

**EXHIBIT B**



**CREPE DELICIOUS HOLDING USA, INC.**

**FRANCHISE AGREEMENT**

**Franchise #:** \_\_\_\_\_

**Franchisee:** \_\_\_\_\_

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

**Territory:** \_\_\_\_\_

\_\_\_\_\_

**CREPE DE LICIOUS**  
**Franchise Agreement**

**TABLE OF CONTENTS**

<b>Section</b>	<b>Page</b>
1. RECITALS	1
2. GRANT AND LIMITATIONS	1
3. TERM AND EXTENSION	3
4. YOUR DEVELOPMENT OBLIGATIONS	4
5. YOUR OPERATING OBLIGATIONS	7
6. UNIT MANAGEMENT	14
7. ASSISTANCE BY US	15
8. PAYMENTS AND REPORTS	18
9. SYSTEM STANDARDS AND MANUAL	21
10. MARKS	22
11. CONFIDENTIAL INFORMATION	23
12. INSPECTIONS AND AUDITS	25
13. RELATIONSHIP OF THE PARTIES	26
14. INSURANCE AND INDEMNIFICATION	27
15. TRANSFERS	28
16. DEFAULT AND TERMINATION	30
17. POST TERMINATION RIGHTS AND OBLIGATIONS	32
18. DISPUTE RESOLUTION	35
19. GENERAL PROVISIONS	38
20. SECURITY INTEREST	40
21. ACKNOWLEDGMENTS	41

**ATTACHMENTS:**

Attachment A	Approved Location and Territory
Attachment B	Ownership Interests In Franchise Owner
Attachment C	Owners Agreement

## **CREPE DE LICIOUS FRANCHISE AGREEMENT**

This Franchise Agreement (“**Agreement**”) is made by and between Crepe Delicious Holding USA, Inc., a Delaware corporation headquartered at 147 Citation Drive, Unit 30, Concord, Ontario, Canada L4K 2P8 (“**we**” or “**us**”), and the franchisee identified on the signature page of this Agreement (“**you**”) as of the date specified as the “Effective Date” on the signature page. In consideration of the following mutual promises, the parties agree as follows:

### **1. RECITALS**

**1.01 System and Marks.** We have the right to use and to license to our franchisees a proprietary and distinctive system (“**System**”) relating to the establishment and operation of Crepe de licious restaurants and kiosks which make and sell some or all of the following: crepe-based dishes and other specialty food items, gelato, beverage items and other items. We also have the right to use and to license to our franchisees certain service marks, trademarks, trade names, trade dress, logos, slogans and commercial symbols used to identify the restaurant or kiosk or particular items and services offered (collectively, the “**Marks**”).

**1.02 Desire to Franchise.** You desire, upon the terms and conditions set forth in this Agreement, to obtain a license to use the System and Marks in the establishment and operation of a Crepe de licious unit (“**Restaurant, Kiosk, or Food Truck**”) to engage in the business of making and selling some or all of the following: crepe-based dishes and other specialty food items, gelato, beverage items and other items (“**Franchised Business**”). We are willing, upon the terms and conditions set forth herein, to license you to establish and operate the Franchised Business using the Marks and the System in a Restaurant, Kiosk, or Food Truck at an approved location. Unless the context indicates otherwise, capitalized terms have the meaning ascribed to them in this Agreement.

### **2. GRANT AND LIMITATIONS**

**2.01 Grant of Franchise.** Subject to all of the terms and conditions in this Agreement, we grant to you, and you accept, the license (“**Franchise**”) to use the System and the Marks in connection with the establishment and operation of a Franchised Business at a Restaurant, Kiosk, or Food Truck situated at the specific location (“**Approved Location**”) set forth in Attachment A to this Agreement.

#### **2.02 Limitations on Grant.**

(a) System Standards. The Franchise granted by this Agreement is limited to the operation of a Restaurant, Kiosk, or Food Truck in strict accordance with the provisions of this Agreement and the standards we specify in writing, as periodically amended, modified, supplemented or deleted, which we impose on our franchisees in connection with participation in the System, including all mandatory and suggested specifications, policies, rules, techniques and procedures we promulgate about System operation usage (collectively, the “**System Standards**”). You have no rights under this Agreement to use, and you will not use, the System, Marks or Restaurant, Kiosk, or Food Truck premises in connection with any other business, activities, or unapproved items or services.

(b) Trade Name. The Franchise granted by this Agreement is limited to establishment and operation of the Franchised Business only under the trade name “Crepe de licious” or other trade name that we expressly authorize or require in writing. You will not adopt alternative, additional or secondary trade names unless you have our prior express written consent.

(c) Location Approval by Us and Local Municipality. The Franchise granted by this Agreement is limited to a single Restaurant, Kiosk, or Food Truck at the Approved Location. The Restaurant or Kiosk must be located at the Approved Location. The Food Truck must always be located within the Territory. If a particular site has not been selected and approved at the time this Agreement is signed, Attachment A will describe the Approved Location in general terms. In that case, after we have approved a location for your Restaurant, Kiosk, or Food Truck, we will unilaterally modify Attachment A and the specific address of that location will automatically become the Approved Location as if originally set forth in Attachment A instead of the general description. You have no rights under this Agreement to use, and you will not use, the System or Marks at any other location, without our prior express written consent. You will not relocate the Restaurant, Kiosk, or Food Truck without our prior express written consent. You acknowledge that you are not guaranteed any certain Restaurant, Kiosk, Food Truck sites or other location for the operation of the Restaurant, Kiosk, Food Truck. You acknowledge that our approval of a location for the Restaurant or Kiosk is not a representation or warranty that the Restaurant, Kiosk, or Food Truck will be successful. Any Approved Location or Territory for a Food Truck will be non-exclusive and subject to our unilateral revision at anytime during the Franchise Agreement at our sole discretion.

(d) No Sub-Franchising. You have no rights under this Agreement to grant, and you will not grant, any sub-franchise or sub-license of all or part of the System or Marks.

**2.03 Non-Exclusive License.** During the term of this Agreement, neither we nor any of our affiliates will establish or operate, or franchise any entity to establish or operate, a Restaurant, Kiosk, or Food Truck using the Marks and System at any location within the market area described in Attachment A (“**Territory**”), subject to our rights set forth below in this Section. The Franchise is non-exclusive. You may not sell products or services, or advertise products or services, within another franchisee’s Territory. Other than the limited rights expressly granted to you under this Agreement, we (on behalf of ourselves and our affiliates) reserve all rights to use the Marks and System, including the following rights, in any manner and on any terms and conditions we deem advisable, and without granting you any rights, accommodation or compensation:

(a) to own, franchise, establish and/or operate, and license others to establish and operate, businesses using the Marks and System outside the Territory regardless of the proximity to your Crepe de licious Business (even if there may be some impact to your Crepe de licious Business);

(b) to contract and utilize third party delivery and ghost kitchen companies that may operate within or adjacent to your Territory regardless of the proximity to your Crepe de licious Business (even if there may be some impact to your Crepe de licious Business; you will have no right to be compensated from these third party sales which may occur within your Territory;

(c) to use and license the use of other proprietary and non-proprietary marks or methods, which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering quick-service restaurants and related products and services, at any location, including within the Territory, which may be similar to or different from the Crepe de licious Business operated by you;

(d) to sell or distribute, at retail or wholesale or otherwise, directly or indirectly, or license others to sell or distribute, any proprietary items (such as crepe ingredients, crepes, crepe-based food items and crepe sandwiches, and gelato) which bear any proprietary marks, including the Marks, through grocery stores, convenience stores, hotel shops and kiosks, theaters, malls, airports, gas stations, college campuses, sports venues, third party delivery companies, ghost kitchens, or other retail locations within or outside the Territory;

(e) to own, acquire, establish and/or operate, and license others to establish and operate, businesses using any proprietary marks or systems (including the Marks and System) at any airport, train station, other transportation facility, arena, ballpark, stadium, racetrack, other sports facility, theater, auditorium, concert hall, theme park, amusement park, cruise ship, casino, or other entertainment facility, or within any outlet mall or other regional mall, within or outside the Territory;

(f) to purchase or be purchased by, or merge or combine with, any business, including a business that competes directly with your Crepe de licious Business, wherever located;

(g) to acquire and convert to the System operated by us, any businesses offering services and products similar to offered by Crepe de licious Restaurants, Kiosks, and Food Trucks, including such businesses operated by competitors or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned and whether located inside or outside of the Territory, provided that in such situations the newly acquired businesses may not operate under the Marks in the Territory;

(h) to implement multi-area marketing programs which may allow us or others to solicit or sell, to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs; and

(i) to use the Internet and other means as a channel of distribution for us, and you may not independently market on the Internet or conduct e-commerce without our prior written approval and subject to the policies and procedures in our Operations Manual.

We are not required to pay you if we exercise any of the rights specified above within your Territory. We do not pay compensation for soliciting or accepting orders inside your Territory.

**2.04 Owners Agreement.** To induce us to enter into this Agreement, all persons with a direct or indirect ownership interest in the Franchised Business, and their spouses, must sign and deliver to us the Owners Agreement in the form attached to this Agreement as Attachment C. If you are an entity, each individual owner (i.e., each natural person holding a direct or indirect ownership interest in you) and their spouses must sign the Owners Agreement in the form attached to this Agreement as Attachment C. Any future persons and their spouses must sign and deliver revised versions of Attachment C as a condition of, and in order to reflect any permitted changes in ownership in connection with any permitted transfer of ownership under this Agreement.

### **3. TERM AND EXTENSION**

**3.01 Term.** The term of this Agreement begins on the Effective Date and will continue for the term of the lease at the Approved Location up to a maximum of 10 years, unless terminated sooner by either party. You have no rights under this Agreement to use, and you will not use, the System or Marks after expiration or termination of this Agreement. Some of your duties and obligations under this Agreement will survive after expiration or termination of this Agreement as provided herein.

**3.02 Successor Franchise Rights.** If you meet all of the conditions specified in Section 3.03, we will offer you up to two (2) successor franchise agreements, each with a term of five (5) years to become effective following the expiration of this Agreement.

**3.03 Conditions to Successor Franchise.** To qualify for an offer of a successor franchise agreement, you must timely satisfy all of the following conditions:

(a) At least six (6) months (but no more than nine (9) months) before the end of the term of this Agreement, you must give us written notice of your request for an extension of franchise rights, and you must pay us a renewal fee equal to twenty percent (20%) of our then-current franchise fee.

(b) At least two (2) months (but no more than six (6) months) before the end of the term of this Agreement, you must, at your sole cost and expense, reimage, renovate, refurbish and modernize your Restaurant, Kiosk, or Food Truck, within the time frame required by the us, to make it consistent with the then-current System Standards for new Restaurants, Kiosks, or Food Truck.

(c) At the time that you give notice of your request for an extension and at the end of the initial term, you must not be in default under this Agreement or any other agreement with us or any of our affiliates, and you must have substantially complied with all the provisions of this Agreement and of any other agreements with us or any affiliate during their respective terms.

