amounts received from suppliers and/or distributors, whether or not based on your or other franchisees' actual or prospective dealings with them, without restriction for any purposes we or our affiliates deem appropriate. If you derive any revenue based on payments or promotional allowances received from suppliers and/or distributors, you must report to us the details of the arrangement and such revenue shall be included as part of your Gross Revenue.

(d) Approval Process. If you would like to offer products or services, or use any supplies, Operating Assets, or services that we have not approved or to purchase or lease from a supplier or service provider that we have not approved, you must submit a written request for approval and provide us with any information that we request. We have the right to inspect the proposed supplier's facilities and test samples of the proposed products and to evaluate the proposed service provider and the proposed service offerings. We may require the proposed supplier or service provider to visit our headquarters to evaluate the proposed supplier or service provider in person. You agree to pay us a charge not to exceed the reasonable cost of the inspection and our actual cost of testing the proposed product or evaluating the proposed service or service provider, including personnel and travel costs, whether or not the item, service, supplier, or service provider is approved. We have the right to grant, deny, or revoke approval of products, services, suppliers, or service providers based solely on our judgment. We will notify you in writing of our decision as soon as practicable following our evaluation. If you do not receive our approval within 90 days after submitting all of the information that we request, our failure to respond will be deemed a disapproval of the request. You acknowledge that the products and services that we approve for you to offer in your Shop may differ from those that we permit or require to be offered in other Shops.

(e) Revocation of Approval. We reserve the right to reinspect the facilities and products of any approved supplier and to reevaluate the services provided by any service provider at and to revoke approval of the item, service, supplier, or service provider if any fail to meet any of our then-current criteria. If you receive a notice of revocation of approval, you agree to cease purchasing or leasing the formerly approved item or service or any items or services from the formerly approved supplier or service provider and you must dispose of your remaining inventory of the formerly-approved items and services as we direct. If we revoke approval of a previously approved product that you have been selling to customers or service that you have been offering to customers, you must immediately discontinue offering the service and may continue to sell the product only from your existing inventory for up to 30 days following our disapproval. We have the right to shorten this period if, in our opinion, the continued sale of the product would prove detrimental to our reputation. After the 30-day period, or such shorter period that we may designate, you must dispose of your remaining formerly approved inventory as we direct.

6.7 Distribution. You may not make any sales of products or services outside of the Shop or use vendor relationships that you establish through your association with us or the Smoker's Destiny Smoke Shop brand for any other purpose besides the operation of the Shop, unless we consent in writing. You agree to purchase products solely for resale to retail customers, and not for resale or redistribution to any other party, including other Smoker's Destiny, LLC franchisees. You may not offer products or services in connection with the Marks on any website on the Internet or any other electronic communication network unless we consent in writing.

6.8 Participation in System-wide Programs, Conferences, and Councils.

(a) Promotional Programs. You must participate in all in-Shop promotional programs that we offer to franchisees. You will follow our guidelines concerning the acceptance and reimbursement of gift certificates, gift cards, coupons, corporate discounts, and other promotional programs as we set forth from time to time in the Manuals or otherwise in writing. You will not allow use of gift certificates, gift cards, or coupons (including Groupons and similar discounts) unless approved or offered by us or our affiliates.

(b) Conferences. You, your Operating Principal, your Key Managers, or any of your representatives that we designate must attend franchise conventions, meetings, product shows or demonstrations, and teleconferences that we or our Area Representative may require periodically in the Manuals or otherwise in writing. We or our Area Representative, in our or their sole discretion, will designate the time and place of any meetings, which may be held in-person or remotely via teleconference or web seminar. In each year, you and your employees shall not be required to attend in person more than three days of franchisee conventions and meetings that we organize, which shall count towards the five days of additional training programs that we may require your Required Trainees to attend annually. We or your Area Representative will be responsible for arranging meetings and providing meeting materials. You are responsible for arranging and paying for travel and living expenses that you and/or your representatives incur. We or our Area Representative may require you to pay us or our Area Representative a reasonable registration fee for you and each of your representatives. If you or any of your representatives fail to attend any events that we require you and/or they to attend, regardless of the reason for the absence, you must pay us the registration fee that each absent required attendee would have incurred plus \$500 for each absent required attendee, unless we have previously excused them in writing in our sole discretion.

(c) Franchisee Advisory Council. We may establish an advisory council of franchisees ("Franchisee Advisory Council") using a form and process set forth in the Manuals to advise us on various issues and strategies. The Franchisee Advisory Council will have an advisory role, but no operational or decision-making power. We may change the structure and process of the Franchisee Advisory Council or dissolve the Franchisee Advisory Council at any time. If we establish a Franchisee Advisory Council, you must participate in all council-related activities and meetings and must pay any dues related to the administration of the Franchisee Advisory Council.

6.9 Shop Management and Technology System.

(a) Acquisition and Updates. You must obtain, maintain, and use the hardware, software, other equipment, and network connections that we specify periodically in the Manuals necessary to operate our point-of-sale (POS) system, the customer relationship management system, the online reservation system, and other technology systems that we designate (collectively, the "Shop Management and Technology System"). You must use the Shop Management and Technology System to (i) enter and track purchase orders and receipts, attendance, and customer information, (ii) update inventory, (iii) enter and manage your customers' contact information, (iv) generate sales reports and analysis relating to the Shop, and (iv) provide other services relating to the operation of the Shop. If we require you to use any proprietary software or to purchase any software from a designated vendor, you must execute and pay any fees associated with any software license agreements or any related software maintenance agreements that we or the licensor of the software require. You must replace, upgrade, or update at your expense the Shop Management and Smoker's Destiny, LLC

Technology System as we may require periodically without limitation. We will establish reasonable deadlines for implementation of any changes to our Shop Management and Technology System requirements.

(b) Use of the Shop Management and Technology System. You agree: (i) that your Shop Management and Technology System will be dedicated for business uses relating to the operation of the Shop; (ii) to use the Shop Management and Technology System in accordance with our policies and operational procedures; (iii) to transmit financial and operating data to us as required by the Manuals; (iv) to do all things necessary to give us unrestricted access to the Shop Management and Technology System at all times (including users IDs and passwords, if necessary) so that we may independently download and transfer data via a modem or other connection that we specify; (v) to maintain the Shop Management and Technology System in good working order at your own expense; (vi) to ensure that your employees are adequately trained in the use of the Shop Management and Technology System and our related policies and procedures; and (vii) not to load or permit any unauthorized programs or games on any hardware included in the Shop Management and Technology System. You also must comply with all laws and payment card provider standards relating to the security of the Shop Management and Technology System, including, without limitation, the Payment Card Industry Data Security Standards. You are responsible for any and all consequences that may arise if the system is not properly operated, maintained and upgraded or if the Shop Management and Technology System (or any of its components) fails to operate on a continuous basis or as we or you expect.

6.10 Compliance with Laws and Good Business Practices. You must comply with all Applicable Laws. You will obtain and maintain in good standing any and all licenses, permits, and consents necessary for you to lawfully operate the Shop. You have sole responsibility for such compliance despite any information or advice that we or our Area Representatives may provide. You must in all dealings with your customers, prospective customers, suppliers, us and the public adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business or advertising practice which might injure our business or the goodwill associated with the Marks or other Shops.

6.11 Notice of Proceedings. You will notify us in writing within five days after the commencement of any action, suit or proceeding, or of the issuance of any inquiry, subpoena, order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality in connection with the operation or financial condition of the Shop, including without limitation any criminal action or proceeding brought by you against any employee, customer, or other person, but excluding civil proceedings against customers to collect monies owed.

6.12 Insurance. During the Term you must maintain in force at your sole expense the insurance coverage for the Shop in the amounts, covering the risks, and containing only the exceptions and exclusions that we periodically specify in the Manuals for all similarly situated Shops. All of your insurance carriers must be rated A or higher by A.M. Best and Company, Inc. (or such similar criteria as we periodically specify). These insurance policies must be in effect on or before the deadlines we specify. All coverage must be on an “occurrence” basis, except for the employment practices liability insurance coverage, which is on a “claims made” basis. All policies shall apply on a primary and non-contributory basis to any other insurance or self-insurance that we or our affiliates maintain. All general liability and workers’ compensation coverage must provide for waiver of subrogation in favor of us and our affiliates. We may, upon at least 60 days’ notice to you, periodically increase the amounts of coverage required and/or require different or additional insurance coverage at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. All insurance policies must name us, our Area Representative, and any affiliates we designate as an additional insured and provide for 30 days’ prior written notice to us of a policy’s material modification or cancellation. You agree periodically to send us a valid certificate of insurance or duplicate insurance policy evidencing that you have maintained the required coverage and paid the applicable premiums. If you fail to obtain or maintain (or to prove that you have obtained or maintained) the insurance we specify, in addition to our other remedies, we may (but need not) obtain such insurance for you and the Shop on your behalf, in which

event you shall cooperate with us and reimburse us for all premiums, costs and expenses we incur in obtaining and maintaining the insurance and pay us a reasonable fee for such service.

6.13 Taxes. You will pay when due all taxes, assessments, and governmental charges upon or against you or your real or personal properties, income, and revenue; provided that no such tax, assessment, or governmental charge need be paid so long as the validity, applicability, or amount thereof is being contested in good faith by appropriate proceedings and appropriate reserves are maintained to pay the disputed amount, if necessary.

## **Section 7      Marketing**

7.1 Our Advertising Materials. We may periodically formulate, develop, produce, and conduct, at our sole discretion, advertising or promotional programs in such form and media as we determine to be most effective. We may make available to you for you to purchase approved advertising and promotional materials, including signs, posters, collaterals, etc. that we have prepared. We or our affiliates will retain all copyrights relating to such advertising materials.

### **7.2      Marketing Fund.**

(a) Fund Management. We may, but are not obligated to, establish the Marketing Fund, a segregated or independent fund into which all Marketing Fees will be paid. In no event will we be deemed a fiduciary with respect to any Marketing Fees we receive or administer. We are not required to have an independent audit of the Marketing Fund completed. We will prepare an unaudited statement of contributions and expenditures for the Marketing Fund and make it available within 60 days after the close of our fiscal year to franchisees that make a written request for a copy. If any monies in the Marketing Fund remain at the end of a fiscal year, they will carry-over in the Marketing Fund into the next fiscal year. We or one of our affiliates may make or otherwise arrange loans to the Marketing Fund in any year in which the balance of the Marketing Fund is negative and charge a reasonable rate of interest. The amounts loaned to the Marketing Fund will be repaid from future contributions to the Marketing Fund in the year the loan is made or in subsequent years.

(b) Use of Marketing Fund. We may use monies in the Marketing Fund and any earnings on the Marketing Fund account for any costs associated with advertising (media and production), branding, marketing, public relations and/or promotional programs and materials, and any other activities we believe would benefit the Smoker's Destiny Smoke Shop brand or the Shops generally, including advertising campaigns in various media; creation, maintenance, and optimization of the System Website or other websites; keyword or adword purchasing programs; conducting and managing social media activities; direct mail advertising; market research, including, without limitation, secret shoppers and customer satisfaction surveys; branding studies; employing advertising and/or public relations agencies; purchasing promotional items; conducting and administering promotions, contests, giveaways, public relations events, and community involvement activities; and providing promotional and other marketing materials and services to our franchisees. We will not use the Marketing Fund for anything whose sole purpose is the marketing of franchises, however, you acknowledge that the System Website, public relations activities, community involvement activities, and other activities supported by the Marketing Fund may contain information about franchising opportunities. We will not use any contributions to the Marketing Fund to defray our general operating expenses, except for reasonable administrative costs and overhead we incur in activities reasonably related to the administration of the Marketing Fund or the management of Marketing Fund-supported programs (including the pro-rata amount of salaries of our personnel who devote time to Marketing Fund activities and retainers and fees for outside agencies). We may use monies in the Marketing Fund to pay for an independent audit of the Marketing Fund, if we elect to have it audited. We do not guarantee that you will benefit from the Marketing Fund in proportion to your contributions to the Marketing Fund.

(c) Control Over Marketing Fund. We may consult with, in our sole discretion, a franchisee advisory council selected by franchisees or a committee of franchisees that we appoint regarding marketing programs. However, we have the right to direct all marketing programs and uses of the Marketing Fund, with the final decision over creative concepts, materials, and media used in the programs and their placement.

(d) Materials Produced. Any sales and other materials produced with Marketing Fund monies will be made available to you without charge or at a reasonable cost. The proceeds of such sales will also be deposited into the Marketing Fund.

(e) Other Contributions. If we or our affiliates operate any Shops, we or our affiliates will contribute to the Marketing Fund a percentage of the receipts of those Shops, on the same basis as required for franchisees. If we reduce the Marketing Fund contribution rate for franchisees, we will reduce the contribution rate for company or affiliate-owned Shops by the same amount. You acknowledge that our other franchisees may not be required to contribute to the Marketing Fund, may be required to contribute to the Marketing Fund at a different rate than you, or may be required to contribute to a different marketing fund.

### 7.3 Local Marketing.

(a) Local Marketing Requirements. You must participate in such advertising, promotional, and community outreach programs that we may specify from time to time, at your own expense. You must use your best efforts to promote the use of the Marks in your Territory. You must ensure that all of your advertising, marketing, promotional, customer relationship management, public relations and other brand related programs and materials that you or your agents or representatives develop or implement relating to the Shop is completely clear, factual and not misleading, complies with all Applicable Laws, and conforms to the highest ethical standards and the advertising and marketing policies that we periodically specify. Any media advertising or direct mail marketing that you conduct must be predominantly focused within your Territory, unless we agree otherwise. There are no territorial restrictions from accepting business from retail customers that reside or work or are otherwise based outside of your Territory if these customers contact you, but we reserve the right to implement rules and restrictions regarding soliciting such customers in the future in our Manuals or otherwise in writing.

(b) Approval of Advertising Materials. You must obtain our advance written approval prior to using or producing any advertising or marketing materials using any of the Marks, in whole or in part. You agree to conduct all advertising in a dignified manner and to conform to the standards and requirements we specify in the Manuals. We will have the final decision on all creative development of advertising and promotional messages. If our written approval is not received within 14 days from the date we received the material, the material is deemed disapproved. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

(c) Minimum Marketing Expenditure. You must spend a minimum of 2% of Gross Revenue per month on local advertising and promotional activities (the "Marketing Spending Requirement"). Your Marketing Spending Requirement is in addition to your Marketing Fee. We have the right to designate in the Manuals the types of expenditures that will or will not count toward the Marketing Spending Requirement. At our request, you must submit appropriate documentation to verify compliance with the Marketing Spending Requirement. If you fail to spend (or prove that you spent) the Marketing Spending Requirement in any month, then we may, in addition to and without limiting our other rights and remedies, require you to pay us the shortfall as an additional Marketing Fee or to pay us the shortfall for us to spend on local marketing for your Shop.

(d) Grand Opening Advertising. You must pay us \$5,000 to conduct a grand opening marketing campaign on your behalf (the "Grand Opening Marketing Spend"). The Grand Opening Marketing Spend

is due upon invoice which will be sent approximately 60 days prior to your anticipated grand opening date, is uniform to all franchisees and is nonrefundable upon payment.