(d) At least one (1) month before the end of the term of this Agreement, you must sign the then-current version of our standard franchise agreement for similar units, to become effective upon the expiration of this Agreement. You acknowledge that the terms and conditions of that agreement may be materially different from this Agreement, and they might not be as favorable to you. However, you will not be required to pay the then-current initial franchise fee. You will have one (1) additional option to extend the Franchise under the same terms and conditions set forth herein; and the Territory will be the same as under this Agreement.

(e) At the end of the term, you (and/or your Designated Manager, if we require) must satisfy our then-current qualification and training requirements.

(f) At least one (1) month before the end of the initial term, you (and your owners, if we require) must sign and deliver to us a general release, in a form we will provide, of all claims you or your owners may have against us and any of our affiliates (and our and their respective officers, directors, partners, owners, agents, and employees).

#### **4. YOUR DEVELOPMENT OBLIGATIONS**

**4.01 Site Selection.** You will be solely responsible for locating and obtaining a suitable site for your Restaurant, Kiosk, or Food Truck, which we have the right to approve. Depending on your Restaurant, Kiosk, or Food Truck location, layout, and size, you may also be required to lease additional storage space that may be located off-site from your Restaurant, Kiosk, or Food Truck. If you do procure off-site storage, such storage area will be considered part of the site or premises of your Restaurant, Kiosk, or Food Truck for purposes of your obligations and our rights under this Agreement. Before entering into a lease agreement or other binding agreement to acquire the proposed site, you must: submit to us a written description of the proposed site for our approval; provide us with other information regarding the proposed site according to the System Standards or as we reasonably request; and verify to us in writing that the proposed site meets our site selection criteria. We will then approve or disapprove the proposed site. If we disapprove of the proposed site, you must select an alternate site and repeat the site approval process until we have approved a proposed site for your Restaurant, Kiosk, or Food Truck. You acknowledge and agree that our approval of a site does not constitute a representation or warranty of any kind, express or implied, as to the suitability of the site for a Restaurant, Kiosk, or Food Truck or for any other purpose. Different jurisdictions have specific requirements that must be met before you can open a Restaurant, Kiosk, or Food Truck at a given location. It is your responsibility, prior to signing a lease, to make sure the location and the ability to operate a Restaurant, Kiosk, or Food Truck as a franchisee at that location is approved by the governing jurisdiction. Our approval of the site indicates

only that we believe that a site falls within the acceptable site selection criteria as of that time. If you and we are not able to reach agreement on an Approved Location within twelve (12) months after the Effective Date, we have the option to terminate this Agreement without providing you a refund of any fees you paid to us. The Food Truck must always operate within the Territory detailed in Attachment A, we reserve the right to limit specific Sites for the Food Truck to operate within the Territory at our sole discretion.

**4.02 Lease Provisions.** After we have approved a proposed site, you must then lease or purchase the approved site. If you will lease the site, your lease must include certain provisions for our protection. You must provide us with a copy of your proposed lease agreement for our review and approval before you sign it. You must not sign the proposed lease agreement until after you have our express written approval. Your landlord may require you and, if you are an entity, your owners, and spouses to sign a personal guaranty. Any lease relating to the Restaurant's, Kiosk's, or Food Truck's premises must contain the following provisions in contractual language acceptable to us:

(a) The use of the leased premises will be restricted solely to the operation of a Restaurant, Kiosk, or Food Truck.

(b) The landlord, upon termination or expiration of the lease, consents to the tenant's removal (at the tenant's expense) of the exterior and interior signs and trade fixtures, so long as the tenant makes repairs caused by the removal of these items.

(c) The landlord will provide to us (at the same time they are sent to the tenant) a copy of all lease amendments and assignments, and a copy of all letters and notices sent to the tenant relating to the lease or the leased premises.

(d) We will have the right to enter the leased premises to make any modifications or alterations, at our own cost, necessary (in our opinion) to protect the System and the Marks and to cure, within the time periods provided by the lease, any default under the lease, all without being guilty of trespass or other tort.

(e) The tenant may assign the lease to us (or our designee) with the landlord's consent (which consent will not be unreasonably withheld) and without payment of any assignment fee or similar charge or increase in any rent. The tenant will remain solely responsible for all obligations, debts and payments under the lease accruing before the effective date of any assignment to us (or our designee).

(f) The landlord will not amend or otherwise modify the lease in any manner that would affect any of the foregoing requirements without our prior written consent (which will not be unreasonably withheld).

(g) The total possible term of the lease (including the initial term and all renewal terms that are at the tenant's option) must be for at least five (5) years.

(h) Upon expiration or termination of this Agreement, we (or our designee) will have the right to an assignment of the lease with the landlord's consent (which consent will not be unreasonably withheld) and without payment of any assignment fee or similar charge or increase in any rent. The tenant will remain solely responsible for all obligations, debts and payments under the lease accruing before the effective date of any assignment to us (or our designee).

**4.03 Construction, Remodeling and Build-out.** Promptly after obtaining possession of the approved site for the Restaurant, Kiosk, Food Truck, you will: (a) have prepared and submit to us for



approval plans for the construction, build-out or remodeling of the site consistent with the System Standards and applicable law, if you are unable to use our standard plans; provided, that any altered plans must be submitted to us and receive our approval before such plans can be used. You may be required to pay to an approved or designated suppliers for our then-current fee for restaurant, kiosk, or food truck design preparation services (“**Design Fee**”), at our discretion which will vary based on the size and complexity of the design. You acknowledge that our review of your amended plans is not meant to assess any compliance with applicable laws, regulations and/or building codes, all of which is your responsibility; (b) obtain all required permits, licenses, and zoning variances; (c) complete the construction, build-out, and/or remodeling of the Restaurant, Kiosk, or Food Truck premises consistent with the approved plans, the System Standards, and applicable law; (d) purchase or lease and install all required equipment, furnishings, fixtures, signs and décor as required by this Agreement and the System Standards; (e) obtain all customary contractors sworn statement and waivers of liens; and (f) otherwise prepare the Restaurant, Kiosk, Food Truck for opening for business as required by this Agreement and the System Standards.

**4.04 Furnishings, Fixtures, Equipment and Signs.** You must purchase, lease or otherwise use and install (at your own cost and expense) in the establishment and operation of the Restaurant, Kiosk, or Food Truck all of the furnishings, fixtures, equipment, supplies and signs that are in conformance with the Operations Manual as meeting our specifications and standards for quality, design, appearance, function and performance, and only these items. You must purchase or lease approved brands, types or models of furnishings, fixtures, equipment, and signs only from suppliers designated or approved by us and according to System Standards. You agree to place or display at the Restaurant, Kiosk, and Food Truck only the signs, logos and display materials that we have approved. After your Restaurant, Kiosk, or Food Truck has been built out, equipped and decorated according to System Standards, you will not make any material alteration to the Restaurant’s, Kiosk’s, or Food Truck’s premises, furnishings, fixtures, equipment or signs without our prior express written approval.

**4.05 Inventory and Supplies.** You must purchase and stock in the Restaurant, Kiosk, or Food Truck all of the required inventory and supply items, in an adequate mix and quantity of each, all according to the System Standards. Such inventory and items shall be purchased from the suppliers we designate or approve, which may include or be limited to us or our affiliates.

**4.06 Commencement of Business.** Unless we agree in writing to a later opening date, you must open the Restaurant, Kiosk, or Food Truck and begin business within 12 months after the Effective Date of this Agreement. Before opening the Restaurant, Kiosk, or Food Truck, you must comply with all of your applicable development and operating obligations under this Agreement, including: (a) obtain all required permits and licenses; (b) properly complete all construction, remodeling and build-out of the Restaurant, Kiosk, or Food Truck; (c) properly complete installation of all furnishings, fixtures, equipment and signs; (d) properly display and stock all required inventory and supplies; (e) successfully complete the initial training program; (f) provide to us proper evidence of required insurance coverage; and (g) provide to us any other information or documents relating to the Restaurant’s, Kiosk’s, or Food Truck’s readiness for opening or your compliance with applicable System Standards. You must obtain our written approval before opening the Restaurant, Kiosk, or Food Truck, and you must schedule the opening on a mutually convenient date. If you do not open your Restaurant, Kiosk, or Food Truck within 12 months after the execution of this Agreement, you will be required to pay an opening extension fee of \$250 per week until such time as the Restaurant, Kiosk, or Food Truck is open or this Agreement is terminated.

**4.07 Relocation.** If your Restaurant’s, Kiosk’s, or Food Truck’s lease expires or terminates without your fault or if the site is condemned, destroyed or otherwise rendered unusable, you must seek our approval to relocate the Restaurant, Kiosk, or Food Truck to a new location that meets our then-



current site selection criteria, subject to the territorial rights of other Restaurants, Kiosks, or Food Truck operated by franchisees or our affiliates. You must pay to us our relocation fee of \$2,500, must open for business within 120 days of the date your Restaurant, Kiosk, or Food Truck closes and you must comply with all of the requirements of this Section 4 with regard to any relocation.

## **5. YOUR OPERATING OBLIGATIONS**

**5.01 Compliance with System Standards.** You will maintain high standards of quality, appearance and operation for the Restaurant, Kiosk, Food Truck. For the purpose of enhancing the public image and reputation of the businesses operating under the System and for the purpose of increasing the demand for items and services associated with the Marks, you will comply in good faith with all System Standards, including those contained in the Operations Manual. You will operate and maintain the Restaurant, Kiosk, or Food Truck solely in the manner and pursuant to the standards prescribed herein, in the Operations Manual and in other materials we provide to you. Any required standards exist to protect our interests in the System and the Marks and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. The required standards generally will be set forth in the Operations Manual or other written materials. The Operations Manual also will include guidelines or recommendations in addition to required standards. In some instances, the required standards will include recommendations or guidelines to meet the required standards. You may follow the recommendations or guidelines or some other suitable alternative, provided you meet and comply with the required standards. In other instances, no suitable alternative may exist. In order to protect our interests in the System and Marks, we reserve the right to determine if you are meeting a required standard and whether an alternative is suitable to any recommendations or guidelines.

**5.02 Compliance with Sound Business Practices.** You will at all times operate the Restaurant, Kiosk, or Food Truck diligently and in a manner which is consistent with sound business practices. You will at all times maintain working capital and a net worth which is sufficient, in our opinion, to enable you to fulfill properly all of your responsibilities under this Agreement. You will pay all of your debts and obligations incurred in the operation of the Restaurant, Kiosk, or Food Truck as these debts and obligations become due. You will, in all dealings with us and our affiliates, your suppliers and customers, and public officials, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You will refrain from any business practice which may harm our business, System or Marks, or other franchisees' businesses. You will cause your affiliates, employees, owners, representatives and agents to strictly comply with the provisions of this Agreement.

**5.03 Lease Compliance.** You will comply with all of the terms of your lease, sublease, and other agreements authorizing use of the Restaurant, Kiosk, or Food Truck premises, and will refrain from any activity which may jeopardize your right to remain in possession of, or to renew the lease or sublease for, the Restaurant, Kiosk, or Food Truck premises. You will not amend or otherwise modify your lease without our express written consent.

**5.04 Compliance with Laws.** You will obtain and maintain in force, as and when needed, all governmental permits, licenses and approvals required by applicable law to establish and operate the Restaurant, Kiosk, or Food Truck at the Approved Location. You will pay when due (or properly and timely contest) all federal, state and local payroll, withholding, unemployment, permit, license, property, ad valorem, use, sales, gross receipts, income, property and other taxes, assessments, fees, charges, penalties and interest, which may be charged or levied against us as a result of your business operations, and will file when due all required governmental returns, notices and other filings. You will conduct your business operations under this Agreement in full compliance with all applicable laws, ordinances, regulations, rules, administrative orders, decrees and policies of any local, state, or federal government,

governmental agency or department. You will notify us promptly if you obtain any information that any aspect of the System does not comply with any applicable law, rule or regulation.

You and your owners agree to comply, and to assist us to the fullest extent possible in our efforts to comply, with Anti-Terrorism Laws (defined below). In connection with that compliance, you and your owners certify, represent, and warrant that none of your property or interests is subject to being blocked under, and that you and your owners otherwise are not in violation of, any of the Anti-Terrorism Laws. “Anti-Terrorism Laws” mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by you or your owners, or any blocking of your or your owners’ assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Agreement.

If applicable law implies a covenant of good faith and fair dealing in this Agreement, you and we agree that the covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law shall imply the covenant, you agree that: (i) this Agreement (and the relationship of the parties that is inherent in this Agreement) grants us the discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with our explicit rights and obligations under this Agreement that may affect favorably or adversely your interests; (ii) we will use our judgment in exercising the discretion based on our assessment of our own interests and balancing those interests against the interests of our franchisees generally (including ourselves and our affiliates if applicable), and specifically without considering your individual interests or the individual interests of any other particular franchisee; (iii) we will have no liability to you for the exercise of our discretion in this manner, so long as the discretion is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation shall substitute its judgment for our judgment so exercised.

**5.05 Restaurant, Kiosk, or Food Truck Image.** You will at all times maintain your Restaurant, Kiosk, or Food Truck according to the System Standards, including those standards prescribed in the Operations Manual, such as standards and specifications relating to the safety, maintenance, cleanliness, sanitation, function and appearance of the Restaurant, Kiosk, or Food Truck and your equipment and signs, as well as the requirement that the employees of the Restaurant, Kiosk, or Food Truck will be required to wear uniforms and to maintain a standard of appearance while employed at the Restaurant, Kiosk, or Food Truck. You will maintain and operate the Restaurant, Kiosk, or Food Truck in a good, clean, wholesome manner.

**5.06 Goodwill.** You will use reasonable efforts to protect, maintain and promote the trade name “Crepe de licious” (or other trade name we approve) and our distinguishing characteristics, the other Marks and the System. You will not permit or allow your officers, directors, owners, Designated Managers, employees, representatives or agents to engage in conduct which is unlawful or damaging to the goodwill or public image of the Marks or System. You will participate in all quality assurance, customer service and customer satisfaction programs we require in good faith. You will follow System Standards for identification of your operations and for you to avoid confusion on the part of customers, creditors, lenders, investors and the public as to the ownership and operation of the Franchised Business.

**5.07 Quality and Customer Service Standards.** All items and services you provide under this Franchise will be of high quality, and will conform to the quality and customer service standards we may establish from time to time.

**5.08 Maintenance of Restaurant, Kiosk, or Food Truck.** You will install and maintain at the Restaurant, Kiosk, or Food Truck, at your expense, all furnishings, fixtures, equipment, and signs as required by the System Standards. You will not install or permit to be installed on or about the Restaurant, Kiosk, or Food Truck premises any furnishings, fixtures, equipment, signs, décor, vending machines, video games, or the like that we have not previously approved. You will maintain the Restaurant, Kiosk, or Food Truck premises, and all furnishings, fixtures, equipment and signs in a clean, attractive condition, and in good working order and repair. If we notify you of any deficiency as to the general state of repair or appearance of the Restaurant's, Kiosk's, or Food Truck's premises, furnishings, fixtures, equipment, signs or décor, you must undertake the action we reasonably specify to correct the deficiency within the time period we specify.

**5.09 Refurbishing the Restaurant, Kiosk, or Food Truck.** Within six (6) months after our request, you will: (a) remodel, redecorate, and refurbish the Restaurant, Kiosk, or Food Truck at your expense, to conform to the décor, color schemes, and presentation of trademarks and service marks consistent with our then-current image; and (b) upgrade, modify and/or replace furnishings, fixtures and equipment to conform to our then-current System Standards. You will not be required to make significant capital expenditures in this regard during the first three (3) years of the term of this Agreement, but you may be required to purchase equipment necessary to offer and sell new items or services.

**5.10 Approved Items and Services.** You will offer all approved items and services pursuant to the System Standards at the Restaurant, Kiosk, or Food Truck, and no other items or services. You will prepare and offer for sale all required menu items using the recipes, ingredients, serving sizes, decorations, nomenclature and presentation exactly in accordance with the System Standards. Depending on the size of your Restaurant, Kiosk, or Food Truck, we will require a full or limited menu offering. If you desire to offer any unapproved items or services, you must first obtain our prior express written consent. You will be required to submit to us any information, specifications and samples of the unapproved items or services. We will notify you in writing within 60 days after receiving all requested information and materials whether or not you are authorized to use or sell the authorized product or service or to purchase or lease the product or service from that supplier or provider. You will refrain from deviating from System Standards by the offer, sale or use of any non-conforming items or services, without our prior express written consent. You will not sell any items offered by the Franchised Business outside of the Restaurant, Kiosk, or Food Truck including, as an example, by food truck or catering services, without our express written consent.

**5.11 Purchasing.** You will purchase or procure certain designated items (including furnishings, fixtures, equipment, signs, inventory and supplies) and services in compliance with any minimum standards or specifications we may periodically establish, and from only the suppliers that we approve which may include or be limited to us or our affiliates. You may purchase or procure any other approved items or services for the Franchised Business from any competent source, so long as the items and services meet or exceed the System Standards. You will maintain at the Restaurant, Kiosk, or Food Truck, at your expense, the mix and quantity of inventory and supplies as required by the System Standards.

**5.12 Computer and Communications System.** You will, at your expense, purchase and maintain any point-of-sale system, cash register, computer hardware and software, communication equipment, communication services, Internet services (including the requirement to maintain a high speed internet connection), dedicated telephone and power lines, modems, printers, and other related accessories or peripheral equipment that we may specify for use in the Franchised Business. You will provide any assistance we require to connect your point-of-sale system or computer system with our computer system. We will have the right at any time to retrieve data and other information from your point-of-sale system or computer system as we, in our sole discretion, deem necessary or desirable. You shall ensure that we

have access at all times to your point-of-sale system, at your cost. You will strictly comply with System Standards for all items associated with your point-of-sale system, computer system and communication equipment and services. You will keep the point-of-sale system, computer system and communication equipment in good maintenance and repair, and you will promptly install, at your expense, any additions, changes, modifications or substitutions to your point-of-sale system, computer hardware, software, communication equipment, telephone and power lines, and other related accessories or peripheral equipment, as we may specify periodically. We may require that you license from us proprietary software for use in the Franchised Business, and, if so, you will sign the software license agreement we specify, and you will comply with all of its terms and conditions. You will utilize the point-of-sale system, computer system and communication equipment and services in connection with the Franchised Business pursuant to the System Standards, including procuring all set-up services software licenses. You are required to pay our then-current monthly technology fee (“**Technology Fee**”) for use of our online systems, email, data sharing and other internet related functions. This Technology Fee will be collected by the 5<sup>th</sup> day of each month. We reserve the right to increase this fee in the event we offer updated or additional software or technology, but we will not increase this fee by a total of more than five percent (5%) in any calendar year. You acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and you agree to comply with those reasonable new standards that we establish as if we periodically revised this Section for that purpose. We reserve the right to require you to pay the Technology Fee directly to the service provider(s) of these services, in which case the amount will be set by the provider.

### **5.13 Marketing.**

(a) Marketing Programs. You will participate in all advertising, public relations, promotion, market research, and other marketing activities we may implement for the System (“**Marketing Programs**”).

(b) Grand Opening Marketing. You must spend at least \$2,500 on local advertising, public relations, promotion, and other marketing activities in connection with your grand opening. Such amount shall be spent before your Restaurant or Kiosk opens and during its first 90 days of operation. Your grand opening marketing campaign must be approved by us before it can be conducted. You must submit to us proof of these expenditures within 30 days after your Restaurant or Kiosk first opens for business. The Grand Opening Marketing expenses are not applicable to any Food Truck Franchised Business.

(c) Local Marketing. In addition to the Advertising Fund Contribution (defined in Section 8.03), you must spend the greater of \$500 or one percent (1%) of your monthly Gross Revenues on local advertising each month (“**Local Advertising Requirement**”). If you fail to spend the Local Advertising Requirement, you will be required to pay the difference to us or, if established, the Advertising Fund. Your marketing materials must use the Marks correctly, comply with System Standards and applicable law, and be expressly approved by us in writing before use. If you use advertising that has not been approved by us, you will be required to pay us \$500 per incident, which will be either paid to us or deposited into the Advertising Fund, once established. Upon our request, you will immediately stop using any marketing materials or programs that we, in our sole opinion, deem to be outdated, false, misleading, illegal, in violation of this Agreement, inconsistent with the System Standards, harmful to the System or Marks, or potentially harmful to the goodwill, reputation or customer relations of us or our franchisees or affiliates. At our request, all marketing and promotional materials used by you shall include specific language, such as “Franchises Available” and our website address and telephone number.

(d) **Press Releases.** You will not issue any press release or other public statements without our prior express written approval.

(e) **Contributions and Donations.** You will not make any contributions or donations of items, services or money to any individual or entity, or provide any type of other benefit to any charitable, religious, political, social, civic or other type of organization (or to any individual on behalf of any organization) in the name of the Franchised Business or otherwise associate with any Mark, without our prior express written consent.

(f) **Marketing Approval.** We may negotiate marketing programs with suppliers and obtain advertising allowances for doing so. We will review and approve advertising and your other approval requests under this Agreement and will not unreasonably delay our approvals or disapprovals allowed or required by this Agreement. If you violate any provision of this Section, in addition to all other remedies available to us, you will pay an unauthorized advertising fee of \$500 per occurrence to the Advertising Fund to offset the damage caused by your breach.

**5.14 Telephone.** You will obtain a telephone number for exclusive use in connection with the Franchised Business, and this telephone number will be deemed to be our property.

**5.15 Directory Listings.** You will obtain and maintain at your expense white pages and yellow pages listings for the Restaurant, Kiosk, or Food Truck, as required by System Standards, and in the form provided by or expressly approved by us, in the principal telephone directory serving your Approved Location. If other Crepe de licious franchisees are served by the same directory, we may require a group listing of all franchised businesses in the area, and, in that case, the costs of the listing will be reasonably allocated among these franchised businesses. You will timely pay your share of these costs.

**5.16 Internet Listing.** You will not, directly or indirectly, create or maintain an Internet web page, website address or Internet directory listing relating in any way to your Restaurant, Kiosk, or Food Truck, or which uses any Marks. You are prohibited from conducting any aspect of the Franchised Business through the Internet (except email communications). You are strictly prohibited from promoting your Restaurant, Kiosk, or Food Truck and using the Marks in any manner on social media, networking, discount, blogs or other network communications or other online sites, including, but not limited to, Facebook, LinkedIn and Twitter, without our prior written consent. We have the right to review all content on any such online site.