7.4 Advertising Cooperatives. You agree to join and actively participate in any organizations or associations of franchisees or advertising cooperatives that we establish or approve for the purpose of promoting, coordinating, and purchasing advertising in local, regional, or national areas where there are multiple Shops (“Advertising Cooperatives”) and to abide by the bylaws, rules, and regulations duly required by the Advertising Cooperative, which we have the right to mandate or approve. If you join an Advertising Cooperative, the Advertising Cooperative may require you to spend additional funds on marketing programs conducted by the Advertising Cooperative, which may be in addition to your Marketing Fee or Marketing Spending Requirement. We shall have the right to approve any marketing materials or marketing programs developed by any Advertising Cooperative in the same manner as specified in Section 7.3(b) (Approval of Advertising Materials).

#### 7.5 Digital Marketing.

(a) Restrictions. We or our affiliates may, in our sole discretion, establish and operate websites, social media accounts (such as Facebook, Twitter, Instagram, Pinterest, etc.), applications, keyword or adword purchasing programs, accounts with websites featuring gift certificates or discounted coupons (such as Groupon, Living Social, etc.), mobile applications, or other means of digital advertising on the Internet or any electronic communications network (collectively, “Digital Marketing”) that are intended to promote the Marks, your Shop, and the entire network of Shops. We will have the sole right to control all aspects of any Digital Marketing, including those related to your Shop. Unless we consent otherwise in writing, you and your employees may not, directly or indirectly, conduct or be involved in any Digital Marketing that use the Marks or that relate to the Shop or the network. If we do permit you or your employees to conduct any Digital Marketing, you or your employees must comply with any policies, standards, guidelines, or content requirements that we establish periodically and must immediately modify or delete any Digital Marketing that we determine, in our sole discretion, is not compliant with such policies, standards, guidelines, or requirements. If we permit you or your employees to conduct any Digital Marketing, we will have the right to retain full control over all websites, social media accounts, mobile applications or other means of digital advertising that we have permitted you to use. We may withdraw our approval for any Digital Marketing or suspend or terminate your use of any Digital Marketing platforms at any time.

(b) System Website. As part of our Digital Marketing, we or one of our designees will operate and maintain a System Website, which will include basic information related to the Shop. You must promptly provide us with any information that we request regarding your Shop for inclusion on the System Website.

### **Section 8      Records, Reports, Audits, and Inspections**

8.1 Bookkeeping and Records. You agree to keep complete and accurate books, records, and accounts of all business conducted under this Agreement in accordance with generally accepted accounting principles. You must preserve all of your books and records in hard copy or in a format from which hard copies can be readily generated for at least five years from the date of preparation or such longer period as may be required by law. You must maintain such information and records on the Shop Management and Technology System as we may require from time to time in the Manuals and you acknowledge and agree that we will have access to that data remotely via a network connection that we will specify. At our request, you must retain and use, at your expense, the services of an accountant or accounting firm that we approve.

8.2 Reports and Financial Statements. You agree to submit financial and operational reports and records to us at the times and in the manner specified in the Manuals. Upon our written request, by April 15 of each year, you must submit your balance sheet and income statement for the previous calendar year. With respect to your year-end income statement and balance sheet, you or the Operating Principal must certify that the income statement and balance sheet are correct and complete and that they have been prepared in accordance with generally accepted accounting principles. We have the right to demand audited

financial statements if an Event of Default has occurred within the last calendar year. In addition, you must provide us within 15 days after our request, exact copies of federal and state income and other tax returns and any other forms, records, books, reports and other information that we periodically require relating to the Shop or you.

8.3 Additional Information. You shall respond promptly to requests from us for clarification and/or additional information regarding any matter entrusted to you under this Agreement. We may from time to time require information about your financial condition, earnings, sales, profits, costs, expenses, and performance to provide a basis for providing our prospective franchisees with information concerning actual or potential earnings or to comply with Applicable Laws governing the sale of franchises. You will provide such information promptly upon our request, and you will certify that such information is true and complete in all material respects.

8.4 Inspection. We have the right, through our employees, an Area Representative, and any agents we designate, at any time during business hours and without prior notice to you to: (i) inspect the Site and Shop for compliance with the Manuals, (ii) videotape, photograph or otherwise record the operation of the Shop, (iii) interview your employees, landlord, and customers, (iv) examine the records, invoices, payroll records, check stubs, sales tax records and returns, and other supporting records and documents of the Shop, and (v) examine your income tax records and any other information, records or properties relating to the ownership, management, or operation of the Shop. We may require you to install and maintain, at your expense, a video surveillance system that we designate which we may access remotely through a connection that we specify to ensure compliance with our standards and the Manuals. Our right to inspect your business records includes records maintained electronically or off-site. You must cooperate with such inspections by giving our representatives unrestricted access and rendering such assistance as our representatives may reasonably request. If we notify you of any deficiencies after the inspection, you must promptly take steps to correct them. If you fail to correct any deficiencies within a reasonable time, not to exceed 30 days, we have the right to correct such deficiencies and charge you a reasonable fee plus our costs and expenses incurred in such inspection. Any inspections will be made at our expense, unless the inspection is necessitated by your repeated or continuing failure to comply with any provision of this Agreement, in which case we may charge you the costs of making such inspection, including without limitation the wages and cost of travel and living expenses for our representatives.

8.5 Auditing. Without limiting the foregoing, we may audit or cause to be audited any statement you are required to submit pursuant to Section 8.2 (Reports and Financial Statements) and we may review, or cause to be reviewed, the records maintained by any bank or other financial institution used by you in connection with the Shop. If any such audit or review discloses an understatement of the Gross Revenue for any period or periods, you will pay to us, within 10 days after demand for payment is made, all additional Royalty Fees, Marketing Fees, or other amounts required to be paid based upon the results of such audit or review. In addition, if such understatement for any period or periods is 2% or more of the Gross Revenue for such period or periods, you will reimburse us for the cost of such audit or review, including without limitation the charges of any independent accountant and any related attorneys' fees and the cost of travel and living expenses and wages for such accountant and employees or other agents of us. You will pay to us, upon demand, on any delinquent fees interest at the lesser of 18% per annum or the maximum rate allowed by law calculated from the date when the fees should have been paid to the date of actual payment. These remedies are in addition to our other remedies and rights under this Agreement and Applicable Laws.

8.6 Mystery Shopper Program. We may require you to participate in a mystery shopper service in order to ensure your compliance with the System and our customer service standards. We may specify mystery shopper services that you must engage at your expense, or we may engage the mystery shopper service on your behalf. If we engage the mystery shopper service on your behalf, you must pay us a reasonable fee or a third-party managing such service that we will specify in the Manuals upon demand. You must share the results of any mystery shopper program with us and must promptly address any deficiencies identified in any such report. You must follow any evaluation process, and use such evaluation forms, as we may from time to time require.

## **Section 9        Intellectual Property.**

### **9.1        Marks and Trade Dress.**

(a)        Acknowledgements. You acknowledge that we or our affiliates are the owner of the Marks and the Trade Dress, that you have no interest in the Marks and the Trade Dress beyond the nonexclusive License granted herein, and that, as between we and you, we have the exclusive right and interest in and to the Marks and the Trade Dress and the goodwill associated with and symbolized by them. Upon the expiration or termination of this Agreement, no monetary amount will be attributable to goodwill associated with your activities as a franchisee under this Agreement.

(b)        Rights. Your right to use the Marks and the Trade Dress applies only to the Shop operated at the Site as expressly provided in this Agreement, including advertising related to the Shop. You may only use in your Shop the Marks and the Trade Dress we designate, and only in compliance with written rules that we prescribe from time to time. You may not use any Mark (i) as part of any corporate or legal business name, (ii) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos we have licensed to you), (iii) in selling any unauthorized services or products, (iv) as part of any domain name, electronic address, metatag, social media account, or otherwise in connection with any website or other electronic medium without our consent, or (v) in any other manner we have not expressly authorized in writing. No materials on which any of the Marks or the Trade Dress appears will be used by you without our prior written approval, which may be revoked at any time upon reasonable notice to you. You must display the Marks in a manner that we specify on signage at the Shop and on all written materials, forms, advertising, promotional materials, supplies, employee uniforms, business cards, receipts, letterhead, contracts, stationary, and other materials we designate.

9.2        Copyrights. You acknowledge that as between you and us, any and all present or future copyrights relating to the System or the Smoker's Destiny Smoke Shop concept, including, but not limited to, the Manuals and marketing materials, (collectively, the "Copyrights") belong solely and exclusively to us. You have no interest in the Copyrights beyond the non-exclusive License granted in this Agreement.

9.3        No Contesting Our Rights. During the Term of this Agreement and after its expiration or termination, you agree not to directly or indirectly contest our ownership, title, right or interest in or to, or our license to use, or the validity of, (i) the Marks, (ii) the Trade Dress, (iii) the Copyrights, or (iv) any trade secrets, methods, or procedures that are part of the System (collectively, the "Intellectual Property"), or contest our sole right to register, use, or license others to use the Intellectual Property.

9.4        Changes to the Intellectual Property. We have the right, upon reasonable notice, to change, discontinue, or substitute for any of the Intellectual Property and to adopt entirely different or new Intellectual Property for use with the System without any liability to you, in our sole discretion. You agree to implement any such change at your own expense within the time we reasonably specify.

9.5        Third-Party Challenges. You agree to notify us promptly of any unauthorized use of the Intellectual Property of which you have knowledge. You also agree to inform us promptly of any challenge by any person or Entity to the validity of our ownership of or our right to license others to use any of the Intellectual Property. We have the right, but no obligation, to initiate, direct, and control any litigation or administrative proceeding relating to the Intellectual Property, including, but not limited to, any settlement. We will be entitled to retain any and all proceeds, damages, and other sums, including attorneys' fees, recovered or owed to us or our affiliates in connection with any such action. You agree to execute all documents and, render any other assistance we may deem necessary to any such proceeding or any effort to maintain the continued validity and enforceability of the Intellectual Property.

9.6        Post-Termination or Expiration. Upon the expiration or termination of this Agreement for any reason, all of your rights to use the Intellectual Property will automatically revert to us without cost and

without the execution or delivery of any document. Upon our request, you will execute all documents that we require to confirm such reversion.

9.7 Innovations. All ideas, concepts, techniques, or materials relating to a Shop or the System (collectively, “Innovations”), whether or not protectable intellectual property and whether created by or for you or your Owners, employees, or contractors, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the System and the Intellectual Property, and works made-for-hire for us. To the extent any Innovation does not qualify as a work made-for-hire for us, by this Section you assign ownership of that Innovation, and all related rights to that Innovation, to us and agree to sign (and to cause your Owners, employees, and contractors to sign) whatever assignment or other documents we request to evidence our ownership or to help us obtain intellectual property rights in the Innovation. We and our affiliates have no obligation to make any payments to you or any other person with respect to any Innovations. You may not use any Innovation in operating the Shop or otherwise without our prior approval.

## **Section 10      Proprietary Information.**

10.1 Receipt of Proprietary Information. You acknowledge that prior to or during the Term, we may disclose in confidence to you, either orally or in writing, certain trade secrets, know-how, and other confidential information relating to the System, our business, our vendor relationships, or the construction, management, operation, or promotion of the Shop (collectively, “Proprietary Information”), including (i) site selection criteria and methodologies; (ii) methods, formats, systems, System Standards, sales and marketing techniques, knowledge and experience used in developing and operating Shops, including information in the Manuals; (iii) marketing research and promotional, marketing, advertising, public relations, customer relationship management and other brand-related materials and programs for Shops; (iv) knowledge of specifications for and suppliers of, and methods of ordering, certain items that Shops use and/or sell; (v) knowledge of the operating results and financial performance of other Shops; (vi) customer communication and retention programs, along with data used or generated in connection with those programs; and (vii) any other information we reasonably designate from time to time as confidential or proprietary. “Proprietary Information” does not include (i) information that is part of the public domain or becomes part of the public domain through no fault of you, (ii) information disclosed to you by a third party having legitimate and unrestricted possession of such information, or (iii) information that you can demonstrate by clear and convincing evidence was within your legitimate and unrestricted possession when the parties began discussing the sale of the franchise.

10.2 Nondisclosure of Proprietary Information. We and our affiliates own all right, title, and interest in and to the Proprietary Information. You will not, nor will you permit any person to, use or disclose any Proprietary Information (including without limitation all or any portion of the Manuals) to any other person, except to the extent necessary for your professional advisors and your employees to perform their functions in the operation of the Shop. You acknowledge that your use of the Proprietary Information in any other business would constitute an unfair method of competition with us and our franchisees. You will be liable to us for any unauthorized use or disclosure of Proprietary Information by any employee or other person to whom you disclose Proprietary Information. You will take reasonable precautions to protect the Proprietary Information from unauthorized use or disclosure and will implement any systems, procedures, or training programs that we require. At our request, you will require anyone who may have access to the Proprietary Information to execute non-disclosure agreements in a form satisfactory to us that identifies us as a third-party beneficiary of such covenants with the independent right to enforce the agreement.

### **10.3      Customer Information.**

(a) Protection of Customer Information. You must comply with our System Standards, other directions from us, and all Applicable Laws regarding the organizational, physical, administrative and technical measures and security procedures to safeguard the confidentiality and security of Customer Information on your Shop Management and Technology System or otherwise in your possession or control and, in any event, employ reasonable means to safeguard the confidentiality and security of Customer Information.

“Customer Information” means names, contact information, financial information and other personal information of or relating to the Shop’s customers and prospective customers. If there is a suspected or actual breach of security or unauthorized access involving your Customer Information, you must notify us immediately after becoming aware of such actual or suspected occurrence and specify the extent to which Customer Information was compromised or disclosed. You are responsible for any financial losses you incur or remedial actions that you must take as a result of a breach of security or unauthorized access to Customer Information in your control or possession.

(b) Ownership of Customer Information. You agree that all Customer Information that you collect in connection with your Shop is deemed to be owned by us, and must be furnished to us at any time that we request it. In addition, we and our affiliates may, through the Shop Management and Technology System or otherwise, have independent access to Customer Information.

(c) Use of Customer Information. You have the right to use Customer Information while this Agreement or a successor franchise agreement is in effect, but only to market Smoker’s Destiny, LLC products and services to customers in accordance with the policies that we establish periodically and Applicable Laws. You may not sell, transfer, or use Customer Information for any purpose other than marketing Smoker’s Destiny, LLC products and services. We and our affiliates may use Customer Information in any manner or for any purpose. You must secure from your actual and prospective customers and others all consents and authorizations, and provide them all disclosures, that Applicable Law requires to transmit Customer Information to us and our affiliates, and for us and our affiliates to use that Customer Information, in the manner that this Agreement contemplates.

## **Section 11 Indemnification.**

11.1 Indemnification By You. You agree to indemnify and hold harmless us, our Area Representative, and our affiliates, and our and their respective owners, directors, officers, employees, agents, representatives, successors, and assignees (the “Indemnified Parties”) against, and to reimburse any one or more of the Indemnified Parties for, all Losses (defined below) directly or indirectly arising out of or relating to: (i) the Shop’s operation; (ii) the business you conduct under this Agreement; (iii) your breach of this Agreement; or (iv) your noncompliance or alleged noncompliance with any law, ordinance, rule or regulation, including those concerning the Shop’s construction, design or operation, and including any allegation that we or another Indemnified Party is a joint employer or otherwise responsible for your acts or omissions relating to your employees. “Losses” means any and all losses, expenses, obligations, liabilities, damages (actual, consequential, or otherwise), and reasonable defense costs that an Indemnified Party incurs, including accountants’, arbitrators’, mediators’, 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.

11.2 Indemnification Procedure. You agree to defend the Indemnified Parties against any and all claims asserted or inquiries made (formally or informally), or legal actions, investigations, or other proceedings brought, by a third party and directly or indirectly arising out of or relating to any matter described in Subsection 11.1(i) through (iv) above (collectively, “Proceedings”), including those alleging the Indemnified Party’s negligence, gross negligence, willful misconduct and/or willful wrongful omissions. Each Indemnified Party may at your expense defend and otherwise respond to and address any claim asserted or inquiry made, or Proceeding brought, that is subject to this Section 11 (instead of having you defend it as required above), and agree to settlements or take any other remedial, corrective, or other actions, for all of which defense and response costs and other Losses you are solely responsible, subject to Section 11.3. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against you, and 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 Section 11. Your obligations in this Section 11 will survive the expiration or termination of this Agreement.

11.3 Willful Misconduct or Gross Negligence. Despite Section 11.1, you have no obligation to indemnify or hold harmless an Indemnified Party for, and we will reimburse you for, any Losses (including costs of defending any Proceeding under Section 11.2) to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's willful misconduct or gross negligence, so long as the claim to which those Losses relate is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or our failure to compel you to comply with this Agreement. However, nothing in this Section 11.3 limits your obligation to defend us and the other Indemnified Parties under Section 11.2.

## **Section 12      Your Covenant Not to Compete.**

12.1 During Term. You acknowledge that you will receive valuable, specialized training and confidential information regarding the manufacturing, operational, sales, promotional, and marketing methods of the Smoker's Destiny, LLC concept. During the Term, you and your Owners will not, without our prior written consent, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any other person or Entity:

- (a) own, manage, engage in, be employed by, advise, make loans to, or have any other interest in (i) any business which sells and offers for sale all smoking related products for tobacco, nicotine, and other legal herbal use, any other Approved Products and Services that we grant you the right to offer during the Term of your Franchise Agreement (ii) any entity that grants franchises or licenses for any of these types of businesses (collectively, each, a "Competitive Business") at any location in the United States;
- (b) divert or attempt to divert any business or customer or potential business or customer of the Shop to any Competitive Business, by direct or indirect inducement or otherwise;
- (c) perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the System;
- (d) use any vendor relationship established through your association with us for any purpose other than to purchase products or equipment for use or retail sale in the Shop; or
- (e) directly or indirectly solicit for employment any person who at any time within the immediate past 12 months has been employed by us, or our affiliates, or by any of our franchisees.

12.2 After Termination, Expiration, or Transfer. For two years after the expiration or termination of this Agreement or an approved Transfer to a new franchisee, you and your Owners may not, without our prior written consent, (i) directly or indirectly own, manage, engage in, be employed in a managerial position by, advise, make loans to, or have any other interest in any Competitive Business that is (or is intended to be) located within a ten-mile radius of your former Shop or any other Shop that is operating or under development at the time of such expiration, termination, or Transfer, or (ii) solicit for employment any person who at any time within the immediate past 12 months has been employed by us, or our affiliates, or by any of our franchisees. With respect to the Owners, the time period in this Section 12.2 will run from the expiration, termination, or Transfer of this Agreement or from the termination of the Owner's relationship with you, whichever occurs first.

12.3 Publicly Traded Corporations. Ownership of less than five percent of the outstanding voting stock of any class of stock of a publicly traded corporation will not, by itself, violate this Section 12.

12.4 Covenants of Owners and Employees. The Owners personally bind themselves to this Section 12 by signing this Agreement or the attached Guarantee. We may, in our sole discretion, require you to obtain from your officers, directors, Key Managers, Owners' spouses, and other individuals that we may designate executed agreements containing nondisclosure and noncompete covenants similar in substance to those

contained in this Section 12 as we prescribe in the Manuals and otherwise. The agreements must be in a form acceptable to us and specifically identify us as having the independent right to enforce them.

**12.5 Enforcement of Covenants.** You acknowledge and agree that (i) the time, territory, and scope of the covenants provided in this Section 12 are reasonable and necessary for the protection of our legitimate business interests; (ii) you have received sufficient and valid consideration in exchange for those covenants; (iii) enforcement of the same would not impose undue hardship; and (iv) the period of protection provided by these covenants will not be reduced by any period of time during which you are in violation of the provisions of those covenants or any period of time required for enforcement of those covenants. To the extent that this Section 12 is judicially determined to be unenforceable by virtue of its scope or in terms of area or length of time but may be made enforceable by reductions of any or all thereof, the same will be enforced to the fullest extent permissible. You agree that the existence of any claim you may have against us, whether or not arising from this Agreement, will not constitute a defense to our enforcement of the covenants contained in this Section 12. You acknowledge that any breach or threatened breach of this Section 12 will cause us irreparable injury for which no adequate remedy at law is available, and you consent to the issuance of an injunction prohibiting any conduct violating the terms of this Section 12. Such injunctive relief will be in addition to any other remedies that we may have.

### **Section 13      Transfer and Assignment.**

**13.1 Transfer by Us.** We may assign this Agreement and all of our rights, duties, and obligations under this Agreement to any person or Entity that we choose in our sole discretion. Upon any such assignment, we will be released from all of our duties and obligations hereunder, and you will look solely to our assignee for the performance of such duties and obligations.

**13.2 Definition of Transfer.** For purposes of this Agreement, “Transfer” as a verb means to sell, assign, give away, transfer, pledge, mortgage, or encumber, either voluntarily or by operation of law (such as through divorce or bankruptcy proceedings), any interest in this Agreement, the Shop, substantially all the assets of the Shop, or in the ownership of the franchisee (if you are an Entity). “Transfer” as a noun means any such sale, assignment, gift, transfer, pledge, mortgage, or encumbrance. A “Control Transfer” means any Transfer of (i) this Agreement or any interest in this Agreement; (ii) the Shop or all or substantially all of the Shop’s assets; or (iii) any Controlling Ownership Interest (defined below) in you (if you are an Entity), whether directly or indirectly through a transfer of legal or beneficial ownership interests in any Owner that is an Entity, and whether in one transaction or a series of related transactions, regardless of the time period over which these transactions take place. References to a “Controlling Ownership Interest” in you mean either (i) 20% or more of your direct or indirect legal or beneficial ownership interests in your Entity or (ii) an interest the acquisition of which grants the power (whether directly or indirectly) to direct or cause the direction of management and policies of you or the Shop to any individual or Entity, or group of individuals or Entities, that did not have that power before that acquisition.

**13.3 No Transfer Without Our Consent.** This Agreement and the License are personal to you, and we have granted the License in reliance on your (and, if you are an Entity, your Owners’) business skill, financial capacity, and personal character. Accordingly, neither you nor any of the Owners or any successors to any part of your interest in this Agreement or the License may make any Transfer or permit any Transfer to occur without obtaining our prior written consent, except as provided in Section 13.7 (Permitted Transfers). If you or any of your Owners desire to make a Transfer, you must promptly provide us with written notice. Any purported Transfer, without our prior written consent, will be null and void and will constitute an Event of Default (as herein defined), for which we may terminate this Agreement without opportunity to cure. We have sole and absolute discretion to withhold our consent, except as otherwise provided in Sections 13.4 through 13.8. We have the right to communicate with both you, your counsel, and the proposed transferee on any aspect of a proposed Transfer. You agree to provide any information and documentation relating to the proposed Transfer that we reasonably require. No Transfer that requires our consent may be completed until at least 60 days after we receive written notice of the proposed Transfer. Our consent to a Transfer does not constitute a waiver of any claims that we have against the transferor, Smoker’s Destiny, LLC

nor is it a waiver of our right to demand exact compliance with the terms of this Agreement. If your Shop is not open and operating, we will not consent to your Transfer of this Agreement, and we are under no obligation to do so.

13.4 Control Transfer. For a proposed Control Transfer, the following conditions apply (unless waived by us):

(a) When you provide written notice of the proposed Transfer, you must pay to us a non-refundable deposit of \$2,500 to cover our administrative costs incurred in reviewing the proposal. The deposit will be applied towards your Transfer Fee in the event that the Transfer is completed.

(b) You or your transferee must pay to us a Transfer Fee equal to: (i) \$5,000 for any Control Transfer resulting in a change of control to a third party or to any immediate family member. You must make such payment by wire transfer from the proceeds of the sale at the closing if we so request.

(c) You must satisfy all of your accrued monetary obligations to us and must be in compliance with all obligations to us under this Agreement and any other agreement that you have with us and our affiliates as of the date of the request for our approval of the Transfer or you must make arrangements satisfactorily to us to come into compliance by the date of the Transfer.

(d) You and your Owners must execute a general release, in a form that we prescribe, in favor of us, our Area Representatives, our affiliates, and our and their affiliates' past, present, and future officers, directors, managers, members, equity holders, agents, and employees, releasing them from all claims, including claims arising under federal, state, and local laws, rules, and regulations.

(e) You and your Owners must agree to remain liable for all of the obligations to us in connection with the Shop arising before the effective date of the Transfer and execute any and all instruments that we reasonably request to evidence such liability.

(f) You and your Owners must continue to be bound by the provisions of Sections 9 (Intellectual Property), 10 (Proprietary Information), 11 (Indemnification), and 12 (Your Covenant Not to Compete) as if they were the Franchisee and this Agreement had expired or terminated as of the effective date of the Transfer.

(g) You must provide us with written notice from your landlord indicating that your landlord has agreed to transfer the Site Lease to your transferee.

(h) Your proposed transferee (or, if the transferee is not an individual, all owners of any legal or beneficial interest in the transferee) must demonstrate to our satisfaction that he or she meets all of our then-current qualifications to become a Smoker's Destiny, including not having any involvement with a Competing Business, or if he or she is already a Smoker's Destiny Smoke Shop franchisee, he or she must not be in default under any of their agreements with us and must have a good record of customer service and compliance with our System Standards.

(i) Your proposed transferee and their representatives must successfully complete our then-current training requirements at their expense.

(j) Your proposed transferee (and, if the transferee is not an individual, such owners of a legal or beneficial interest in the transferee as we may request) must (i) enter into a written assignment, in a form satisfactory to us, assuming and agreeing to discharge and guarantee all of your obligations under this Agreement and (ii) must execute our then-current form of personal guarantee.

(k) Your proposed transferee (and, if the transferee is not an individual, such owners of a legal or beneficial interest in the transferee as we may request) must execute, for a term ending on the last day of the Term and with such Successor Term as is provided by this Agreement, our then-current franchise Smoker's Destiny, LLC

agreement for new franchisees and such other agreements as we may require, which agreements will supersede this Agreement in all respects. The terms of the new franchise agreement may differ significantly from the terms of this Agreement. The prospective transferee will not be required to pay any initial Franchise Fee.

(l) Your proposed transferee must make arrangements to modernize, renovate, or upgrade the Shop, at its expense, to conform to our then-current System Standards for new Smoker's Destiny Smoke Shop stores.

(m) Your proposed transferee must covenant that it will continue to operate the Shop under the Marks and using the System.

(n) We must determine, in our sole discretion, that the purchase price and payment terms will not adversely affect the operation of the Shop, and if you or your Owners finance any part of the purchase price, you and they must agree that all obligations under promissory notes, agreements, or security interests reserved in the Shop are subordinate to the transferee's obligation to pay all amounts due to us and our affiliates and otherwise to comply with this Agreement.

13.5 Non-Control Transfers. For any Transfer that does not result in a Control Transfer, you must give us advance notice and submit a copy of all proposed contracts and other information concerning the Transfer and transferee that we may request. We will have the right to require you to pay a Transfer Fee that is equal to \$2,500 plus our administrative costs in processing such Transfer, including any attorneys' fees and other third-party costs that we incur. We will have a reasonable time (not less than 30 days) after we have received all requested information to evaluate the proposed Transfer. You and/or your transferee must satisfy, in addition to others that we may specify, the conditions in Sections 13.4(c) (comply with obligations), 13.4(d) (sign general release), 13.4(e) (remain liable for pre-Transfer obligations), 13.4(f) (remain bound to certain provisions), 13.4(h) (transferee meets qualifications), and 13.4(j) (sign assignment and guaranty). You and your Owners must sign the form of agreement and related documents that we then specify to reflect your new ownership structure. We may withhold our consent on any reasonable grounds or give our consent subject to reasonable conditions.

13.6 Transfer To An Entity. We will consent to the assignment of this Agreement to an Entity that you form for the convenience of ownership, provided that: (i) the Entity has and will have no other business besides operating Smoker's Destiny Shops; (ii) you satisfy the conditions in Sections 13.4(c) (comply with obligations), 13.4(d) (sign general release), 13.4(e) (remain liable for pre-Transfer obligations), 13.4(f) (remain bound to certain provisions), and 13.4(j) (sign assignment and guaranty); (iii) the Owners hold equity interests in the new Entity in the same proportion shown on Attachment A; and (iv) you pay a Transfer Fee that is equal to \$2,500 plus our administrative costs in processing such Transfer, including any attorneys' fees and other third party costs that we incur.

13.7 Permitted Transfers. The other provisions in this Section do not apply, including our right of first refusal and right of approval, to the following Transfers:

(a) Security Interests. You may grant a security interest in the Site (if you own the Site), the Shop, any Operating Assets, this Agreement, or any direct or indirect legal and/or beneficial interest in you to a financial institution or other party that provided or provides any financing your acquisition, development, and/or operation of the Shop, but only if that party signs our then current form of lender consent to protect our rights under this Agreement. Any foreclosures or other exercise of the rights granted under that security interest are subject to all applicable terms and conditions of this Section 13.

(b) Transfer to a Trust. Any Owner who is an individual may Transfer his or her ownership interest in you (or any of your Owners that is an Entity) to a trust that he or she establishes for estate planning purposes, as long as he or she is a trustee of the trust and otherwise controls the exercise of the rights in you (or your Owner) held by the trust and you notify us in writing of the Transfer at least ten days before its anticipated

effective date. Dissolution of or transfers from any trust described in this Section 13.7(b) are subject to all applicable terms and conditions of this Section 13.

**13.8 Transfer Upon Death Or Incapacity.** If you or any Owner dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative, or trustee must apply to us in writing within three months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to Transfer the person's interest. The Transfer will be subject to the provisions of this Section 13, as applicable, except there shall be no Transfer Fee due. In addition, if the deceased or incapacitated person is you or the Operating Principal, we will have the right (but not the obligation) to take over operation of the Shop until the Transfer is completed and to charge a reasonable management fee for our services. For purposes of this Section, "incapacity" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement (i) for a period of 30 or more consecutive days or (ii) for 60 or more total days during a calendar year. In the case of Transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Section 13.4(h) (transferee meets qualifications), the executor may transfer the decedent's interest to another successor that we have approved, subject to all of the terms and conditions for Transfers contained in this Agreement. If an interest is not disposed of under this Section 13.8 within 120 days after the date of death or appointment of a personal representative or trustee, we may terminate this Agreement under Section 14.2 (Our Remedies After An Event of Default).