**5.17 Digital Signage Displays.** You are required to purchase and maintain televisions for digital signage displays as set forth in our Operations Manual and pay all related network set-up fees, annual license fees and annual maintenance fees.

**5.18 Hours of Operation.** You will keep the Restaurant, Kiosk, or Food Truck open and in normal operation for the minimum hours and/or days as required by the System Standards, to the extent consistent with local law and your lease.

**5.19 Conferences.** You or your owner or Designated Manager will attend each conference and pay the applicable conference fee, if and when we sponsor a conference. Mandatory training for franchisees or their Designated Managers may be held at a conference. The conference fee will be the same for all of our franchisees, but may be based on the number of Restaurants, Kiosks, or Food Trucks each franchisee has or the number of attendees each franchisee sends to the conference. You will receive



reasonable notice of each conference. You will be responsible for all travel, transportation, lodging, meals, and incidental expenses and compensation of the people you send to any conference.

**5.20 Notification of Legal Proceedings.** You will notify us in writing within five (5) business days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, of which you become aware and which may adversely affect the operation or financial condition of the Restaurant, Kiosk, or Food Truck.

Upon the occurrence of a Crisis Management Event, you shall without delay inform us by telephone and email. “Crisis Management Event” means any event that occurs at or about the Franchised Business that has or may cause harm or injury to customers or employees. Examples include, but are not limited to, food contamination, food spoilage/poisoning, food tampering, contagious diseases, natural disasters, terrorist acts, shootings, or any other circumstance which may damage the System, Marks, or image or reputation of the Restaurant, Kiosk, or Food Truck, Franchise System or us. You will cooperate fully with us with respect to our response to the Crisis Management Event. You shall cooperate fully with us with respect to our response to the Crisis Management Event. In the event of the occurrence of a Crisis Management Event, we may also establish emergency procedures which may require you to temporarily close the Restaurant, Kiosk, or Food Truck to the public, in which event we shall not be liable to you for any loss or costs, including consequential damages or loss profits occasioned thereby.

**5.20 Customer List.** You will protect the privacy of your customers by keeping their personal information confidential. You will not disclose customer information to anyone other than your employees and us without our prior written consent.

**5.21 Non-Competition.** You (and, if you are an entity, your owners, officers and directors), your Designated Managers, your immediate family members (defined as your spouse, domestic partner and children, if any) and the immediate family members of your principal owners will not engage in, assist, acquire, advise, consult with, be employed by, own, or become associated in any way with any business whose methods of operation, trade dress or business concept is the same as or similar to that of the System or the Marks, or which offers crepe-based food items or gelato, other than the Franchised Business, without our prior express written consent.

**5.22 Uniforms.** You will require your Designated Managers and other employees to wear uniforms as required by our System Standards.

**5.23 Confidentiality and System Protection Agreements.** Your Designated Managers must sign confidentiality and system protection agreements stating that they will maintain the confidentiality of information they receive in connection with their employment and not compete with any of our franchisees following the end of their employment with you. We may require that these contracts be in a form satisfactory to us, including specific identification of us as a third party beneficiary of the contracts, with the independent right to enforce them. We may require your other employees to sign similar agreements. Our form of Confidentiality Agreement and System Protection Agreement are attached to the Franchise Disclosure Document Exhibit G.

**5.24 Customer Satisfaction.** You will use your best efforts to ensure customer satisfaction; use good faith in all dealings with customers, potential customers, referral sources, suppliers and creditors; respond to customer complaints in a courteous, prompt and professional manner; use its best efforts to promptly and fairly resolve customer disputes in a mutually agreeable manner; and take such actions as we deem necessary or appropriate to resolve customer disputes. We may remedy any issues

with your customers in our sole discretion including reimbursement of any fees paid to you. You are responsible to reimburse us for any such costs.

**5.25 Staffing.** You must hire and supervise efficient, competent, and courteous persons as your employees for the operation of your Franchised Business. You must require all your employees to work in clean uniforms approved by us, but furnished at your cost or the employees' cost as you may determine. You understand and acknowledge it is your responsibility to hire and supervise a satisfactory number of employees in order to efficiently operate the Unit and meet your obligations under this Agreement. You alone are responsible for all employment decisions and functions of your Franchised Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, safety, work conditions, assignments, taxes, schedules, personnel policies, benefits, recordkeeping, supervision, discipline of employees and compliance with all workplace laws, regardless of whether you have received advice from us on these subjects or not. We will have no liability for any action or settlement related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, safety, work conditions, assignments, taxes, schedules, personnel policies, benefits, recordkeeping, supervision, discipline of employees and compliance with all workplace laws, and you agree to indemnify us for any such liabilities we incur. You agree to inform each of your employees that you alone are their employer, and that we are not. You agree to explain to your employees and contractors the respective roles of a franchisor and franchisee and our relationship with you, and you will request that your employees and contractors sign any acknowledgment or disclosure explaining the differences between us and you, their employer or contractor. At no time will you or your employees be deemed to be employees of us or our affiliates and we are not a joint employer of those persons. We will have no obligation to direct your employees or to operate the business. Upon our request, you and each employee will sign an employment relationship acknowledgment form within seven (7) days stating that you alone are the employer and operate your Franchised Business. You will use your legal name on all documents for use with employees and contractors, including but not limited to, employment applications, time cards, pay checks and employment and independent contractor agreements and will not use the Marks on these documents. You will also post a conspicuous notice to employees to explain that you are a franchisee and that your employees are employed by you and not by us.

**5.26 Privacy.** You agree to comply with all applicable laws pertaining to the privacy of customer, employee, and transactional information (“**Privacy Laws**”). You also agree to comply with our standards and policies pertaining to Privacy Laws. If there is a conflict between our standards and policies pertaining to Privacy Laws and actual applicable law, you will: (a) comply with the requirements of applicable law; (b) immediately give us written notice of said conflict; and (c) promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to Privacy Laws within the bounds of applicable law. You agree not to publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent as to said policy.

**5.27 Methods of Payment and Data Security.** You agree to maintain, at all times, credit card relationships with the credit- and debit-card issuers or sponsors, check or credit verification services, financial-center services, merchant service providers, and electronic-fund-transfer systems (together, “**Credit Card Vendors**”) that we may periodically designate as mandatory. The term “Credit Card Vendors” includes, among other things, companies that provide services for electronic payment, such as near field communication vendors (for example, “Apple Pay” and “Google Wallet”). You agree not to use any Credit Card Vendor for which we have not given you our prior written approval or as to which we have revoked our earlier approval. We have the right to modify our requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke our approval of any service provider.



You agree to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)), or any successor organization or standards that we may reasonably specify. Among other things, you agree to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

**5.28 Advisory Council.** We currently do not have, but reserve the right to form, one or more franchise advisory councils (“**FAC(s)**”) to advise us on advertising policies. The FAC would be governed by bylaws. The purpose of the FAC would be to provide input regarding the Advertising Fund and to promote communication between us and all franchisees. Members of the FAC would consist of both franchisees and corporate representatives. Members of the FAC would be selected by way of a voting method specified in the FAC’s bylaws. The FAC would serve in an advisory capacity only. We will have the power to form, change, or dissolve the FAC, in our sole discretion.

## **6. UNIT MANAGEMENT**

**6.01 Management.** At all times during the term of this Agreement, you will designate a manager who meets our educational, managerial and business experience standards, and who will devote full time, energy, attention and best efforts to the management and operation of the Restaurant, Kiosk, or Food Truck (“**Designated Manager**”). If you are an individual, you may serve as the Designated Manager. If you are an entity, an owner, officer or other qualified employee may serve as the Designated Manager. You will designate to us in writing the identity of your initial Designated Manager as soon as possible after the Effective Date of this Agreement. You will designate to us in writing the identity of each successor Designated Manager immediately after the prior Designated Manager ceases to serve as Designated Manager.

**6.02 Manager Training.** You and your initial Designated Manager must, at least two weeks before the opening of the Restaurant, Kiosk, or Food Truck, attend and complete to our satisfaction the initial training program required for Designated Managers. You must adequately train any successor Designated Manager you later employ. We will notify you if we determine that the training you provided is inadequate. In that case, your successor Designated Manager must satisfactorily complete the initial training program we require promptly after we notify you. We will provide instructors, facilities and training materials for the training of you, your initial Designated Manager and one other person (a maximum of three trainees and provided that all of your trainees attend the same initial training program). All other expenses incurred in connect with attendance of training, including the cost of travel, transportation, meals, lodging and any wages will be your responsibility. You will pay to us the then-current tuition (or then-current per diem fee) and expenses we incur for the initial training we may require for any successor Designated Manager you later employ, including the reasonable travel, transportation, meals and lodging expenses we incur if we elect to provide this training at your Restaurant, Kiosk, or Food Truck. If any Designated Manager fails to successfully complete the initial training program to our satisfaction, we may require your Designated Manager to attend additional training programs (at your cost) or we may require you to appoint a new Designated Manager and to send that new Designated Manager to the initial training program (at your cost). If, after this corrective action, your Designated Manager fails to successfully complete the initial training program to our satisfaction, we may terminate this Agreement.

**6.03 Other Training.** You and your Designated Manager must attend any additional or refresher training programs that we designate as mandatory for franchisees and managers, respectively, unless your absence is excused by us. You will be responsible for all travel, transportation, lodging,

meals and incidental expenses and compensation of the people you send for additional or refresher training programs, and you will pay us the cost of providing training materials (if any), and any tuition we may impose under Section 7.09. All training materials are confidential, and will remain our property. You will also be required to complete a training program with our current point-of-sale system provider and our supplier of cleaning products and sanitizers before opening your Restaurant, Kiosk, or Food Truck. These providers will have discretion regarding cost, methods and frequency of training.

**6.04 Employee Training.** You will maintain competent and conscientious personnel to operate the Restaurant, Kiosk, or Food Truck in accordance with this Agreement and the Operations Manual. You will train or cause the training of all of your personnel as and when required by prudent business practices, System Standards, or this Agreement. All employees or independent contractors hired by or working for you will be your employees or independent contractors alone and will not, for any purpose, be deemed our employees or subject to our control. You alone are solely responsible for all hiring and employment decisions and functions relating to the Restaurant, Kiosk, or Food Truck, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision, and discipline of employees, regardless of whether you have received advice from us on these subjects or not. You agree that any direction you receive from us regarding employment policies should be considered as examples, that you alone are responsible for establishing and implementing your own policies, and that you understand that you should do so in consultation with local legal counsel well-versed in employment law.

## **7. ASSISTANCE BY US**

**7.01 Restaurant, Kiosk, or Food Truck Location.** We will provide you with our standard site selection criteria and standard Restaurant, Kiosk, or Food Truck layout plans and specifications. We will also provide you with the assistance and consultation we deem advisable regarding site selection and/or the layout of the Restaurant, Kiosk, or Food Truck at the Approved Location. You acknowledge that we will have no obligation to select or acquire a site on your behalf. We disclaim all liability for the consequences of approving a particular site. Our site selection assistance does not constitute any warranty or guaranty that the Franchised Business will be profitable or otherwise successful at the Approved Location.