**13.9 Our Right Of First Refusal.**

(a) **Our Right.** We have the right, exercisable within 30 days after receipt of the notice of your intent to Transfer and such documentation and information that we require, to send written notice to you that we intend to purchase the interest proposed to be Transferred on the same economic terms and conditions offered by the third-party or, at our option, the cash equivalent thereof. If you and we cannot agree on the reasonable equivalent in cash or if the Transfer is proposed to be made by gift, we will designate, at our expense, an independent appraiser to determine the fair market value of the interest proposed to be transferred. We may purchase the interest at the fair market value determined by the appraiser or may elect at that time to not exercise our rights. We must receive, and you and your Owners agree to make, all customary representations, warranties and indemnities given by the seller of the assets of a business or ownership interests in an Entity, as applicable, including representations and warranties regarding ownership and condition of, and title to, assets and (if applicable) ownership interests, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities, contingent or otherwise, relating to the assets or ownership interests being purchased, and indemnities for all actions, events and conditions that existed or occurred in connection with the Shop or your business prior to the closing of our purchase. Closing on our purchase must occur within 90 days after the date of our notice to the seller electing to purchase the interest. We may assign our right of first refusal to another Entity or person either before or after we exercise it. However, our right of first refusal will not apply with regard to Transfers to an Entity under Section 13.7 (Permitted Transfers) or 13.8 (Transfer Upon Death or Incapacity) or Transfers to your spouse, son, or daughter.

(b) **Declining Our Right.** If we elect not to exercise our rights under this Section, the transferor may complete the Transfer after complying with the applicable provisions in Section 13. Closing of the Transfer must occur within 90 days of our election (or such longer period as Applicable Laws may require); otherwise, the third-party's offer will be treated as a new offer subject to our right of first refusal. Any material change in the terms of the offer from a third-party after we have elected not to purchase the seller's interest will constitute a new offer subject to the same right of first refusal as the third party's initial offer. The Transfer is conditional upon our determination that the Transfer was on terms substantially the same as those offered to us.

## **Section 14      Termination and Default.**

14.1    Events of Default. Any one or more of the following constitutes an “Event of Default” under this Agreement:

- (a)    You or any Owner make any material misrepresentations or omissions in connection with your application to us for the franchise, this Agreement, or any related documents, or you submit to us any report or statement that you know or should know to be false or misleading;
- (b)    Your Required Trainees fail to successfully complete initial training to our satisfaction at least ten days before the Opening Deadline;
- (c)    You fail to sign a Site Lease or purchase agreement that we have approved for a site that we have accepted by the Site Acquisition Deadline;
- (d)    You fail to open for business by the Opening Deadline;
- (e)    You fail to make changes to the Site and the Shop as required in Section 6.5 (Refurbishing and Renovations) within the applicable time periods;
- (f)    You fail to maintain possession of the Site and fail to secure our approval of and enter into a lease for a new, accepted Site within 90 days after the expiration or termination of the Site Lease;
- (g)    You voluntarily suspend operation of the Shop without our prior written consent for five or more consecutive business days on which you were required to operate, unless we determine, in our sole discretion, that the failure was beyond your control;
- (h)    After multiple attempts to reach you via telephone, e-mail, or other written correspondence, you fail to communicate with us within seven days after we send you a written communication in accordance with Section 17.11 (Notices) notifying you of our attempts to reach you and our need to receive a response from you.
- (i)    Intentionally Omitted.
- (j)    You, your Operating Principal, your Key Managers, or any of your representatives that we designate fail to attend or participate in two or more required franchise conventions, meetings, and teleconferences during any 12-month period, without our prior written consent;
- (k)    You, any Owner, or any of your officers or directors are convicted of or plead nolo contendere to a felony, a crime involving moral turpitude or consumer fraud, or any other crime or offense that we believe is likely to have an adverse effect on our franchise system, the Marks and any associated goodwill, or the Smoker’s Destiny, LLC concept (an “Adverse Effect”) or you, any Owner, or any of your officers or directors has engaged in or engages in activities that, in our reasonable opinion, have an Adverse Effect;
- (l)    You use any of the Marks or any other identifying characteristic of us other than in the operation or promotion of the Shop;
- (m)    You or any of your Owners, directors, or officers disclose or divulge the contents of the Manuals or other Proprietary Information contrary to Section 10 (Proprietary Information);
- (n)    Any Transfer occurs that does not comply with Section 13 (Transfer and Assignment), including a failure to transfer to a qualified successor after death or disability within the time allowed by Section 13.8 (Transfer Upon Death or Incapacity);

- (o) You or any Owner violates the noncompete covenants in Section 12 (Your Covenant Not to Compete);
- (p) You breach or fail to comply with any law, regulation, or ordinance which results in a threat to the public's health or safety and fail to cure the non-compliance within 24 hours following receipt of notice thereof from us or applicable public officials, whichever occurs first;
- (q) You become insolvent or make an assignment for the benefit of your creditors, execution is levied against your business assets, or a suit to foreclose any lien or mortgage is instituted against you and not dismissed within 30 days;
- (r) (i) You fail, refuse, or neglect to pay any monies owing to us or our affiliates or fail to make sufficient funds available to us as provided in Section 3.12 (Methods of Payment) within ten days after receiving written notice of your default or 30 days after due date of the payment, whichever is the shorter period, or (ii) you have previously been given at least two notices of nonpayment for any reason within the last 24 months and you subsequently fail to timely pay when due any monies; or (iii) you fail to do all things necessary to give us access to the information contained in your Shop Management and Technology System pursuant to Section 6.11 (Shop Management and Technology System) within 10 days after receiving notice;
- (s) You are more than 60 days past due on your obligations to suppliers and trade creditors in an amount exceeding \$2,000, unless you have given us prior notice that the failure to pay is a result of a bona fide dispute with such supplier or trade creditor that you are diligently trying to resolve in good faith;
- (t) You fail to pay when due any federal, state or local income, service, sales or other taxes due on the Shop's operation, unless you are in good faith contesting your liability for these taxes;
- (u) You underreport Gross Revenue by more than 2% two times or more in any two-year period or by 5% or more for any period of one week or greater;
- (v) You refuse to permit, or try to hinder, an examination, inspection, or audit of your books and records, the Shop, or the Site as required by this Agreement;
- (w) You fail to timely file any periodic report required in this Agreement or the Manuals three or more times in a 12-month period, whether or not you subsequently cure the default;
- (x) You default under any other franchise agreement or other agreement between you and us or our affiliates, provided that the default would permit us or our affiliate to terminate that agreement;
- (y) You breach or fail to comply with any other covenant, agreement, standard, procedure, practice, or rule prescribed by us, whether contained in this Agreement, in the Manuals, or otherwise in writing and fail to cure such breach or failure to our satisfaction within 30 days (or such longer period as Applicable Laws may require) after we provide you with written notice of the default; or
- (z) You are in default three or more times within any 18-month period, whether or not the defaults are similar and whether or not they are cured.

#### 14.2 Our Remedies After An Event of Default.

- (a) Right to Terminate. If an Event of Default occurs, we may, at our sole election and without notice or demand of any kind, declare this Agreement and any and all other rights granted under this Agreement to be immediately terminated and, except as otherwise provided herein, of no further force or effect. Upon termination, you will not be relieved of any of your obligations, debts, or liabilities under this Agreement, including without limitation any debts, obligations, or liabilities that you accrued prior to such termination.

(b) Other Remedies. If an Event of Default occurs, we may, at our sole election and upon delivery of written notice to you, take any or all of the following actions without terminating this Agreement:

(i) temporarily or permanently reduce the size of the Territory, in which event the restrictions on us and our affiliates under Section 1.3 (Limited Territorial Protection) will not apply in the geographic area that was removed from the Territory;

(ii) temporarily remove information concerning the Shop from the System Website and/or stop your or the Shop's participation in any other programs or benefits offered on or through the System Website;

(iii) suspend your right to participate in one or more programs or benefits that the Marketing Fund provides;

(iv) suspend any other services that we or our affiliate provides to you under this Agreement or any other agreement, including any services relating to the Shop Management and Technology System;

(v) suspend or terminate any temporary or permanent fee reductions to which we might have agreed (whether as a policy, in an amendment to this Agreement, or otherwise);

(vi) suspend our performance of, or compliance with, any of our obligations to you under this Agreement or other agreements;

(vii) undertake or perform on your behalf any obligation or duty that you are required to, but fail to, perform under this Agreement. You will reimburse us upon demand for all costs and expenses that we reasonably incur in performing any such obligation or duty; and/or

(viii) enter the Shop's premises and assume the management of the Shop ourselves or appoint a third party (who may be our affiliate) to manage the Shop. All funds from the operation of the Shop while we or our appointee assumes its management will be kept in a separate account, and all of the expenses of the Shop will be charged to that account. We or our appointee may charge you (in addition to the amounts due under this Agreement) a management fee equal to 3% of the Shop's Gross Revenue during the period of management, plus any direct out-of-pocket costs and expenses. We or our appointee has a duty to utilize only reasonable efforts and will not be liable to you for any debts, losses, or obligations the Shop incurs, or to any of your creditors for any products or services the Shop purchases, while managing it. You shall not take any action or fail to take any action that would interfere with our or our appointee's exclusive right to manage the Shop and may, in our sole discretion, be prohibited from visiting the Shop so as to not interfere with its operations. Our (or our appointee's) management of the Shop will continue for intervals lasting up to 90 days each (and, in any event, for no more than a total of one year), and we will during each interval periodically evaluate whether you are capable of resuming the Shop's operation and periodically discuss the Shop's status with you.

(c) Exercise of Other Remedies. Our exercise of our rights under Section 14.2(b) (Other Remedies) will not (i) be a defense for you to our enforcement of any other provision of this Agreement or waive or release you from any of your other obligations under this Agreement, (ii) constitute an actual or constructive termination of this Agreement, or (iii) be our sole or exclusive remedy for your default. You must continue to pay all fees and otherwise comply with all of your obligations under this Agreement (except as set forth in Section 14.2(viii) (our assumption of management)) following our exercise of any of these rights. If we exercise any of our rights under Section 14.2(b), we may thereafter terminate this Agreement without providing you any additional corrective or cure period, unless the default giving rise to our right to terminate this Agreement has been cured to our reasonable satisfaction.

14.3 Termination By You. You may terminate this Agreement only if: (i) we commit a material breach of this Agreement; (ii) you give us written notice of the breach; (iii) we fail to cure the breach, or to take reasonable steps to begin curing the breach, within 60 days after receipt of your notice; and (iv) you are in Smoker's Destiny, LLC  
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full compliance with your obligations under this Agreement. If we cannot reasonably correct the breach within this 60-day period but provide you, within this 60-day period, with reasonable evidence of our effort to correct the breach within a reasonable time period, then the cure period shall run through the end of such reasonable time period. Termination will be effective no less than ten days after you deliver to us written notice of termination for failure to cure within the allowed period. Any attempt to terminate this Agreement without complying with this Section 14.3 (including by taking steps to de-identify the Shop or otherwise cease operations under this Agreement) will constitute an Event of Default by you.

## **Section 15      Your Obligations Upon Expiration or Termination.**

You covenant and agree that upon expiration or termination of this Agreement for any reason, unless we direct you otherwise:

15.1    Payment of Costs and Amounts Due. You will pay upon demand all sums owing to us and our affiliates. If this Agreement is terminated due to an Event of Default, you will promptly pay all damages, costs, and expenses, including reasonable attorneys' fees, incurred by us as a result of your default. These payment obligations will give rise to and remain, until paid in full, a lien in favor of us against the Shop premises and any and all of the personal property, fixtures, equipment, and inventory that you own at the time of the occurrence of the Event of Default. We are hereby authorized at any time after the Effective Date to make any filings and to execute such documents on your behalf of to perfect the lien created hereby. You also will pay to us all damages, costs, and expenses, including reasonable attorneys' fees, that we incur after the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provision of this Section 15 (Your Obligations Upon Expiration or Termination).

15.2    Discontinue Use of the System and the Intellectual Property. You must immediately cease using, by advertising or in any other manner, (i) the Intellectual Property (including, without limitation, the Marks and the Trade Dress), (ii) the System and all other elements associated with the System, and (iii) any colorable imitation of any of the Intellectual Property or any trademark, service mark, trade dress, or commercial symbol that is confusingly similar to any of the Marks or the Trade Dress.

15.3    Return of Proprietary Information. You must immediately return to us, at your expense, all copies of the Manuals, all of your Customer Information, and all other Proprietary Information (and all copies thereof). You may not use any Proprietary Information or sell, trade or otherwise profit in any way from any Proprietary Information at any time following the expiration or termination of this Agreement.

15.4    Cease Identification with Us. You must immediately take all action required (i) to cancel all assumed name or equivalent registrations relating to your use of the Marks and (ii) to cancel or transfer to us or our designee all authorized and unauthorized domain names, social media accounts, telephone numbers, post office boxes, and classified and other directory listings relating to, or used in connection with, the Shop or the Marks (collectively, "Identifiers"). You acknowledge that as between you and us, we have the sole rights to and interest in all Identifiers. If you fail to comply with this Section 15.4, you hereby authorize us and irrevocably appoint us or our designee as your attorney-in-fact to direct the telephone company, postal service, registrar, Internet Service Provider and all listing agencies to transfer such Identifiers to us. The telephone company, the postal service, registrars, Internet Service Providers and each listing agency may accept such direction by us pursuant to this Agreement as conclusive evidence of our exclusive rights in such Identifiers and our authority to direct their transfer.

15.5    Our Right to Purchase Shop Assets.

(a)    Exercise of Option. Upon termination of this Agreement for any reason (other than your termination in accordance with Section 14.3 (Termination By You)) or expiration of this Agreement without our and your signing a successor franchise agreement, we have the option, exercisable by giving you written notice within fifteen (15) days after the date of termination or expiration (the "Exercise Notice"), to purchase the inventory, supplies, Operating Assets, and other assets used in the operation of the Shop that we designate Smoker's Destiny, LLC

(the “Purchased Assets”). We have the unrestricted right to exclude any assets we specify relating to the Shop from the Purchased Assets and not acquire them. You agree to provide us the financial statements and other information we reasonably require, and to allow us to inspect the Shop and its assets, to determine whether to exercise our option under this Section 15.5. If you or one of your affiliates owns the Site, we may elect to include a fee simple interest in the Site as part of the Purchased Assets or, at our option, lease the Site from you or that affiliate for an initial five-year term with one renewal term of five years (at our option) on commercially reasonable terms. You (and your Owners) agree to cause your affiliate to comply with these requirements. If you lease the Site from an unaffiliated lessor, you agree (at our option) to assign the Lease to us or to enter into a sublease for the remainder of the Lease term on the same terms (including renewal options) as the Lease.

(b) Operations Pending Purchase. While we are deciding whether to exercise our option under this Section 15.5 (Our Right to Purchase Shop Assets), and, if we do exercise that option, during the period beginning with our delivery of the Exercise Notice and continuing through the closing of our purchase or our decision not to complete the purchase, you must continue to operate the Shop in accordance with this Agreement. However, we may, at any time during that period, assume the management of the Shop ourselves or appoint a third party (who may be our affiliate or our Area Representative) to manage the Shop pursuant to the terms of Section 14.2(b)(viii).

(c) Purchase Price. The purchase price for the Purchased Assets will be their fair market value for use in the operation of a Competitive Business (but not a Smoker’s Destiny Shop). However, the purchase price will not include any value for any rights granted by this Agreement, goodwill attributable to the Marks, our brand image, any Proprietary Information or our other intellectual property rights, or participation in the network of Shops. For purposes of determining the fair market value of all equipment (including the exercise equipment and Shop Management and Technology System) used in operating the Shop, the equipment’s useful life shall be determined to be no more than three years. If we and you cannot agree on fair market value for the Purchased Assets, we will select an independent appraiser after consultation with you, and his or her determination of fair market value will be the final and binding purchase price.

(d) Closing. We will pay the purchase price at the closing, which will take place within 60 days after the purchase price is determined, although we may decide after the purchase price is determined not to complete the purchase. We may set off against the purchase price, and reduce the purchase price by, any and all amounts you owe us or our affiliates. We are entitled to all customary representations, warranties and indemnities in our asset purchase, including representations and warranties as to ownership and condition of, and title to, assets, liens and encumbrances on assets, validity of contracts and agreements, and liabilities affecting the assets, contingent or otherwise, and indemnities for all actions, events and conditions that existed or occurred in connection with the Shop or your business prior to the closing of our purchase. At the closing, you agree to deliver instruments transferring to us: (a) good and merchantable title to the Purchased Assets, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and transfer taxes paid by you; and (b) all of the Shop’s licenses and permits which may be assigned or transferred. If you cannot deliver clear title to all of the Purchased Assets, or if there are other unresolved issues, the sale will be closed through an escrow. You and your Owners further agree to sign general releases, in a form satisfactory to us, of any and all claims against us, our Area Representatives, and our affiliates and our and their respective owners, officers, directors, employees, agents, representatives, successors and assigns.

(e) Assignment. We may assign our rights under this Section 15.5 (Our Right to Purchase Shop Assets) to any Entity (who may be our affiliate), and that Entity will have all of the rights and obligations under this Section 15.5.

15.6 De-identification of the Site. If we do not exercise our option to acquire the Site Lease or the Site, you will make such modifications or alterations to the Site immediately upon termination or expiration of this Agreement that we deem necessary to distinguish the appearance of the Site from a Smoker’s Destiny Smoke Shop store, including, but not limited to, removing the signs, the Marks, and any Trade Dress so as Smoker’s Destiny, LLC

to indicate to the public that you are no longer associated with us. If you do not comply with the requirements of this Section 15.6, we may enter the Shop without being guilty of trespass or any other tort, for the purpose of making or causing to be made any required changes. You agree to reimburse us on demand for our expenses in making such changes.

15.7 Promote Separate Identity. You will not, directly or indirectly, in any manner, identify yourself, or any individual connected with you, as a former Smoker's Destiny franchisee or as otherwise having been associated with us, or use in any manner or for any purpose any of the Marks.

15.8 Comply with Noncompete. You and your Owners must comply with the covenant not to compete in Section 12 (Your Covenant Not to Compete).

15.9 Injunctive and Other Relief. You acknowledge that your failure to abide by the provisions of this Section 15 (Your Obligations Upon Expiration or Termination) will result in irreparable harm to us, and that our remedy at law for damages will be inadequate. Accordingly, you agree that if you breach any provisions of this Section 15, we are entitled to injunctive relief (including the remedy of specific performance) in addition to any other remedies available at law or in equity.

## **Section 16      Dispute Resolution and Governing Law.**

16.1 Mandatory Pre-Litigation Mediation. Except as otherwise provided in this Section, prior to filing any proceeding to resolve any dispute based upon, arising out of, or in any way connected with this Agreement, a party must submit the dispute for mediation. The mediation will be held before one mediator selected by the parties, and if the parties cannot agree upon the mediator, then a mediator selected by the American Arbitration Association ("AAA"). All parties must attend and participate in the mediation. The mediation shall not last more than one day and shall be held in Langhorne, Pennsylvania, unless we no longer have an office there, in which case it will be held in the metropolitan area of our then-current principal place of business. If we and you do not resolve our dispute, then thereafter any party may file for litigation, as applicable in accordance with the terms of this Agreement. The mediation shall be governed by the rules of the AAA. It is the intent of the parties that mediation shall be held not later than 14 days after a written request for mediation shall have been served on the other parties. The obligation to mediate shall not be binding upon either party with respect to claims relating to the Marks, the non-payment or underpayment of any monies due under this Agreement, the noncompetition covenants, or requests by either party for temporary restraining orders, preliminary injunctions or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution of the actual dispute.

16.2 Forum for Litigation. You and the Owners must file any suit against us, and we may file any suit against you, in federal or state courts located in Langhorne, Pennsylvania, unless we no longer have an office there, in which case, you must file any suit against us, and we may file against you, in federal or state courts located in the metropolitan area of our then-current principal place of business. The parties waive all questions of personal jurisdiction and venue for the purpose of carrying out this provision.

16.3 Governing Law. This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Pennsylvania, excluding the Pennsylvania Franchise Act except with respect to Shops which are physically located in Pennsylvania. In the event of any conflict-of-law question, the laws of Pennsylvania shall prevail, without regard to the application of Pennsylvania conflict-of-law rules.

16.4 Mutual Waiver of Jury Trial. You and we each irrevocably waive trial by jury in any litigation.

16.5 Mutual Waiver of Punitive Damages. Each of us waives any right to or claim of punitive, exemplary, multiple, or consequential damages against the other in litigation and agrees to be limited to the recovery of actual damages sustained.

16.6 Remedies Not Exclusive. Except as provided in Section 16.5 (Mutual Waiver of Punitive Damages), no right or remedy that the parties have under this Agreement is exclusive of any other right or remedy under this Agreement or under Applicable Laws. Each and every such remedy will be in addition to, and not in limitation of or substitution for, every other remedy available at law or in equity or by statute or otherwise.

16.7 Limitations of Claims. Except for:

- (a) claims against you by us concerning the underreporting of Gross Revenue and corresponding underpayment of any fees specified in Section 3 (Fees);
- (b) claims against you by us relating to third-party claims or suits brought against us as a result of your operation of the Shop;
- (c) claims against you by us for injunctive relief to enforce the provisions of this Agreement relating to your use of the Marks;
- (d) claims against you by us relating to your financial obligations upon the termination or expiration of the Agreement;
- (e) claims against you by us or concerning your obligations under Section 10 (Proprietary Information) or Section 12 (Your Covenant Not to Compete) of this Agreement; and
- (f) claims against you by us regarding an assignment of this Agreement or any ownership interest therein,

any and all claims arising out of or relating to this agreement or our relationship with you will be barred unless a judicial proceeding is commenced in the proper forum within one year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claim.

16.8 Our Right to Injunctive Relief. Nothing in this Agreement bars our right to obtain injunctive or declaratory relief against a breach or threatened breach of this Agreement that will cause us loss or damage. You agree that we will not be required to prove actual damages or post a bond in excess of \$1,000 or other security in seeking or obtaining injunctive relief (both preliminary and permanent) and/or specific performance with respect to this Agreement.

16.9 Attorneys' Fees and Costs. You agree to reimburse us for all expenses we reasonably incur (including attorneys' fees): (i) to enforce the terms of this Agreement or any obligation owed to us by you and/or the Owners (whether or not we initiate a legal proceeding, unless we initiate and fail to substantially prevail in such court or formal legal proceeding); and (ii) in the defense of any claim you and/or the Owners assert against us on which we substantially prevail in court or other formal legal proceedings. We agree to reimburse you for all expenses you reasonably incur (including attorneys' fees): (i) to enforce the terms of this Agreement or any obligation owed to you by us (whether or not you initiate a legal proceeding, unless you initiate and fail to substantially prevail in such court or formal legal proceeding); and (ii) in the defense of any claim we assert against you on which you substantially prevail in court or other formal legal proceedings.

## **Section 17      Miscellaneous.**

17.1 Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement between you and us with respect to the Shop and supersede all prior discussions, understandings, representations, and agreements concerning the same subject matter. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representations that we made in the most recent Franchise Disclosure Document (the "FDD") that we delivered to you or your

representatives. This Agreement includes the terms and conditions on Attachment A, which are incorporated into this Agreement by this reference.

17.2 Amendments and Modifications. This Agreement may be amended or modified only by a written document signed by each party to this Agreement. The Manuals and any policies that we adopt and implement may be changed by us from time to time.

17.3 Waiver. Any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit of the term or condition, but such waiver must be in writing. No course of dealing or performance by any party, and no failure, omission, delay, or forbearance by any party, in whole or in part, in exercising any right, power, benefit, or remedy, will constitute a waiver of such right, power, benefit, or remedy. Our waiver of any particular default does not affect or impair our rights with respect to any subsequent default you may commit. Our waiver of a default by another franchisee does not affect or impair our right to demand your strict compliance with the terms of this Agreement. We have no obligation to deal with similarly situated franchisees in the same manner. Our acceptance of any payments due from you does not waive any prior defaults.

17.4 Importance of Timely Performance. Time is of the essence in this Agreement.

17.5 Construction. The headings in this Agreement are for convenience of reference and are not a part of this Agreement and will not affect the meaning or construction of any of its provisions. Unless otherwise specified, all references to a number of days shall mean calendar days and not business days. The words “include,” “including,” and words of similar import shall be interpreted to mean “including, but not limited to” and the terms following such words shall be interpreted as examples of, and not an exhaustive list of, the appropriate subject matter.

17.6 Severability. Each provision of this Agreement is severable from the others. If any provision of this Agreement or any of the documents executed in conjunction with this Agreement is for any reason determined by a court to be invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability will not affect any other remaining provisions of this Agreement or any other document. The remaining provisions will continue to be given full force and effect and bind us and you.

17.7 Applicable State Law Controlling. If the termination, renewal, or other provisions set forth in this Agreement are inconsistent with any applicable state statute, in effect as of the Effective Date, governing the relationship of us and franchisees, the provisions of such statute will apply to this Agreement, but only to the extent of such inconsistency.

17.8 Survival. Each provision of this Agreement that expressly or by reasonable implication is to be performed, in whole or in part, after the expiration, termination, or Transfer of this Agreement will survive such expiration, termination, or Transfer, including, but not limited to, Sections 9 (Intellectual Property), 10 (Proprietary Information), 11 (Indemnification), 12 (Your Covenant Not to Compete), and 15 (Your Obligations Upon Expiration or Termination).

17.9 Consent. Whenever our prior written approval or consent is required under this Agreement, you agree to make a timely written request to us for such consent. Our approval or consent must be in writing and signed by an authorized officer to be effective.

17.10 Independent Contractor Relationship. This Agreement does not create, nor does any conduct by us create, a fiduciary or other special relationship or make you or us an agent, legal representative, joint venturer, partner, employee or servant of each other for any purpose. You are not authorized to make any contract, agreement, warranty, or representation on our behalf, or to create any obligation, express or implied, on our behalf. You are, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Shop and its business, including any personal property, Operating Assets, or real property and for all claims or demands based on damage or destruction of property

or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Shop. Further, we and you are not and do not intend to be partners, associates, or joint employers in any way, and we shall not be construed to be jointly liable for any of your acts or omissions under any circumstances. We have no relationship with your employees, and you have no relationship with our employees.

17.11 Notices. All notices and other communications required or permitted under this Agreement will be in writing and will be given by one of the following methods of delivery: (i) personally; (ii) by certified or registered mail, postage prepaid; or (iii) by overnight delivery service. Notices to you will be sent to the address set forth on Attachment A. Notices to us must be sent to:

Smoker's Destiny, LLC  
Attn: Corporate Counsel  
1236 E Lincoln Hwy  
Langhorne, Pennsylvania 19047

Either party may change its mailing address by giving notice to the other party. Notices will be deemed received the same day when delivered personally, upon attempted delivery when sent by registered or certified mail or overnight delivery service, or the next business day when sent by facsimile.

17.12 Execution. This Agreement shall not be binding on either party until it is executed by both parties. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument.

17.13 Successors and Assigns. Except as expressly otherwise provided herein, this Agreement is binding upon and will inure to the benefit of the parties and their respective heirs, executors, legal representatives, successors, and permitted assigns.

17.14 No Third-Party Beneficiaries. Except as expressly otherwise provided herein, no third party shall have the right to claim any of the benefits conferred under this Agreement.

17.15 Additional Terms; Inconsistent Terms. The parties may provide additional terms by including the terms on Attachment A. To the extent that any provisions of Attachment A are in direct conflict with the provisions of this Agreement, the provisions of Attachment A shall control.

17.16 Area Representative and Delegation. We may delegate the performance of any or all of our obligations under this Agreement to an "Area Representative", affiliate, agent, independent contractor, or other third party. You acknowledge that if we appoint an Area Representative in the area that includes your Territory, the Area Representative will provide training, support, marketing, and other services to you on our behalf and will have the authority to exercise many of our rights and perform many of our obligations under this Agreement. We may, without your consent, appoint an Area Representative or a substitute for the Area Representative at any time.

## **Section 18      Your Representations and Acknowledgments.**

You (on behalf of yourself and your Owners) represent, warrant, and acknowledge as follows:

18.1 Truth of Information. The information (including without limitation all personal and financial information) that you and your Owners have furnished or will furnish to us relating to the subject of this Agreement is true and correct in all material respects and includes all material facts necessary to make such information not misleading in light of the circumstances when made.

18.2 Due Authority. This Agreement has been duly authorized and executed by you or on your behalf and constitutes your valid and binding obligation, enforceable in accordance with its terms, subject to Smoker's Destiny, LLC

applicable bankruptcy, moratorium, insolvency, receivership, and other similar laws affecting the rights of creditors generally.

18.3 Terrorist Acts. 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, or with a person aiding any person engaged in, acts of terrorism, as defined in the Order. Accordingly, you represent and warrant to us that, as of the date of this Agreement, neither you nor any person holding any ownership interest in you, controlled by you, 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: (i) do not, and hereafter will not, engage in any terrorist activity; (ii) are not affiliated with and do not support any individual or Entity engaged in, contemplating, or supporting terrorist activity; and (iii) 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.

18.4 Independent Investigation. Intentionally omitted.

18.5 Timely Receipt and Review of Agreement and Disclosure Document. You have received an execution ready copy of this Agreement at least seven calendar days before you executed this Agreement or any related agreements or paid any consideration to us. You have also received a FDD required by applicable state and/or federal laws, including a form of this Agreement, at least 14 calendar days (or such longer time period as required by applicable state law) before you executed this Agreement or any related agreements or paid any consideration to us.

18.6 Financial Performance Representations. Intentionally omitted.

*[Signature page follows]*

**IN WITNESS WHEREOF**, upon signing below, each of the undersigned has executed this Agreement under seal as of the Effective Date.