**7.02 Lease Review.** We will review the proposed lease for the Restaurant, Kiosk, or Food Truck site after you submit the proposed lease to us. If the proposed lease complies with the requirements in Section 4.02 of this Agreement and is otherwise acceptable to us, we will approve it. We will promptly advise you of our decision regarding the proposed lease. The final decision whether to acquire a particular approved site or whether to sign a particular approved lease rests solely with you. You acknowledge that any lease review by us shall not be an endorsement or comment on the suitability of the lease for your specific purpose or for legal purposes. Our review of any lease is only for compliance with our required lease terms as detailed in Section 4.02.

**7.03 Restaurant, Kiosk, or Food Truck Construction, Remodeling and Build-Out.** We will provide you with the consultation and restaurant or kiosk design preparation services we deem advisable regarding constructing, remodeling or build-out of the Restaurant, Kiosk, or Food Truck.

**7.04 Loan of Operations Manual.** Within 15 days after we sign this Agreement, we will provide you with access to a copy of our current operations manual for the term of this Agreement, and we will later provide you with all periodic modifications thereto and any other manual we may develop specifying the System Standards (collectively, the “Operations Manual”). If the copy of the Operations Manual loaned to you is lost, stolen or destroyed before you return it to us, you must pay us our then-

current replacement fee. We reserve the right to provide the Operations Manual electronically, such as by CD-ROM, intranet or password-protected website. You acknowledge that your compliance with the Operations Manual is vitally importance to us and other System franchisees and is necessary to protect our reputation and the goodwill of the Marks and to maintain the uniform quality of operation throughout the System. However, while the Operations Manual is designed to protect our reputation and the goodwill of the Marks, it is not designed to control the day-to-day operation of the Franchised Business.

**7.05 Furnishings, Fixture, Equipment and Signs.** We will provide you with standard lists and/or specifications for approved furnishings, fixtures, equipment and signs. We will provide you with standard lists of any authorized suppliers of any of these items. We will provide you with the assistance and consultation we deem advisable regarding required furnishings, fixtures, equipment and signs.

**7.06 Inventory and Supplies.** We will provide you with standard lists and/or specifications for approved inventory and supplies. We will provide you with standard lists of any authorized suppliers of any of these items. We will provide you with the assistance and consultation we deem advisable regarding required inventory and supplies.

**7.07 Purchasing Assistance.** Although you are responsible for purchasing or leasing items and services for use in connection with the Franchised Business, we and/or our affiliates may offer optional assistance to you with purchasing or leasing items or services. We may require minimum standards or specifications for items and services, specify approved items and services, and restrict the suppliers authorized to sell or provide certain items and services in order to control quality, provide for consistent service or obtain volume discounts. We will provide you with System Standards for items and services, our list of approved items and services, and our list of approved suppliers. You acknowledge that we and/or our affiliates may be the sole approved suppliers for certain approved items and services, and that we and our affiliates may derive revenues as a result of your purchase of approved items and services either from us or from rebates from suppliers.

**7.08 Initial Training.** We will provide initial training to you, your initial Manager and one other person on mutually convenient dates. All initial training we provide will be offered, in our sole discretion, at a Restaurant, Kiosk, or Food Truck operated by a franchisee or an affiliate, at our training facility, or at some other location in the United States we select, and will be subject to the provisions of Section 6.02. If you would like additional people to attend the initial training program and we have additional capacity, you will be charged an additional fee of \$2,000 per person. You will also need to pay for the cost of travel, room and board, and other personal expenses for each person attending.

**7.09 Other Training.** We may in the future offer or require additional or refresher training for you or your Designated Manager. Additional and refresher training will be held at one (1) or more locations in the United States we select, and may be held in conjunction with a franchisee conference. We may charge you for the cost of providing you the training materials (if any), and a tuition for any additional or refresher training program if training occurs outside of our corporate headquarters plus expenses. All additional and refresher training we provide will be subject to the provisions of Section 6.03.

**7.10 Pre-Opening and Opening Assistance.** We will provide three to five days of on-site training at no charge prior to the opening of your Crepe de licious Business. We or a third party may provide you with other pre-opening assistance and consultation as we deem advisable. We or a third party will provide templates for certain promotional and advertising materials and consultation in connection with the grand opening marketing for the Restaurant, Kiosk, or Food Truck, which promotion and marketing will be conducted at your expense.

**7.11 Suggested Retail Prices.** We will provide you with product information and suggested retail prices for approved items or services; however, you are not bound by our recommended prices. In determining prices, you must consider the general image of the Restaurant, Kiosk, or Food Truck and the System. If you choose to offer any items at any price we recommend, you understand and acknowledge that we do not represent, warranty or guarantee that you will earn any level of sales or profitability.

**7.12 Continuing Consultations.** We will assist you to understand your obligations under the System Standards and this Agreement, provide you with other continuing consultation, and may provide you with new proprietary methods and procedures relating to approved items or services, or to operation of the Restaurant, Kiosk, or Food Truck, all on the terms as we deem appropriate. To the extent possible, this consultation will be provided during inspections and audits, through the System Standards, at training sessions (if any), and during franchisee conferences (if any). If you request additional operating assistance or services, we may require that you pay our then-current hourly fee and the expenses we incur in providing additional assistance to you.

**7.13 Conferences.** We may sponsor periodic conferences for our franchisees, at which seminars, workshops and other training may be conducted. We may require you or your Designated Manager to attend each conference and we may charge you for these programs. You shall pay us a convention fee for each year that an annual convention is held (“**Convention Fee**”) for purposes of defraying Franchisee’s cost of attending such annual conferences regardless of whether or not you attend the annual convention. If you fail to attend an annual conference for any reason, we shall be entitled to use the Convention Fee paid by you for any purpose in our sole discretion. Once paid, the Convention Fee is non-refundable for any reason. We may preclude you from attending an annual convention/national conference if you are in default of this Agreement at the time of the annual convention/national conference or if you have had two notices of default within 12 months prior to any annual convention/national conference. We may also preclude you from participating in system calls, meetings or webinars while you are in default of this Agreement.

**7.14 Marketing Programs.** We will implement one or more Marketing Programs, and we (or our designee or affiliate) will administer the Marketing Programs. We will determine in our sole discretion: the nature and type of program; the nature and type of media placement; the allocation (if any) among national, regional and local markets; the nature and type of advertising copy and other marketing materials; and all other aspects of the Marketing Programs. We do not promise that you will benefit directly or proportionately from any Marketing Programs. On occasion, we may make available to you, local advertising materials and programs, at your cost. We will use the Advertising Fund Contributions we collect from franchisees to pay for the Marketing Programs and to reimburse our reasonable direct and indirect costs, overhead and other expenses (and those of our designee or affiliates) of providing services and materials relating to the Marketing Programs. We and our affiliates are not obligated to contribute money to the Marketing Programs or otherwise supplement the Advertising Fund Contributions; however, Restaurants, Kiosks, or Food Trucks owned and operated by us or our affiliates may voluntarily contribute to the Marketing Programs on the same basis as our franchisees. We have the right to terminate any Marketing Program, at our discretion. However, any termination of all Marketing Programs will not be effective until all Advertising Fund Contributions we have collected for the Marketing Program have been expended. If we terminate any Marketing Program, we may reinstate such Marketing Program at any time and such reinstated Marketing Program shall be administered as described herein.

**7.15 Advertising Fund.** We have established an advertising and marketing fund for Franchises (“**Advertising Fund**”). We require you to pay an advertising fee in an amount of three percent (3%) of your Gross Revenues, which you must contribute to the Advertising Fund. Your Advertising Fund Contribution will be due at the same time and in the same manner as the Royalty Fee.

Franchises owned by us or our affiliates are not obligated to contribute to the Advertising Fund but may do so on a voluntary basis. We have complete discretion on how the Advertising Fund will be utilized. The Advertising Fund may allocate resources to advertise locally, regionally, and/or nationally, in printed materials, on radio, on television, and/or on the Internet, in our sole discretion. We may reimburse ourselves, or authorized representatives or our affiliates from the Advertising Fund for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and all other direct or indirect expenses associated with the programs funded by the Advertising Fund. We are not obligated to spend any amount on advertising in the geographical area where you are or will be located. We will not use the Advertising Fund for advertising that is principally a solicitation for the sale of franchises, but we reserve the right to include a notation in any advertisement or website indicating “Franchises Available” or similar phrasing. We may at any time defer or reduce a Franchisee’s Advertising Fund Contributions and, upon 30 days’ prior written notice to you, reduce or suspend Advertising Fund Contributions and operations for one (1) or more periods of any length and terminate and/or reinstate the Advertising Fund. If we terminate the Advertising Fund, we will distribute all unused contributions to contributing Franchisees, and to us or our affiliates, in proportion to respective contributions during the preceding 24-month period.

**7.16 Internet Site.** We or an affiliate will sponsor and maintain the official Crepe de licious website on the Internet. So long as you are not in default under this Agreement, we will cause your Restaurant, Kiosk, or Food Truck to be listed on this official website and/or provide you with a web page specific to your Restaurant, Kiosk, or Food Truck on this website.

**7.17 Additional Items, Services and Suppliers.** If you desire to offer additional items or services that we have not approved, or desire to purchase approved items and services from any supplier who we have not approved, we will consider any written request by you for approval of additional items, services or suppliers (although we are not obligated to approve any). You will be required to pay us for our costs incurred in any inspection or testing of any samples or any proposed new product, service or supplier nominated by you. We will notify you of our approval or disapproval of any new item, service or supplier requested by you within a reasonable time (usually within 90 days) after we have received all of the relevant information we requested. We may withhold approval of any item, service or supplier, as we determine in our discretion. We can revoke approval of an approved supplier at any time in our sole discretion, and we will notify you of any revocation of supplier approval.

**7.18 Intranet System.** We or our affiliate may establish an intranet system to assist you with your Franchised Business. If an intranet system like this is established, we or our affiliate will administer and maintain it, and we will provide you and/or your Designated Manager with access to this system. Subject to the System Standards, we will continue to allow you and/or your Designated Manager to access our intranet system during the term of this Agreement, so long as you are not in default under this Agreement. We may require you to use the intranet system for communications, reports, and other functions, and you will comply with our requirements.

## **8. PAYMENTS AND REPORTS**

**8.01 Initial Franchise Fee.** When you sign this Agreement, you will pay us the initial franchise fee (“**Initial Franchise Fee**”) in the amount of \$35,000. The Initial Franchise Fee is in consideration of the administrative and other expenses we incurred in entering into this Agreement, and for our lost or deferred opportunity to enter into a similar arrangement with others. The Initial Franchise Fee is non-refundable, and is fully earned when we sign this Agreement. Notwithstanding the foregoing, the Initial Franchise Fee is not payable hereunder if you sign an area development agreement governing the Territory (unless such area developer agreement requires you to pay an Initial Franchise Fee



hereunder) and shall be reduced by any Territory Reservation Fee you previously paid to us towards this Agreement.