**FRANCHISEE:**

[FRANCHISEE]

(if individuals, add signature boxes as necessary)

**Signature:**

**Name:**

**Title:**

**Date:**

**FRANCHISOR:**

SMOKER'S DESTINY, LLC

**Signature:**

**Name:** Harshad Patel

**Title:** CEO

**EFFECTIVE DATE:**

**ATTACHMENT A**

**FRANCHISEE SPECIFIC TERMS**

**Effective Date:**

**Franchise Fee:**

**Franchisee Name:**

**Ownership of Franchise:**

Owner Name	Ownership Percentage
	%
	%
	%

**Franchisee Address:**

**Franchisee Phone:**

**Franchisee Email:**

**Principal Executive:**

**Designated Representative:**

**Protected Territory:**

*[Attach map or list of distinguishing territory features such as list of zip codes]*

**FRANCHISEE:**

[FRANCHISEE]

**Signature:**

**Name:**

**Title:**

**FRANCHISOR:**

SMOKER'S DESTINY, LLC

**Signature:**

**Name:**

**Title:**

**SCHEDULE 1 TO ATTACHMENT A**

**LOCATION ACCEPTANCE LETTER**

*(to be completed after site selection and acceptance)*

**Date:**

1. **Preservation of Agreement.** Except as specifically set forth in this letter, the Franchise Agreement shall remain in full force and effect in accordance with its terms and conditions. This letter is attached to and upon execution becomes an integral part of the Franchise Agreement.

2. **Authorized Location.** The Authorized Location shall be the following:

---

3. **Protected Territory.** Pursuant to the Franchise Agreement, Franchisee's Protected Territory will be defined as follows (if identified on a map, please attach map and reference attachment below):

---

**FRANCHISOR:**

SMOKER'S DESTINY, LLC

**Signature:**

**Name:**

**Title:**

## ATTACHMENT B

### PERSONAL GUARANTY OF OWNER/SHAREHOLDER

This Personal Guaranty and Assumption of Obligations (this "Guaranty") is given by the undersigned individuals identified as the owners of Franchisee in Attachment A.

In consideration of, and as an inducement to, the execution of that certain franchise agreement of even date herewith ("Franchise Agreement") by the parties listed as Franchisor and Franchisee in the Franchise Agreement, the undersigned hereby personally and unconditionally, jointly and severally: guaranties to Franchisor and its successors and assigns, for the Term of the Franchise Agreement and, including any renewal thereof, as provided in the Franchise Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant stated in the Agreement and any documents, agreements, and instruments signed with or in connection with the Franchise Agreement (collectively, the "Franchise Documents"); and (2) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Franchise Documents applicable to the owners of Franchisee.

The undersigned waives:

- acceptance and notice of acceptance by Franchisor of the foregoing undertakings;
- notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- protest and notice of default to any party with respect to the indebtedness of non-performance of any obligations hereby guaranteed;
- any right the undersigned may have to require that an action be brought against Franchisee or any other person as a condition of liability; and
- any and all other notices and legal or equitable defenses to which the undersigned may be entitled.

The undersigned consents and agrees that:

- the undersigned's direct and immediate liability under this Guaranty shall be joint and several with all signatories to this and similar guaranties of Franchisee's obligations;
- the undersigned shall render any payment or performance required under the Franchise Agreement upon demand if Franchisee fails or refuses punctually to do so;
- this Guaranty shall apply to any claims Franchisor may have due to return of any payments or property Franchisor may have received from Franchisee as a preference, fraudulent transfer or conveyance or the like in any legal proceeding;
- such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and
- such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or any other person, including without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which in any way modify or amend this Guaranty, which shall be continuing and irrevocable during and after the terms of the Franchise Documents,

as the same may be amended or renewed, until Franchisee's duties and obligations to Franchisor are fully discharged and satisfied.

All capitalized terms when used shall have the meanings ascribed to them in the Franchise Agreement.

This Guaranty shall be governed, construed, and interpreted in accordance with the substantive laws of the state where Franchisor has its principal place of business at the time a dispute arises, without giving effect to its conflicts of law principles.

**IN WITNESS WHEREOF**, each of the undersigned has affixed his signature as dated below.

**GUARANTOR(S):**

*(add signature lines as necessary)*

**Signature:**

**Name:**

**Date:**

## ATTACHMENT C

### GENERAL RELEASE OF CLAIMS

*[This is our current standard form of General Release. This document is not signed when you purchase a franchise. In circumstances such as a renewal of your franchise or as a condition of our approval of a sale of your franchise, we may require you to sign a general release.]*

This General Release of Claims ("Release") is made as of the date signed below, by the individual or entity listed below as franchisee ("Franchisee"), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, "Releasor") in favor of Smoker's Destiny, LLC ("Franchisor," and together with Releasor, the "Parties").

**WHEREAS**, Franchisor and Franchisee have entered into a Franchise Agreement ("Agreement") pursuant to which Franchisee was granted the right to own and operate a Smoker's Destiny business;

**WHEREAS**, [Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a successor franchise agreement/amend the Agreement] OR [the Agreement is being terminated/or indicate other reason for the requirement of this waiver and release], and Franchisor has consented to such; and

**WHEREAS**, as a condition to Franchisor's consent, Releasor has agreed to execute this Release upon the terms and conditions stated below.

**NOW, THEREFORE**, in consideration of Franchisor's consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasor hereby agrees as follows:

**1. Representations and Warranties.** Releasor represents and warrants that it is duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

**2. Release.** Releasor and its subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of its affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the "Released Parties"), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasor may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages, expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third party claim.

**3. Nondisparagement.** Releasor expressly covenants and agrees not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.

**4. Confidentiality.** Releasor agrees to hold in strictest confidence and not disclose, publish, or use the existence of, or any details relating to, this Agreement to any third party without Franchisor's express written consent, except as required by law.

**5. Miscellaneous.**

a. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the state where the Franchised Business is located.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof. This Release may not be modified except in a writing signed by all the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.

*[Signature Page follows]*

**Signature Page to General Release Form**

**IN WITNESS WHEREOF**, Releasor has executed this Release as of the date signed below.

**FRANCHISEE:**

[FRANCHISEE]

**By:**

**Name:**

**Title:**

**Date:**

**FRANCHISEE'S OWNERS:**

*(add signature lines as necessary)*

**Signature:**

**Name:**

**Date:**

## ATTACHMENT D

### ELECTRONIC FUNDS TRANSFER AUTHORIZATION FORM

**Bank Name:**

**ABA Number:**

**Account Number:**

**Account Name:**

Effective as of the date of the signature below, [FRANCHISEE NAME] (the “Franchisee”) hereby authorizes Smoker’s Destiny, LLC (the “Franchisor”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to cover the following payments that are due and owing Franchisor or its affiliates under the franchise agreement dated [EFFECTIVE DATE OF FA] (the “Franchise Agreement”) for the business operating at the location identified on Attachment A of the Franchise Agreement (the “Franchised Business”): (i) all Royalty Fees; (ii) Fund Contributions; (iii) any amounts due and owing the Franchisor or its affiliates in connection with marketing materials or other supplies or inventory that is provided by Franchisor or its affiliates; and (iv) all other fees and amounts due and owing to Franchisor or its affiliates under the Franchise Agreement. Franchisee acknowledges each of the fees described above may be collected by the Franchisor (or its designee) as set forth in the Franchise Agreement.

The parties further agree that all capitalized terms not specifically defined herein will be afforded the definition they are given in the Franchise Agreement.

Such withdrawals shall occur on a weekly basis, or on such other schedule as Franchisor shall specify in writing. This authorization shall remain in full force and effect until terminated in writing by Franchisor. **PLEASE ATTACH A VOIDED BLANK CHECK, FOR PURPOSES OF SETTING UP BANK AND TRANSIT NUMBERS.**

**AGREED:**

**FRANCHISEE:**

[FRANCHISEE]

**By:**

**Name:**

**Title:**

**FRANCHISOR:**

SMOKER’S DESTINY, LLC

**By:**

**Name:**

**Title:**

## ATTACHMENT E

### LEASE RIDER

THIS LEASE RIDER is entered into between the undersigned parties.

WHEREAS, Company and Franchisee are parties to a Franchise Agreement dated \_\_\_\_\_, (the "Franchise Agreement"); and

WHEREAS, the Franchise Agreement provides that Franchisee will operate a Smoker's Destiny ("Business") at a location that Franchisee selects and Company accepts; and

WHEREAS, Franchisee and Landlord propose to enter into the lease to which this Rider is attached (the "Lease"), pursuant to which Franchisee will occupy premises located at the address listed on the signature page below (the "Premises") for the purpose of constructing and operating the Business in accordance with the Franchise Agreement; and

WHEREAS, the Franchise Agreement provides that, as a condition to Company's authorizing Franchisee to enter into the Lease, the parties must execute this Lease Rider;

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth in this Rider and in the Franchise Agreement, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. During the term of the Franchise Agreement, Franchisee will be permitted to use the Premises for the operation of the Business and for no other purpose.
2. Subject to applicable zoning laws and deed restrictions and to prevailing community standards of decency, Landlord consents to Franchisee's installation and use of such trademarks, service marks, signs, decor items, color schemes, and related components of the Smoker's Destiny system as Company may from time to time prescribe for the Business.
3. Landlord agrees to furnish Company with copies of all letters and notices it sends to Franchisee pertaining to the Lease and the Premises, at the same time it sends such letters and notices to Franchisee. Notice shall be sent to Company by the method(s) as stated in the lease to:

Smoker's Destiny, LLC  
1236 E Lincoln Hwy  
Langhorne, PA 19047  
hmv.infinity@gmail.com

4. Company will have the right, without being guilty of trespass or any other crime or tort, to enter the Premises at any time or from time to time (i) to make any modification or alteration it considers necessary to protect the Smoker's Destiny system and marks, (ii) to cure any default under the Franchise Agreement or under the Lease, or (iii) to remove the distinctive elements of the Smoker's Destiny trade dress upon the Franchise Agreement's expiration or termination. Neither Company nor Landlord will be responsible to Franchisee for any damages Franchisee might sustain as a result of action Company takes in accordance with this provision. Company will repair or reimburse Landlord for the cost of any damage to the Premises' walls, floor or ceiling that result from Company's removal of trade dress items and other property from the Premises.

5. Franchisee will be permitted to assign the Lease to Company or its designee upon the expiration or termination of the Franchise Agreement. Landlord consents to such an assignment and agrees not to impose any assignment fee or similar charge, or to increase or accelerate rent under the Lease, in connection with such an assignment.

6. If Franchisee assigns the Lease to Company or its designee in accordance with the preceding paragraph, the assignee must assume all obligations of Franchisee under the Lease from and after the date of assignment, but will have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assignment.

7. Franchisee may not assign the Lease or sublet the Premises without Company's prior written consent, and Landlord will not consent to an assignment or subletting by Franchisee without first verifying that Company has given its written consent to Franchisee's proposed assignment or subletting.

8. Landlord and Franchisee will not amend or modify the Lease in any manner that could materially affect any of the provisions or requirements of this Lease Rider without Company's prior written consent.

9. The provisions of this Lease Rider will supersede and control any conflicting provisions of the Lease.

10. Landlord acknowledges that Company is not a party to the Lease and will have no liability or responsibility under the Lease unless and until the Lease is assigned to, and assumed by, Company.

IN WITNESS WHEREOF, the parties have executed this Lease Rider on the date signed below:

**COMPANY:**

SMOKER'S DESTINY, LLC

**By:**

**Name:**

**Title:**

**FRANCHISEE:**

[FRANCHISEE]

**By:**

**Name:**

**Title:**

**LANDLORD:**

[LANDLORD]

**By:**

**Name:**

**Title:**

**Effective Date of this Lease Rider:**

**Premises Address:**

## ATTACHMENT F

### FRANCHISEE QUESTIONNAIRE/COMPLIANCE CERTIFICATION

**DO NOT SIGN THIS STATEMENT IF YOU ARE A RESIDENT OF, OR INTEND TO OPERATE THE FRANCHISED BUSINESS IN, ANY OF THE FOLLOWING STATES:  
CA, HI, IL, IN, MD, MI, MN, NY, ND, RI, SD, VA, WA, WI (EACH A REGULATED STATE).**

FOR PROSPECTIVE FRANCHISEES THAT RESIDE IN OR ARE SEEKING TO OPERATE THE FRANCHISED BUSINESS IN ANY REGULATED STATE, SUCH PROSPECTIVE FRANCHISEE IS NOT REQUIRED TO COMPLETE THIS QUESTIONNAIRE OR TO RESPOND TO ANY OF THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE.

No statement, questionnaire, or acknowledgement signed or agreed to by you in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by us, any franchise seller, or any other person acting on our behalf. This provision supersedes any other term of any document executed in connection with the franchise.

As you know, Smoker's Destiny, LLC ("we", "us"), and you are preparing to enter into a franchise agreement for the right to operate a Smoker's Destiny franchise (each, a "Business"). The purpose of this questionnaire is to: (i) determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate, or misleading; (ii) be certain that you have been properly represented in this transaction; and (iii) be certain that you understand the limitations on claims you may make by reason of the purchase and operation of your franchise. **You cannot sign or date this questionnaire the same day as the Receipt for the Franchise Disclosure Document, but you must sign and date it the same day you sign the Franchise Agreement and pay us the appropriate franchisee fee.** Please review each of the following questions carefully and provide honest responses to each question. If you answer "No" to any of the questions below, please explain your answer on the back of this sheet.

- Yes/No \_\_\_\_ 1. Have you received and personally reviewed the Franchise Agreement, as well as each exhibit or schedule attached to these agreements that you intend to enter into with us?
- Yes/No \_\_\_\_ 2. Have you received and personally reviewed the Franchise Disclosure Document we provided?
- Yes/No \_\_\_\_ 3. Did you sign a receipt for the Disclosure Document indicating the date you received it?
- Yes/No \_\_\_\_ 4. Do you understand all the information contained in the Disclosure Document and the Franchise Agreement you intend to enter into with us?
- Yes/No \_\_\_\_ 5. Have you reviewed the Disclosure Document and Franchise Agreement with a lawyer, accountant or other professional advisor and discussed the benefits and risks of operating the Business(es) with these professional advisor(s)?
- Yes/No \_\_\_\_ 6. Do you understand we have only granted you certain, limited territorial rights under the Franchise Agreement, and that we have reserved certain rights under the Franchise Agreement?
- Yes/No \_\_\_\_ 7. Do you understand we and our affiliates retain the exclusive unrestricted right to engage, directly or through others, in the providing of services under the System mark or any other mark at any location outside your Territory under the Franchise Agreement, without regard to the proximity of these activities to the premises of your Business(es)?

- Yes/No \_\_\_\_ 8. Do you understand all disputes or claims you may have, arising from, or relating to the Franchise Agreement must be mediated and/or arbitrated, at our option, at our then-current headquarters?
- Yes/No \_\_\_\_ 9. Do you understand the Franchise Agreement provides that you can only collect compensatory damages on any claim under or relating to the Franchise Agreement and are not entitled to any punitive, consequential, or other special damages?
- Yes/No \_\_\_\_ 10. Do you understand the sole entity or person against whom you may bring a claim under the Franchise Agreement is us?
- Yes/No \_\_\_\_ 11. Do you understand that the Franchisee (or one of its principals if Franchisee is an organization), as well as any Principal Executive(s) (as defined in the Franchise Agreement), must successfully complete the appropriate initial training program(s) before we will allow the Business to open or consent to a transfer of that Business?
- Yes/No \_\_\_\_ 12. Do you understand that we require you to successfully complete certain initial training program(s) and if you do not successfully complete the applicable training program(s) to our satisfaction, we may terminate your Franchise Agreement?
- Yes/No \_\_\_\_ 13. Do you understand that we do not have to sell you a franchise or additional franchises or consent to your purchase of existing franchises (other than those that you timely fulfill your development obligations and have contracted to open under the Area Development Agreement, provided you have not materially breached that agreement and failed to timely cure that breach)?
- Yes/No \_\_\_\_ 14. Do you understand that we will send written notices, as required by your Franchise Agreement, to either your Business or home address until you designate a different address by sending written notice to us?
- Yes/No \_\_\_\_ 15. Do you understand that we will not approve your purchase of a franchise, or we may immediately terminate your Franchise Agreement, if we are prohibited from doing business with you under any anti-terrorism law enacted by the United States Government?
- Yes/No \_\_\_\_ 16. Is it true that no broker, employee, or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a Business that is not contained in the Disclosure Document or that is contrary to, or different from, the information contained in the Disclosure Document?
- Yes/No \_\_\_\_ 17. Is it true that no broker, employee, or other person speaking on our behalf made any statement or promise regarding the actual, average, or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Business will generate, that is not contained in the Disclosure Document or that is contrary to, or different from, the information contained in the Disclosure Document?
- Yes/No \_\_\_\_ 18. Is it true that no broker, employee, or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement and/or Development Agreement concerning advertising, marketing, media support, marketing penetration, training, support service or assistance that is contrary to, or different from, the information contained in the Disclosure Document?

Yes/No \_\_\_\_ 19. Is it true that no broker, employee, or other person providing services to you on our behalf has solicited or accepted any loan, gratuity, bribe, gift or any other payment in money, property, or services from you in connection with a Business purchase with exception of those payments or loans provided in the Disclosure Document?

**GIVE A COMPLETE EXPLANATION OF ANY NEGATIVE RESPONSES ON BACK OF THIS PAGE (REFER TO QUESTION NUMBER)**

**YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.**

**FRANCHISEE APPLICANT(S):**

*(add signature lines as necessary)*

**Signature:**

**Name:**

**Title:**

**Date:**

**EXHIBIT F**

**RESERVED**

**EXHIBIT G**

**FORM OF GENERAL RELEASE**

## GENERAL RELEASE OF CLAIMS

*[This is our current standard form of General Release. This document is not signed when you purchase a franchise. In circumstances such as a renewal of your franchise or as a condition of our approval of a sale of your franchise, we may require you to sign a general release.]*

This General Release of Claims ("Release") is made as of the date signed below, by the individual or entity listed below as franchisee ("Franchisee"), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, "Releasor") in favor of SMOKER'S DESTINY, LLC ("Franchisor," and together with Releasor, the "Parties").

**WHEREAS**, Franchisor and Franchisee have entered into a Franchise Agreement ("Agreement") pursuant to which Franchisee was granted the right to own and operate a SMOKER'S DESTINY SMOKE SHOP business;

**WHEREAS**, [Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a successor franchise agreement/amend the Agreement] OR [the Agreement is being terminated/or indicate other reason for the requirement of this waiver and release], and Franchisor has consented to such; and

**WHEREAS**, as a condition to Franchisor's consent, Releasor has agreed to execute this Release upon the terms and conditions stated below.

**NOW, THEREFORE**, in consideration of Franchisor's consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasor hereby agrees as follows:

**1. Representations and Warranties.** Releasor represents and warrants that it is duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

**2. Release.** Releasor and its subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of its affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the "Released Parties"), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasor may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages, expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third party claim.

**3. Nondisparagement.** Releasor expressly covenants and agrees not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.

**4. Confidentiality.** Releasor agrees to hold in strictest confidence and not disclose, publish, or use Smoker's Destiny, LLC  
General Release

the existence of, or any details relating to, this Agreement to any third party without Franchisor's express written consent, except as required by law.

**5. Miscellaneous.**

a. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the state where the Franchised Business is located.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof. This Release may not be modified except in a writing signed by all the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.

*[Signature Page follows]*

**Signature Page to General Release Form**

IN WITNESS WHEREOF, Releasor has executed this Release as of the date signed below.

**FRANCHISEE:**

[FRANCHISEE]

**By:**

**Name:**

**Title:**

**Date:**

**FRANCHISEE'S OWNERS:**

*(add more lines signature lines as necessary)*

**Signature:**

**Name:**

**Date:**

**Signature:**

**Name:**

**Date:**

## **EXHIBIT H**

### **FORM OF NONDISCLOSURE AND NONCOMPETE AGREEMENT**

**[THIS EXHIBIT IS FOR REFERENCE PURPOSES ONLY AS A SAMPLE FORM CONFIDENTIALITY AGREEMENT THAT FRANCHISOR MAY APPROVE FOR USE BY FRANCHISEE – BEFORE USING WITH AN EMPLOYEE OR CONTRACTOR FRANCHISEE SHOULD HAVE THIS AGREEMENT REVIEWED AND APPROVED BY AN INDEPENDENT LOCAL ATTORNEY HIRED BY FRANCHISEE.]**



## **CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT**

*[Sample ONLY]*

This Agreement (the “Agreement”) is entered into by the undersigned (“you”) in favor of:

[On the Line Below, Insert Name of Franchisee that Owns and Operates the SMOKER’S DESTINY SMOKE SHOP Franchised Business]

\_\_\_\_\_ (hereinafter referred to as “us”, “our” or “we”)

### **Recitals and Representations**

**WHEREAS**, we are the owners of a licensed SMOKER’S DESTINY SMOKE SHOP Business (hereinafter referred to as the “SMOKER’S DESTINY SMOKE SHOP Business”) that we independently own and operate as a franchisee;

**WHEREAS**, you are or are about to be an employee, independent contractor, officer and/or director of a SMOKER’S DESTINY SMOKE SHOP Business that is independently owned and operated by us;

**WHEREAS**, in the course of your employment, independent contractor relationship and/or association with us, you may gain access to Confidential Information (defined below in this Agreement) and you understand that it is necessary to protect the Confidential Information and for the Confidential Information to remain confidential;

**WHEREAS**, our franchisor, SMOKER’S DESTINY, LLC is not a party to this agreement and does not own or manage the SMOKER’S DESTINY SMOKE SHOP Business but is an intended third-party beneficiary of this Agreement; and

**WHEREAS**, this Agreement is not an employment agreement and is only a confidentiality agreement in connection with information, materials and access that may be provided to you in connection with the SMOKER’S DESTINY SMOKE SHOP Business.

**NOW THEREFORE**, you acknowledge and agree as follows:

**1. Recitals and Representations.** You agree that the foregoing Recitals and Representations are true and accurate and shall constitute a part of this Agreement and are hereby incorporated into the main body of this Agreement.

**2. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“Business Management System” refers to and means the software and/or internet or cloud-based system and/or systems, point of sale system or systems and customer relationship management system or systems as used in connection with the operations of the SMOKER’S DESTINY SMOKE SHOP Business.

“Business Management System Data” refers to and means the forms, data, tools, customer information, inventory and sales information, and other information that is entered into and/or maintained on the Business Management System of the SMOKER’S DESTINY SMOKE SHOP Business.

“Confidential Information” refers to and means: (a) non-public methods, specifications, standards, policies, procedures, information, concepts, programs and systems relating to the development, establishment, marketing, promotion and operation of the SMOKER’S DESTINY SMOKE SHOP Business; (b) information concerning customers, customer lists, email lists, database lists, product sales, operating results, financial performance and other financial data of the SMOKER’S DESTINY SMOKE SHOP Business; (c) customer lists and information related to the SMOKER’S DESTINY SMOKE SHOP Business; (d) Business Management System Data; (e) current and future information contained in the SMOKER’S DESTINY SMOKE SHOP Operations Manual made available to the SMOKER’S DESTINY SMOKE SHOP Business by SMOKER’S DESTINY, LLC; and (f) production and service procedures that are not disclosed to the public but used by the SMOKER’S DESTINY SMOKE SHOP Business.

“Digital Media” refers to and means any interactive or static electronic document, application or media including, but not limited to, WWW.SMOKERSDESTINY.COM, social media platforms and applications such as Facebook, LinkedIn, Twitter, Pinterest, Instagram, Snapchat, YouTube, and world wide web and internet based directories and local directories that refers, references, identifies, reviews, promotes and/or relates, in any way, to the SMOKER’S DESTINY SMOKE SHOP Business or other SMOKER’S DESTINY SMOKE SHOP Businesses.

“Licensed Marks” refers to and means the word marks, trademarks, service marks, and logos now or hereafter utilized in the operation of a SMOKER’S DESTINY SMOKE SHOP Business, including, but not limited to, the “SMOKER’S DESTINY SMOKE SHOP” word mark, associated logos, and any other trademarks, service marks or trade names that we designate for use in a SMOKER’S DESTINY SMOKE SHOP Business.

“Operations Manual” refers to and means the confidential operations manual made available to the SMOKER’S DESTINY SMOKE SHOP Business by our franchisor or as otherwise designated by us. The Operations Manual may consist of one or more volumes, handbooks, manuals, written materials, video, electronic media files, cloud/internet-based list-service, intra-net, internet based and accessed databases, computer media, webinars and other materials as may be modified, added to, replaced, or supplemented.

“Trade Dress” refers to and means the SMOKER’S DESTINY SMOKE SHOP designs, images, marketing materials, packaging, branding and/or branding images used in connection with the operation of the SMOKER’S DESTINY SMOKE SHOP Business.

**3. Your Access to Confidential Information.** In addition to the representations and acknowledgments contained in the Recitals and Representations, above, you acknowledge and represent that in your capacity as an employee, independent contractor, officer and/or director of the SMOKER’S DESTINY SMOKE SHOP Business that you will be gaining access to, among other things, the Confidential Information. You acknowledge that the terms of this Agreement are fair and reasonable.

**4. Protection of the Confidential Information.** You agree that: (i) you will not use the Confidential Information in any business or capacity other than the SMOKER’S DESTINY SMOKE SHOP Business; (ii) you will maintain the confidentiality of the Confidential Information at all times; (iii) you will not make unauthorized copies of documents containing the Confidential Information; (iv) you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Confidential Information; and (v) you will stop using the Confidential Information immediately at our request or demand. You will not use the Confidential Information for any purpose other than for the performance of your duties on behalf of us and in accordance with the scope of your work with us.

**5. Reasonableness of Covenants and Restrictions.** You agree that: (i) the terms of this Agreement are reasonable and fair and that you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **You hereby waive any right to challenge the terms of this Agreement as being overly broad, unreasonable, or otherwise unenforceable.**

**6. Breach.** You agree that failure to comply with the terms of this Agreement will cause irreparable harm to us and to our franchisor, SMOKER'S DESTINY, LLC, and other SMOKER'S DESTINY SMOKE SHOP franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of these covenants will entitle us or our franchisor SMOKER'S DESTINY, LLC, to injunctive relief. You agree that we and/or our franchisor, SMOKER'S DESTINY, LLC, may apply for such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours, in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, you agree that the amount of the bond shall not exceed one thousand dollars (\$1,000.00). None of the remedies available to us under this Article are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages.

**7. Miscellaneous.**

(a) If we hire an attorney or files suit against you because you have breached this Agreement and if we prevail in such lawsuit, you agree to pay the reasonable attorney fees and costs that we incur.

(b) Each section of this Agreement, including each subsection and portion thereof, is severable. In the event that any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration, and geographic area.

**YOU ACKNOWLEDGE THAT THIS IS NOT AN EMPLOYMENT AGREEMENT.**

**YOU ACKNOWLEDGE AND AGREE THAT OUR FRANCHISOR, SMOKER'S DESTINY, LLC, IS NOT A PARTY TO THIS AGREEMENT BUT IS AN INTENDED THIRD-PARTY BENEFICIARY OF THIS AGREEMENT.**

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

**RESTRICTED PARTY**

Signature:

Name:

Date:

## **EXHIBIT I**

### **STATE SPECIFIC ADDENDA**

The following modifications are made to this Disclosure Document given to you and may supersede, to the extent then-required by valid applicable state law, certain portions of the Franchise Agreement between you and us dated as of the Effective Date set forth in your Franchise Agreement. When the term “Franchisor’s Choice of Law State” is used, it means the laws of the state of Pennsylvania, subject to any modifications as set forth in the addenda below. When the term “Supplemental Agreements” is used, it means Area Development Agreement.

Certain states have laws governing the franchise relationship and franchise documents. Certain states require modifications to the FDD, Franchise Agreement and other documents related to the sale of a franchise. These State Specific Addenda (“Addenda”) modify the agreements to comply with the state’s laws. The terms of these Addenda will only apply if you meet the requirements of the applicable state, independent of your signing the appropriate Addenda. The terms of the Addenda will override any inconsistent provision in the FDD, Franchise Agreement, or any Supplemental Documents. These Addenda are only applicable to the following states: California, Hawaii, Illinois, Iowa, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Ohio, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

If your state requires these modifications, you will sign the signature page to the Addenda along with the Franchise Agreement and any Supplemental Agreements.

## CALIFORNIA

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of California:

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION AT [dfpi.ca.gov](http://dfpi.ca.gov).

### ITEM 3 – LITIGATION

Neither the Franchisor, nor any person identified in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 79a et seq., suspending or expelling such persons from membership in such association or exchange

### ITEM 17 – RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

1. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. The Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

2. The Franchise Agreement provides for termination upon bankruptcy, this provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq).

3. The Franchise Agreement and the Development Agreement contain provisions requiring application of the laws of Pennsylvania. This provision may not be enforceable under California law.

4. The Franchise Agreement and the Development Agreement require venue to be limited to Pennsylvania. This provision may not be enforceable under California law.

5. The Franchise Agreement contains a covenant not to compete which extends beyond the termination or non-renewal of the franchise. This provision may not be enforceable under California law.

6. THE FRANCHISE AGREEMENT MAY REQUIRE THE FRANCHISEE TO EXECUTE A GENERAL RELEASE OF CLAIMS UPON EXECUTION OF THE FRANCHISE AGREEMENT. CALIFORNIA CORPORATIONS CODE SECTION 31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE SECTIONS 31000 THROUGH 31516). BUSINESS AND PROFESSIONS CODE SECTION 20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE SECTIONS 20000 THROUGH 20043).

7. California Corporations Code, Section 31125 requires us to give you a disclosure document, approved by the Department of Corporations before we ask you to consider a material modification of your Franchise Agreement or the Development Agreement.

8. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

9. The Franchise Agreement and any Area Development Agreement require binding arbitration. The arbitration will occur in Pennsylvania. If we are the substantially prevailing party, we will be entitled to recover reasonable attorneys' fees and litigations costs and expenses in connection with the arbitration.

Smoker's Destiny, LLC

EXHIBIT I

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

## HAWAII

The following paragraphs are added in the state cover pages:

THESE FRANCHISES WILL HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE COMMISSIONER OF SECURITIES, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, AND THIS ADDENDUM, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS ADDENDUM AND THE DISCLOSURE DOCUMENT CONTAIN A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND FRANCHISEE.