**8.02 Royalty Fee.** During the term of this Agreement, and for as long as you are using the System or Marks, you will pay us a continuing Royalty Fee equal to six percent (6%) of all revenues you receive from the sale of any items and services, and all other income or consideration of every kind and nature related to the Franchised Business or Restaurant, Kiosk, or Food Truck operations sold at, from, or through the Franchised Business, whether or not sold or performed at the Restaurant, Kiosk, or Food Truck and whether for cash or credit, and regardless of collection in the case of credit, including all proceeds from any business interruption insurance and the full redemption value of any gift certificate or coupon sold for use at the Restaurant, Kiosk, or Food Truck (fees retained by or paid to third party sellers of such gift certificates or coupons are not excluded from this calculation) but not including: (a) any sales taxes or other taxes you collect for transmittal to the appropriate taxing authority; or (b) any bona fide refunds you make to customers (collectively, “**Gross Revenues**”). Gross Revenues are deemed received by you at the time the products or services or products from which they were derived are delivered or rendered, or at the time the relevant sale takes place, whichever occurs first, regardless of whether final payment (e.g., collection on an account receivable) actually has been received by you.

**8.03 Advertising Fund Contribution.** During the term of this Agreement, we require you to pay us a continuing Advertising Fund Contribution equal to three percent (3%) of your Gross Revenues (“**Advertising Fund Contribution**”).

**8.04 Place and Method of Payment.** You will pay us, without billing or demand, all Royalty Fees and Advertising Fund Contributions required by this Agreement are payable by the fifth day of each month. All fees and other payments due to us under this Agreement will be made to us at our headquarters in Ontario, Canada or as we otherwise specify in writing. We have the right to require you to transmit fees and other payments to us by means of electronic fund transfers, sweep accounts, Internet payment methods, or other methods in accordance with procedures that we may establish in the Operations Manual or otherwise specify in writing. If we require special means of payment, you will establish any required accounts and sign all documents reasonably required, and will otherwise cooperate with us, to effectuate these means (See Exhibit G of the Franchise Disclosure Document). If any payment is made to us by credit card for any fee required, we may charge a service charge of up to four percent (4%) of the total charge.

**8.05 Late Fee and NSF Fee.** If we do not timely receive any fee or any other amount due to us under this Agreement on or before the applicable due date, you will pay us a late fee equal to \$100, plus the lesser of the daily equivalent of fifteen percent (15%) per year simple interest or the highest amount allowed under law, on any overdue amount for each day any amount is past due, accruing until the past due amount is paid in full. This provision does not permit or excuse late payments. If any check, electronic payment or other payment due under this Agreement is not honored for any reason, you will pay us an additional fee of \$100 to help offset bank charges and administrative expenses.

**8.06 Taxes.** If any federal, state, or local tax (other than an income tax) is imposed upon any fees you paid us under this Agreement, then you agree to compensate us in the manner we prescribe so that the net amount or net rate we receive is no less than as established by this Agreement.

**8.07 Territory Reservation Fee.** If we approve, you may also reserve additional territories by paying us a territory reservation fee of \$10,000 per territory (“**Territory Reservation Fee**”) and signing our then-current “Territory Reservation Agreement and Receipt” the current form of which is attached to the Franchise Disclosure Document as Exhibit G-6. The Territory Reservation Fee will be applied to the initial franchise fee if you execute a new franchise agreement for an additional Franchise

within the time period set forth in the Territory Reservation Agreement and Receipt. The Territory Reservation Fee is non-refundable under any circumstances, even if you do not open the additional Franchise.

**8.08 Allocation of Payments.** Unless we otherwise agree in writing, all payments you make to us under this Agreement will be applied in the order we may decide in our sole discretion. We will not be bound by any instructions for allocation you specify.

**8.09 Right of Offset.** We will have the right, at any time before or after termination of this Agreement, without notice to you, to offset any amounts or liabilities that you may owe to us against any amounts or liabilities that we may owe you under this Agreement or any other agreement, loan, transaction or relationship between the parties.

**8.10 Books and Records.** You will maintain complete and accurate accounting books and records relating to the Franchised Business in accordance with generally-accepted accounting principles and standards, subject to this Agreement and other reasonable accounting standards we may specify periodically.

**8.11 Reports.** You will prepare written periodic reports, in the forms required by the System Standards, containing the information we require about your operations during each reporting period. You will submit all required weekly reports by Tuesday each week for the preceding business week (Monday through Sunday). We may reasonably request in writing to modify the deadline days and times for submission of all reports. You will submit all required semi-monthly reports to us within 15 days after the semi-monthly period to which they relate. You will submit all required monthly reports to us within 15 days after the month to which they relate, and all other reports within the time period required by the System Standards. If you do not submit the monthly reports to us within five days of the request, you will be required to pay a late fee of \$100 per occurrence and \$100 per week until you submit the required report. These fees will be deposited into the Advertising Fund. You will prepare and submit other reports and information about your operations as we may reasonably request in writing or as required by the System Standards. We may require, at our option, that certain reports you are required to submit be certified as accurate and complete by you, your owners or your chief financial officer, and that certain reports be submitted using the formats and communication media that we specify. If requested by us, your profit and loss statements and balance sheets must be certified by a certified public accountant at your expense and you will cause your certified public accountant, if any, to consult with us concerning such statements and balance sheets at your cost.

**8.12 Financial Statements.** You will deliver to us, no later than 60 days from the end of each of your fiscal quarters, a profit and loss statement covering the Franchised Business for the relevant quarter and a balance sheet of the Franchised Business as of the end of that quarter, all of which you must certify as complete and accurate. You must prepare all financial statements in any format we may require. In addition, you must, within 30 days after we request, deliver to us a financial statement, certified as accurate and complete, in a form which is satisfactory to us and which fairly represents your total assets and liabilities.

**8.13 Tax Returns.** Promptly upon our request, you will furnish us with a copy of each of your reports and returns of sales, use and gross receipt taxes and complete copies of any state or federal income tax returns covering the operation of the Franchised Business.

**8.14 Ownership Information.** Promptly upon our request, you will furnish to us a list of all holders of legal and beneficial interests in your business entity, together with description and percentage of ownership amount, addresses and telephone numbers, certified in writing as being accurate and



complete. If any of your general partners, officers, directors or limited liability company managers cease to serve in that capacity, or if any individual is elected or appointed as a new general partner, officer, director or limited liability company manager, you will notify us within 10 days after the change. Any of your new owners must sign an owner's agreement with us.

**8.15 Record Retention.** You will retain copies of all reports, and originals or copies of all other information, books, records, and other materials relating to operation of the Franchised Business for a period of five (5) years following their respective dates, or any longer period required by applicable law.

## **9. SYSTEM STANDARDS AND MANUAL**

**9.01 System Standards.** The System includes, without limitation: (a) our trade secrets and other intellectual property, including Confidential Information (as defined in Section 11.01), the Operations Manual and know-how; (b) marketing, advertising, publicity, public relations and other promotional materials and programs; (c) System Standards; (d) training programs and materials; and (e) service quality and customer satisfaction standards and programs. You acknowledge and agree that every detail of the System is important to us and all of our franchisees in order to develop and maintain high and uniform operating standards, to increase the demand for the items and services marketed by all franchisees, and to protect our reputation and goodwill. You will maintain the high System Standards with respect to your Restaurant, Kiosk, or Food Truck premises, facilities, furnishings, fixtures, equipment, signs, services, items, and operations. You will strictly comply with all of the mandatory System Standards in the Operations Manual or that we otherwise provide to you in writing.

**9.02 Modification of the Operations Manual.** We may, in our sole discretion, change, delete from or add to the System, including any of the System Standards, by providing you with written notice thereof, or by modification of the Operations Manual; however, no modification will alter your fundamental rights or status under this Agreement. You will implement all mandatory modifications promptly after written notice from us. If there is a dispute as to the contents or meaning of any part of the Operations Manual, the version we maintain at our principal office will be controlling. The Operations Manual is confidential and will remain our property.

**9.03 Ownership of the System.** We own all rights, title and interest in and to the System. You will not acquire any proprietary interest in the System. Your right to use the System is a non-exclusive license, derived solely under this Agreement. Unauthorized use of the System by you will constitute a material breach of this Agreement.

**9.04 System Improvements.** During the term of this agreement or any interim period, any improvements or additions to the System, patents, copyrighted materials, recipes, website or any other documents or information pertaining to or relating to the System or the Restaurant, Kiosk, or Food Truck, or any new trade names, trade and service marks, logos, or commercial symbols related to the Restaurant, Kiosk, or Food Truck or any advertising and promotional ideas or inventions related to the Restaurant, Kiosk or Food Truck (collectively, the "**Improvements**") that you conceive or develop shall become our property. You agree to assign and do hereby assign to us, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. You shall fully disclose the Improvements to us, without disclosure of the Improvements to others, and shall obtain our written approval prior to using such Improvements. Any such Improvement may be used by us and all other Crepe de licious franchisees without any obligation to you for royalties or other fees. We may, at our discretion, apply for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and you shall cooperate with us in securing such rights. We may also consider such Improvements as our property and trade secrets. In return, we shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other

franchisees. All Improvements created by you or any other person or entity retained or employed by you are our property, and we shall be entitled to use and license others to use such Improvements unencumbered by moral rights. If any of the Improvements are copyrightable materials, they shall be works made for hire within the meaning of the United States Copyright Act and, to the extent the copyrighted materials are not works made for hire or rights in the copyrighted materials do not automatically accrue to us, you irrevocably assign and agree to assign to us, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such copyrighted materials, which you and the author of such copyrighted materials warrant and represent as being created by and wholly original with the author. Where applicable, you agree to obtain any other assignments of rights in the Improvements from another person or entity necessary to ensure our right in the Improvements as required in this Section. During the term of this agreement or any interim period, we may periodically modify System standards, and those modifications may require you to invest additional capital in the Franchise and/or incur higher income expenses.

**9.05 Variations.** You acknowledge that it may not be possible or practical for us to require complete and detailed uniformity under the various types of conditions different franchisees may face, and under changing customer needs and market conditions. Accordingly, we reserve the right to vary standards for any franchisee based upon the particular situation involved, local conditions, existing business practices, or any other factor that we consider important to the successful operation of the particular franchisee's business. You will have no rights or claims against us for any variation from standard specifications and practices granted to any other franchisee, and you are not entitled to the same or similar variation.

## **10. MARKS**

**10.01 Ownership of the Marks.** You acknowledge that we or our affiliates own all rights, title and interest in and to the Marks. You will not acquire any proprietary interest in the Marks, and you will not challenge ownership of the Marks or our right to use the Marks. Except as expressly provided in this Agreement, you will not acquire any rights to the Marks. Your right to use the Marks is merely a non-exclusive license, derived solely under this Agreement.

**10.02 Registration.** We or our affiliates have taken and will take all steps reasonably necessary, in our and their sole opinion, to preserve and protect ownership of, and the validity of, the Marks. You will not apply for governmental registration of the Marks, or contest the registration status of the Marks. You will display the Marks, and give notice of trademark registration and claims in the following manner: "CREPE DE LICIOUS" (or as otherwise required in the Operations Manual). You will cooperate fully and in good faith with us and our affiliates for the purpose of maintaining registrations and prosecuting applications for the Marks, and otherwise securing and preserving their rights in and to the Marks.