The name and address of the Franchisor's agent in this state authorized to receive service of process is: Commissioner of Securities, Department of Commerce and Consumer Affairs, Business Registration Division, Securities Compliance Branch, 335 Merchant Street, Room 203, Honolulu, Hawaii 96813.

In recognition of the requirements of the Hawaii Franchise Investment Law, Hawaii Rev. Stat. §§ 482E, et seq., the Franchise Disclosure Document for SMOKER'S DESTINY, LLC in connection with the offer and sale of franchises for use in the State of Hawaii shall be amended to include the following:

This proposed registration is effective/exempt from registration or will shortly be on file in California, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin. No states have refused, by order or otherwise, to register these franchises. No states have revoked or suspended the right to offer these franchises. The proposed registration of these franchises has not been involuntarily withdrawn in any state.

**Each provision of this Addendum to the Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Hawaii Franchise Investment Law, Hawaii Rev. Stat. §§ 482E, et seq., are met independently without reference to this Addendum to the disclosure document.**

## ILLINOIS

Illinois law governs the Disclosure Document and Franchise Agreement(s).

Section 3 “FEEs,” of the Franchise Agreement is supplemented by the addition of the following language, which shall apply to the Disclosure Document and the Franchise Agreement and control, in the event of conflict:

Based upon Franchisor’s financial condition, Illinois requires the payment of the initial franchise fee to be deferred until the franchisor has satisfied its pre-opening obligations to franchisee and the franchisee has commenced business operations. The Illinois Attorney General’s Office imposed this deferral requirement due to Franchisor’s financial condition.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Disclosure Act, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## INDIANA

Notwithstanding anything to the contrary set forth in the Franchise Agreement or Area Development Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Indiana:

1. The Franchise Agreement and Area Development Agreement will be governed by Indiana law. Venue for litigation will not be limited to a venue outside of the State of Indiana, as specified in the Franchise Agreement and Area Development Agreement.
2. The prohibition by Indiana Code 23-2-2.7-1 (7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, shall supersede any conflicting provisions of the Franchise Agreement and the Area Development Agreement in the State of Indiana to the extent they may be inconsistent with such prohibition.
3. No release language set forth in the Franchise Agreement or Area Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
4. The post-termination non-competition covenants set forth in the Franchise Agreement and Area Development Agreement shall be limited in time to a maximum of three (3) years and in geographic scope to the designated territory granted by the Agreement.
5. Nothing in the Franchise Agreement or Area Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana, and the laws of the State of Indiana supersede any conflicting choice of law provisions set forth herein if such provision is in conflict with Indiana law.
6. You will not be required to indemnify us and the other Indemnities for any liability caused by your proper reliance on or use of procedures or materials provided by us or caused by our negligence.
7. If we receive any payments related to purchases from you that we do not pass on in full to the supplier, we will promptly account for the amount of the payment that we retained and we will transmit the retained amount to you.

## **IOWA**

Any provision in the Franchise Agreement or Compliance Questionnaire which would require you to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability imposed by the Iowa Business Opportunity Promotions Law (Iowa Code Ch. 551A) is void to the extent that such provision violates such law.

The following language will be added to the Franchise Agreement:

### **NOTICE OF CANCELLATION**

\_\_\_\_\_ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence or business address, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to SMOKER'S DESTINY, LLC – 1236 E. Lincoln Hwy, Langhorne, PA 19047 not later than midnight of the third business day after the Effective Date.

I hereby cancel this transaction.

FRANCHISEE

Signed:

Name:

Date:

## **MARYLAND**

The following provisions will supersede anything to the contrary in the Franchise Disclosure Document or Franchise Agreement and will apply to all franchises offered and sold under the laws of the State of Maryland:

### **Item 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

1. No release language in the Franchise Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland. Any general release required as a condition of renewal, sale and/or assignment or transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
2. A franchisee may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the franchise.
3. The provision in the Franchise Agreement which provides for termination upon bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).
4. Item 5 of the Franchise Disclosure Document and Section 3 "FEEs," of the Franchise Agreement is supplemented by the addition of the following language, which shall apply to the Disclosure Document and the Franchise Agreement and control, in the event of conflict:

Based upon Franchisor's financial condition, Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisee shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise."

**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO  
THE MICHIGAN FRANCHISE INVESTMENT LAW**

The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you:

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provisions of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value, at the time of expiration, of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchised business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years; and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, marketing, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.<sup>1</sup>
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (i) the failure of the proposed franchisee to meet the franchisor's then-current reasonable qualifications or standards;
  - (ii) the fact that the proposed transferee is a competitor of the franchisor or subfranchisor;
  - (iii) the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations; and

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<sup>1</sup>NOTE: Notwithstanding paragraph (f) above, we intend to fully enforce the provisions of the arbitration section of our agreements. We believe that paragraph (f) is preempted by the Federal Arbitration Act and that paragraph (f) is therefore unconstitutional.

- (iv) the failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona-fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).
- (i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

\*\*\*\*\*

The fact that there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.

\*\*\*\*\*

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, the franchisor must, at the request of the franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

\*\*\*\*\*

The name and address of the franchisor's agent in this state authorized to receive service of process is: Michigan Department of Commerce, Corporation and Securities Bureau, 6546 Mercantile Way, P.O. Box 30222, Lansing, MI 48910.

Any questions regarding this notice should be directed to:

Department of the Attorney General's Office  
Corporate Oversight Division  
Attn: Franchise  
670 G. Mennen Williams Building  
Lansing, MI 48913

## MINNESOTA

Notwithstanding anything to the contrary set forth in the Disclosure Document, the Franchise Agreement, or the Area Development Agreement, the following provisions will supersede and apply:

1. Section 3 "FEEs," of the Franchise Agreement is supplemented by the addition of the following language, which shall apply to the Disclosure Document and the Franchise Agreement and control, in the event of conflict:

Based upon Franchisor's financial condition, Minnesota requires the payment of the initial franchise fee to be deferred until the franchisor has satisfied its pre-opening obligations to franchisee and the franchisee has commenced business operations.

2. We will protect your right to use the trademarks, service marks, trade names, logotypes, or other commercial symbols and/or indemnify you from any loss, costs or expenses arising out of any claim, suit, or demand regarding the use of the same.
3. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit the Franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement(s) can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.
4. No release language set forth in the Franchise Agreement or Area Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Minnesota.
5. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C.14, subdivisions 3, 4, and 5 require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement or Area Development Agreement.
6. Under the terms of the Franchise Agreement and Area Development Agreement, as modified by the Minnesota Addendum to the Franchise Agreement, you agree that if you engage in any non-compliance with the terms of the Franchise Agreement or unauthorized or improper use of the System Marks, or Proprietary Materials during or after the period of the Agreements, we will be entitled to seek 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, and you consent to the seeking of these temporary and permanent injunctions.
7. NSF checks and related interest and attorneys' fees are governed by Minnesota Statute § 60A.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys' fees.
8. Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a release that would relieve any person from liability imposed by Minnesota Statutes, Chapter 80C.
9. The franchisee cannot be required to consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400(J). Also, a court will determine if a bond is required.
10. The Limitations of Claims section must comply with Minnesota Stat. § 80C.17, subd. 5.

11. Minnesota Rules 2860.4400(G) prohibits a franchisor from imposing on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable.
12. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including, fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with this franchise.

## NEW YORK

### NOTICE TO PROSPECTIVE FRANCHISEES IN THE STATE OF NEW YORK

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT B OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

- a. No such party has an administrative, criminal, or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- b. No such party has pending actions, other than routine litigation, incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
- c. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.
- d. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust; trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the "Summary" section of Item 17(c), titled **"Requirements for franchisee to renew or extend,"** and Item 17(m), entitled **"Conditions for franchisor approval of transfer"**:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your 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 Section 687(4) and 687(5) be satisfied.

4. The following language replaces the "Summary" section of Item 17(d), titled "**Termination by franchisee**":

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the "Summary" section of Item 17(v), titled "**Choice of forum**", and Item 17(w), titled "**Choice of Law**":

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

6. **Franchise Questionnaires and Acknowledgements.** No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. **Receipts.** Any sale made must be in compliance with § 683(8) of the Franchise Sale Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earlier of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

## **NORTH DAKOTA**

In North Dakota, the Disclosure Document is amended as follows to conform to North Dakota law:

Item 5 “Initial Fees,” is supplemented by the addition of the following:

Refund and cancellation provisions will be inapplicable to franchises operating under North Dakota Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17. If franchisor elects to cancel this Franchise Agreement, franchisor will be entitled to a reasonable fee for its evaluation of you and related preparatory work performed and expenses actually incurred.

Item 6 “Other Fees,” is supplemented by the addition of the following:

No consent to termination or liquidated damages shall be required from franchisees in the State of North Dakota.

Item 17 “Renewal, Termination, Transfer and Dispute Resolution,” is supplemented by the addition of the following:

Any provision requiring a franchisee to sign a general release upon renewal of the franchise agreement has been determined to be unfair, unjust, and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

Any provision requiring a franchisee to consent to termination or liquidation damages has been determined to be unfair, unjust, and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

Covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, and inequitable. Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.

Any provision in the Franchise Agreement requiring a franchisee to agree to the arbitration or mediation of disputes at a location that is remote from the site of the franchisee’s business has been determined to be unfair, unjust, and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The site of arbitration or mediation must be agreeable to all parties and may not be remote from the franchisee’s place of business.

Any provision in the Franchise Agreement which designates jurisdiction or venue or requires the franchisee to agree to jurisdiction or venue in a forum outside of North Dakota is void with respect to any cause of action which is otherwise enforceable in North Dakota.

Apart from civil liability as set forth in Section 51-19-12 of the N.D.C.C., which is limited to violations of the North Dakota Franchise Investment Law (registration and fraud), the liability of the franchisor to a franchisee is based largely on contract law. Despite the fact that those provisions are not contained in the franchise investment law, those provisions contain substantive rights intended to be afforded to North Dakota residents and it is unfair to franchise investors to require them to waive their rights under North Dakota Law.

Any provision in the Franchise Agreement requiring that the Franchise Agreement be construed according to the laws of a state other than North Dakota are unfair, unjust, or

inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

Any provision in the Franchise Agreement which requires a franchisee to waive his or her right to a jury trial has been determined to be unfair, unjust, and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

## OHIO

The following language will be added to the front page of the Franchise Agreement:

You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right.

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

### NOTICE OF CANCELLATION

\_\_\_\_\_ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within five business days from the above date. If you cancel, any payments made by you under the agreement, and any negotiable instrument executed by you will be returned within ten business days following the seller's receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this agreement; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to SMOKER'S DESTINY, LLC – 1236 E. Lincoln Hwy, Langhorne, PA 19047 not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

FRANCHISEE

Signed:

Name:

Date:

## **RHODE ISLAND**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Rhode Island.

### **ITEM 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

§19-28.1.-14 of the Rhode Island Franchise Investment Act provides that “A provision in a Franchise Agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.”

Any general release as a condition of renewal, termination or transfer will be void with respect to claims under the Rhode Island Franchise Investment Act.

## **VIRGINIA**

**In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for SMOKER'S DESTINY, LLC, for use in the Commonwealth of Virginia shall be amended as follows:**

**Additional Disclosure:** The following statements are added to Item 17.h.:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement do not constitute "reasonable cause" as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**Additional Risk Factors:**

**Estimated Initial Investment.** This franchisee will be required to make an estimated initial investment ranging from \$346,450 to \$778,600. This amount exceeds the franchisor's stockholders equity as of July 28, 2023, which is \$3,473.

**Additional Franchise Agreement Amendment:**

No statement, questionnaire, or acknowledgement signed or agreed to by you in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by us, any franchise seller, or any other person acting on our behalf. This provision supersedes any other term of any document executed in connection with the franchise.

## WASHINGTON

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

## **WISCONSIN**

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement if such provision is in conflict with that law. The Franchise Disclosure Document, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

## SIGNATURE PAGE FOR APPLICABLE ADDENDA

If any one of the preceding Addenda for specific states is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement, and any Supplemental Agreements entered into by us and the undersigned Franchisee. To the extent any terms of an Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement, or Supplemental Agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

☐ California  
☐ Hawaii  
☐ Illinois  
☐ Iowa  
☐ Indiana  
☐ Maryland

☐ Michigan  
☐ Minnesota  
☐ New York  
☐ North Dakota  
☐ Ohio

☐ Rhode Island  
☐ South Dakota  
☐ Virginia  
☐ Washington  
☐ Wisconsin

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

### FRANCHISOR:

SMOKER’S DESTINY, LLC

Name:

Title:

### FRANCHISEE:

FRANCHISEE

Name:

Title:

## EXHIBIT J

### STATE EFFECTIVE DATES

The following States require that the Franchise Disclosure Document be registered or filed with the State, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed or registered as of the Effective Date stated below:

State	Effective Date
California	July 14, 2023
Hawaii	Pending
Illinois	October 31, 2023
Indiana	May 22, 2023
Maryland	Pending
Michigan	January 17, 2023
Minnesota	Pending
New York	Pending
North Dakota	August 3, 2023
Rhode Island	June 2, 2023
South Dakota	August 9, 2023
Virginia	October 17, 2023
Washington	Pending
Wisconsin	May 22, 2023

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

## RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Smoker's Destiny, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the Franchisor or an affiliate in connection with the proposed franchise sale. New York requires that you be given this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of any franchise or other agreement, or payment of any consideration that relates to the franchise relationship.

If Smoker's Destiny, LLC does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580, and any applicable state agency.

This franchise is being offered by the following seller(s) at the principal business address and phone number listed below (check all that have been involved in the sales process):

Harshad Patel - 1236 E. Lincoln Hwy, Langhorne, PA 19047

Franchise Brokers, Consultants, or Franchise Development Company Representatives (if any):

Name:

Address:

Phone:

Issuance Date: April 28, 2023

I received a Disclosure Document that included the following Exhibits:

- A. Financial Statements
- B. List of State Administrators and Agents for Service of Process
- C. List of Current and Former Franchisees
- D. Operations Manual Table of Contents
- E. Franchise Agreement with Attachments
- F. Reserved
- G. Form of General Release
- H. Form of Confidentiality and Noncompete Agreement
- I. State Specific Addenda
- J. State Effective Dates

Signature:

Print Name:

Date Received:

**PLEASE SIGN AND KEEP THIS COPY FOR YOUR RECORDS.**

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This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Smoker's Destiny, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the Franchisor or an affiliate in connection with the proposed franchise sale. New York requires that you be given this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of any franchise or other agreement, or payment of any consideration that relates to the franchise relationship.

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- G. Form of General Release
- H. Form of Confidentiality and Noncompete Agreement
- I. State Specific Addenda
- J. State Effective Dates

Signature:

Print Name:

Date Received:

**RETURN THIS COPY TO US:**

SMOKER'S DESTINY, LLC  
c/o Harshad Patel  
1236 E. Lincoln Hwy  
Langhorne, PA 19047  
hmv.infinity@gmail.com

Smoker's Destiny, LLC  
RECEIPT