**10.03 Use of the Marks.** You will not use the Marks unless you have our prior express written consent. Before each intended use of any material of any nature which bears any of the Marks, you will submit to us samples of the materials. We will review samples of all marketing materials and other materials bearing our Marks you submit to us for approval, and we will notify you of our decision. You will use the Marks only as expressly authorized by this Agreement, the Operations Manual or as we otherwise provide in writing. Unauthorized use of the Marks by you will constitute a breach of this Agreement, and an infringement of our rights in and to the Marks. You will take all steps necessary or appropriate to preserve the goodwill and prestige of the Marks. You will use the Marks only in connection with the Franchised Business. You will not use any Mark in your corporate name or legal name, but you may use a Mark in an assumed business or trade name if you first obtain our prior express

written consent. You will not use any Mark with any prefix, suffix or other modifying trademarks, logos, words, terms, designs or symbols or in any modified form. You will not use any Mark in connection with any unauthorized item or service, or in any manner not expressly authorized under this Agreement.

**10.04 Benefits of Usage.** All usage of the Marks and any goodwill associated with the Marks will exclusively benefit us and our affiliates. All present and future service marks, trademarks, copyrights, service mark registration and trademark registration used or to be used as part of the System, and the associated goodwill, will be the property of us or our affiliates, and will inure solely to our and their benefit. Upon the expiration or termination of this Agreement for any reason, no monetary amount will be assigned as attributable to any goodwill associated with your use of the Marks.

**10.05 Infringement and Litigation.** You will promptly notify us in writing of (a) any adverse or infringing uses of the Marks (or names or symbols confusingly similar), Confidential Information (as defined in Section 11.01) or other System intellectual property, and (b) any threatened or pending litigation related to the Marks or System against (or naming as a party) you or us, of which you become aware. We or our affiliates will handle disputes with third parties concerning use of all or any part of the Marks or System in any manner we or they deem appropriate, in our or their sole discretion. You will cooperate fully and in good faith with our or their efforts to resolve these disputes. We or our affiliates may bring suit in your name or join you as a party to the relevant proceedings. We or our affiliates may resolve any dispute by obtaining a license of the property for you at no expense to you, or by requiring that you discontinue using the infringing property or modify use to avoid infringing the rights of others. We need not initiate suit against imitators or infringers who do not, in our sole opinion, have a material adverse impact on the Franchised Business, and we need not initiate any other suit or proceeding to enforce or protect the Marks or System in a matter that we do not believe, in our sole opinion, to be material. We will defend you against any third party claim, suit, or demand arising out of your use of the Marks. If we determine in our sole discretion that you have used the Marks in accordance with this Agreement, we will bear the cost of your defense, including the cost of any judgment or settlement. If we determine in our sole discretion that you have not used the Marks in accordance with this Agreement, you must bear the cost of your defense, including the cost of any judgment or settlement. If there is any litigation relating to your use of the Marks, you will sign all documents and do all acts as may be necessary in our opinion to carry out the defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that any litigation results from your use of the Marks in a manner inconsistent with the terms of this Agreement, we will reimburse you for your out-of-pocket litigation costs in cooperating with us in the litigation.

**10.06 Substitution of Marks.** We reserve the right to substitute different proprietary marks for use in identifying the System, the businesses operating under the System, and/or the items or services offered, if the Marks no longer can be used, or if we, in our discretion, determine that substitution of different proprietary marks will be beneficial to the System. In these circumstances, the use of the substituted proprietary marks will be governed by the terms of this Agreement, and we will not compensate you for the costs of any substitution. You will promptly implement any substitution, at your own expense.

**10.07 Photo/Video Release.** You acknowledge and authorize us to use your likeness in a photograph in any and all of our publications, including printed and digital publications and on websites. You agree and understand that any photograph using your likeness will become our property and will not be returned. You agree and irrevocably authorize us to edit, alter, copy, exhibit, publish or distribute any photograph of you for any lawful purpose. You agree and waive any rights to royalties or any other compensation related to our use of any photograph of you. You agree to hold harmless and forever discharge us from all claims, demands, and causes of action which you may have in connection with this authorization.

## 11. CONFIDENTIAL INFORMATION

**11.01 Confidential Information.** We possess certain non-public trade secrets, proprietary information, technical data, or know-how which relate to our business, System, services or items, or to a Franchised Business, including the Operations Manual, System Standards, quality-control systems, training materials, and information regarding salary, research, recipes, proprietary items and services, developments, inventions, processes, techniques, designs, marketing, finances, and operations (collectively, “**Confidential Information**”) that we will provide to you. You will also obtain other Confidential Information during the term of this Agreement. You acknowledge that your entire knowledge of the operation of a crepe-based restaurant, kiosk, or Food Truck, including the method of establishing this type of unit, preparing crepe-based dishes, gelato, and related items, and marketing this type of unit, and the related specifications, standards, and procedures involved in the operation of a Restaurant, Kiosk, or Food Truck are derived solely from Confidential Information we disclosed (or will disclose) to you.

**11.02 Protection of Confidential Information and Data.** You will use the Confidential Information only in the operation of the Franchised Business, and you will not disclose Confidential Information to others, except as expressly authorized by this Agreement. You will take all appropriate actions to preserve the confidentiality of all Confidential Information, including keeping the Operations Manual in a locked location. Access to Confidential Information must be limited to only your employees who need the Confidential Information to perform their jobs and who are subject to your general policy on maintaining confidentiality as a condition of employment or who have first signed our Confidentiality and Non-Competition Agreement. You will not copy or permit copying of Confidential Information. Your obligations under this section begin when you sign this Agreement and continue for trade secrets as long as they remain secret, and, for other Confidential Information, for as long as we continue to use the information in confidence (even if edited or revised) plus three (3) years. We will respond promptly and in good faith to any inquiry by you about continued protection of any Confidential Information.

All data that you collect, create, provide or otherwise develop (including, but not limited to customer information) is (and will be) owned exclusively by us, and we will have the right to use such data in any manner that we deem appropriate without compensation to you. Copies and/or originals of such data must be provided to us upon our request. We hereby license use of such data back to you, at no additional cost, solely for the term of this Agreement and solely for your use in connection with the business franchised under this Agreement. You agree to provide us with the information that we reasonably require with respect to data and cybersecurity requirements. You agree to indemnify us for any loss of data including, but not limited to customer information, resulting from a breach of such data caused, in whole or in part, by you.

**11.03 Disclosure of Confidential Information.** Notwithstanding anything to the contrary in this Section 11, you may disclose Confidential Information if you are required by law to disclose it, provided that you give us at least 10 days’ notice, if feasible, of your intent to disclose. You may also disclose Confidential Information to your attorneys, accountants, financial and investment advisors, bankers or lending institutions, and other advisors and consultants of a similar nature, provided that any disclosure is only to the extent necessary for your advisors to perform their services for you, and provided that these persons have the obligation to, or otherwise agree, to keep the Confidential Information confidential. At our request, you will require that your officers and other employees sign covenants to maintain the confidentiality of any Confidential Information, and these covenants will be in a form acceptable to us and will identify us as a third party beneficiary with the independent right to enforce them. Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to disclosure of Confidential Information: (i) made in confidence to a

government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; (iii) made in cases of suit for retaliation based on the reporting of a suspected violation of law, disclosure of Confidential Information to an attorney and for use of the Confidential Information in such court proceeding, so long as any document containing the Confidential Information is filed under seal and Confidential Information is not otherwise disclosed except pursuant to court order.

## **12. INSPECTIONS AND AUDITS**

**12.01 Inspections and Audits.** You hereby grant to us and our employees, representatives and agents the right to enter the Restaurant, Kiosk, or Food Truck during regular business hours. You will permit our employees, representatives and agents access to your offices, Restaurant, Kiosk, or Food Truck premises, storage areas, and other places of business, to perform inspections of your operations (including Restaurant, Kiosk, or Food Truck premises, furnishings, fixtures, equipment, signs, inventory and supplies), files, documents, records, items and Mark usage, and to audit your financial and operating books and records (including tax returns) relating to the Franchised Business, with or without prior notice of the inspection or audit. The inspections and audits will occur during normal business hours, although we may observe your operations and accounting activity at any time. You, and your owners, officers, Designated Managers, employees, agents and representatives will cooperate with our inspectors and auditors in the performance of their duties. You will permit our inspectors and auditors to, among other things: take photographs, movies, videotapes or sound recordings; interview your Designated Managers, employees, agents, and representatives; interview your customers; make copies of your books, records and other documents relating to the Franchised Business; and take samples of food, beverages, ingredients, documents, inventory, supplies, items and other materials from your Restaurant, Kiosk, or Food Truck premises, storage areas, and other facilities used in connection with the Franchised Business.

**12.02 Unapproved Items and Services.** You acknowledge that the offer or sale of any unapproved items or services at the Restaurant, Kiosk, or Food Truck constitutes a material breach of this Agreement and good cause for termination of this Agreement. You authorize us to cure any default under this Section 12.02 on your behalf by removing and disposing of any unapproved items and unapproved equipment and other materials from the Restaurant, Kiosk, or Food Truck. Any dispute between you and us as to whether any item, service or equipment is approved will be governed by the official lists we maintain at our principal place of business. You hereby grant us all of your right, title and interests in and to any unapproved items and equipment at the Restaurant, Kiosk, or Food Truck, and waive any claims you may have against us arising from the removal and disposal of any unapproved items and unapproved equipment and other materials. You acknowledge that we have the right to physically remove any unapproved items and equipment from the Restaurant, Kiosk, or Food Truck, and to dispose of them in any way we desire, without any compensation to you. If you use any unapproved product or service that has not been approved by us, you will be required to pay us \$500 per day of use of any unauthorized product or service (the “Unapproved Product or Service Fee”), which will be paid to us. Upon our request, you will immediately stop using any unapproved product or service that we, in our sole opinion, deem to be in violation of this Agreement, inconsistent with the System Standards, harmful to the System or Marks, or potentially harmful to the goodwill, reputation or customer relations of us or our franchisees or affiliates.

**12.03 Other Corrective Action.** If we notify you of any deficiencies in the operation of the Restaurant, Kiosk, or Food Truck pursuant to this Agreement which are detected during an inspection or which otherwise become known to us, you will take the steps that we may require to correct all deficiencies within the time period we specify.



**12.04 Payments.** You will pay us any underpayment of, and we will pay to you or credit your account for any overpayment of, royalty fees discovered by an audit.

**12.05 Audit and Inspection Costs.** You will pay us for the reasonable travel, lodging and meal expenses, and other audit and inspection costs we incur if you or your owners, officers, Designated Managers, employees, agents or representatives fail to fully cooperate with our auditors or inspectors, fail to submit required reports, or if the audit reveals that you paid us less than ninety-eight percent (98%) of the correct amount of fees for any week. You shall also pay any understated amount owed to us with applicable late fees and interest of one and one-half percent (1.5%) per month on understatement. We may publish or disclose the results of our inspections and audits. Our rights under this Section 12.05 survive for two (2) years after expiration or termination of this Agreement, or any Transfer.

**12.06 Mystery Shopper.** To ensure uniformity and compliance with the System Standards, we may send a mystery shopper or similar third party to your Restaurant, Kiosk, or Food Truck. We may, but are not obligated to, share the results of the mystery shopper with you.

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

**13.01 Independence.** You are an independent contractor. You are not our legal representative or agent, or employee and you have no power to obligate us for any purpose whatsoever. We and you have a business relationship based entirely on and circumscribed by this Agreement. No partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Agreement. You will exercise full and complete control over, and have full responsibility for, all of your contracts, daily operations, labor relations, employment practices and policies, including the recruitment, selection, hiring, disciplining, firing, training, compensation, work rules, and schedules of your employees. All employees or independent contractors hired by or working for you will be your employees or independent contractors alone and will not, for any purpose, be deemed our employees or subject to our control, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. You and we will file our own tax, regulatory and payroll reports, and be responsible for all employee benefits and workers compensation payments with respect to our respective employees and operations, and we will save and indemnify one another of and from any liability of any nature whatsoever by virtue thereof. At all times, including in connection with all uses of any of the Marks, in connection with the operation of the Franchised Business, and in connection with all dealings with customers, suppliers, public officials, the general public, and others, you will conspicuously indicate your status as an independent contractor, including in all contracts, advertising, publicity, promotional and other marketing materials, and on any signage and uniforms, and in the manner specified in the Operations Manual or as we otherwise may require. You will not make any express or implied agreements, guarantees or representations, or incur any debt in our name or on our behalf. You will not represent that the relationship between you and us is anything other than a franchise relationship. We will not be obligated by or have any liability under any agreements or representations made by you, and we will not be obligated for any damages to any person or property directly or indirectly arising out of your operation of the Franchised Business or the Restaurant, Kiosk, or Food Truck.

**13.02 Joint Status.** If you comprise of two (2) or more persons or entities (notwithstanding any agreement, arrangement or understanding between or among these persons or entities), the rights, privileges and benefits of this Agreement may only be exercised and enjoyed jointly. The liabilities and responsibilities under this Agreement will be the joint and several obligations of all these persons or entities.

**13.03 Delegation.** You agree that we shall have the right to delegate to third party designees, whether these designees are our agents or independent contractors with whom we have contracted (1) the performance of any portion or all of our obligations under this Agreement, and (2) any right that we have under this Agreement. If we do so, such third party designees will be obligated to perform the delegated functions for you in compliance with this Agreement.

## **14. INSURANCE AND INDEMNIFICATION**

**14.01 Insurance Coverage.** Before your Restaurant, Kiosk, or Food Truck first opens for business, you will obtain insurance in the types and amounts specified herein. Your insurance policies (except for employment liability insurance policies) must designate us, our directors, officers, employees, agents and other designees as additional named insureds, and your policies must provide that the insurer will not cancel or materially alter the policies without giving us at least 30 days' prior written notice. You will maintain all required insurance in force during the term of this Agreement, and you will obtain and maintain any additional or substituted insurance coverage, limits and amounts as we may periodically require. All insurance coverage will be underwritten by a company acceptable to us, with a Best's Rating of no less than "A+." If you fail to purchase required insurance conforming to our standards, we may obtain insurance for you, and you will pay us the cost of insurance plus a twenty percent (20%) administrative surcharge. Your compliance with these insurance provisions does not relieve you of any liability under any indemnity provisions of this Agreement.

We currently require you to maintain the following insurance coverages: (1) commercial general liability insurance with limits of at least \$2 million per occurrence, at least \$4 million aggregate, and at least \$2 million per person, with \$5,000 per person medical benefits, and a maximum deductible of \$2,500; (2) all risks coverage insurance on all furniture, fixtures, equipment, inventory, supplies and other property used in the operation of the Restaurant, Kiosk, or Food Truck (including flood and/or earthquake coverage where there are known risks) for full replacement value; (3) workers compensation insurance consistent with applicable law; (4) data theft and cybersecurity; and (5) automobile (covering all vehicles used for Food Trucks and in the delivery of products to and from the Franchised Business including owned, hired, or non-owned vehicles) liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. We reserve the right to require that you obtain some or all of insurance coverage from our approved vendors. Our insurance requirements are subject to change during the term of this Agreement, and you agree to comply with each such change.

**14.02 Proof of Insurance.** Before your Restaurant, Kiosk, or Food Truck first opens for business, you will provide us with a copy of each certificate of all required insurance policies. You will promptly provide us with copies of each certificate for all renewal or replacement insurance policies. Within 10 days after we request, you will provide us with a complete copy of any of your insurance policies we request.

**14.03 Your Indemnification of Us.** Independent of your obligation to procure and maintain insurance, you will indemnify, defend and hold us and our affiliates, the respective officers, directors, partners, shareholders, employees, agents and contractors of these entities, and the successors, assigns, personal representatives, heirs and legatees of all of these persons or entities (collectively, the "**Indemnities**") harmless, to the fullest extent permitted by law, from and against all expenses, losses, payments or obligations to make payments either (a) to or for third party claimants by any and all Indemnitees, including refunds, or (b) incurred by any and all Indemnitees to investigate, take action, respond to or defend a matter, including investigation and trial charges, costs and expenses, fees, fees paid to professionals, attorney fees, experts' fees, court costs, settlement amounts, judgments and costs of collection (collectively, "**Losses and Expenses**"), incurred by any Indemnatee for any investigation, claim, action, suit, demand, administrative or alternative dispute resolution proceeding, actually or



allegedly, directly or indirectly, relating to, arising out of, or resulting from or in connection with: any transaction, occurrence or service involving the Franchised Business, the Restaurant, Kiosk, or Food Truck or this Agreement; your employment or other contractual relationship with your employees, workers, managers, or independent contractors, including but not limited to any allegation, claim, finding, or ruling that we are an employer or joint employer of your employees; your marketing, selling, or providing of items and services; any breach or violation of any agreement (including this Agreement), or any law, regulation or ruling by, or any act, error or omission (active or passive) of, you, any party associated or affiliated with you or any of the owners, officers, directors, Designated Managers, employees, and agents of you or your affiliates, including when the active or passive negligence of any Indemnitee is alleged or proven; and any fees, costs, or liabilities incurred by us on your behalf, including fees and costs incurred by us to recover amounts due to you on your behalf. .

**14.04 Your Indemnification Duties.** You will respond promptly to any matter described in Section 14.03, and defend the Indemnitee. You will reimburse the Indemnitee for all costs of defending the matter, including attorney fees, incurred by the Indemnitee if you or your insurer does not assume defense of the Indemnitee promptly when requested. We have the right to approve any resolution or course of action in a matter that could directly or indirectly have any adverse effect on us, the Marks or the System, or could serve as a precedent for other matters.

**14.05 Our Indemnification of You.** We will indemnify, defend and hold you harmless from and against all investigation and trial charges, costs and expenses, attorney fees, experts' fees, court costs, settlement amounts, judgments and costs of collection incurred by you in any action or claim, actually or allegedly, arising out of or resulting from or in connection with the gross negligence or intentional misconduct of us or any of our employees while acting within the course and scope of their employment.

## **15. TRANSFERS**

**15.01 Transfer by Us.** We shall have the right to assign this Agreement and all of our attendant rights and privileges to any person, firm, corporation or other entity provided that, with respect to any assignment resulting in the subsequent performance by the assignee of our functions: (i) the assignee shall, at the time of such assignment, be financially responsible and economically capable of performing our obligations; and (ii) the assignee shall expressly assume and agree to perform such obligations.

You expressly affirm and agree that we may sell our assets, our rights to the Marks or to the System outright to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of "Crepe Delicious Holding USA, Inc." as the franchisor. Nothing contained in this Agreement shall require us to remain in the restaurant business or to offer the same products and services, whether or not bearing the Marks, in the event that we exercise our right to assign our rights in this Agreement.

**15.02 Transfer by You.** You acknowledge that the rights and duties set forth in this Agreement are personal to you, and that we have granted these rights in reliance on your business experience, skill, financial resources and personal character (and that of your owners, officers, directors, Designated Managers and guarantors, if any). Accordingly, neither you, nor any immediate or remote successor to any part of your interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in you will sell, encumber, assign,

transfer, convey, pledge, merge or give away any direct or indirect interest in this Agreement, or in you, or in all or substantially all of the assets of the Franchised Business (collectively, a “**Transfer**”), unless we consent and all of the requirements of Section 15.03 and Section 15.04 are satisfied. Any transaction requiring our consent under this Section 15.02 for which our express written consent is not first obtained will be null and void, and shall be a material default of this Agreement. In that event: we may terminate this Agreement under Section 16.01; you will remain responsible for performing the post-termination obligations in Section 17; and the purported transferee may not operate the Franchised Business under the Marks or the System.

**15.03 Transfer Conditions.** We may, to the extent permitted by applicable law, condition and withhold our consent to a Transfer, when required under Section 15.02 until the transferee and you meet certain conditions. If a Transfer is to occur: (a) the proposed transferee must apply for a Crepe de licious franchise and must meet all of our then-current standards and requirements for becoming a Crepe de licious franchisee, in our sole discretion; (b) you or the proposed transferee must provide to us in writing the circumstances of the proposed Transfer; (c) the proposed transferee must provide to us the same supporting documents as a new franchise applicant; (d) you or the proposed transferee must pay us a transfer fee of \$10,000 (\$5,000 if the proposed transferee is an existing Crepe de licious franchisee), including a non-refundable \$1,000 deposit that is due upon the request for approval of a Transfer (e) the proposed transferee must sign the form of franchise agreement and related documents we then offer to prospective franchisees, which agreement will provide for a new initial term of five (5) years, and the transferee’s owners will sign the form of owners agreement or guaranty we then require of franchisees’ owners; (f) the proposed transferee and its designated manager must complete to our satisfaction the initial training then required for new franchisees and their designated managers; (g) you or the proposed transferee must refurbish the Restaurant, Kiosk, or Food Truck to conform to our then-current standards and specifications; (h) we must receive general releases from you and each of your owners, and payment of all amounts then owed to us and our affiliates by you and your owners and affiliates, and the transferee and its owners and affiliates, under this Agreement or otherwise; (i) you must not be in default under this Agreement or any other agreement with us or any of our affiliates; (j) you must give us at least 30 days’ prior written notice of any proposed Transfer; (k) you must reimburse us upon receipt of our invoice for any broker or other placement fees we incur as a result of the transfer; (l) the Restaurant, Kiosk, or Food Truck must be in operation for at least one (1) year, if we have not exercised right of first refusal; (m) the proposed transferee must have sufficient business experience and financial resources to operate the Franchise; (n) your landlord must consent to transfer the lease to the proposed transferee; (o) you must sign a non-compete agreement not to engage in a competitive business for two (2) years within: (i) a 25-mile radius from your Franchised Business (and including the premises of the Approved Location), and (ii) a 25-mile radius from all other Crepe de licious businesses that are operating or under construction (as provided in Section 17.09 hereof); and (p) you or the transferee must provide us with any additional information that we may reasonably request. We may withhold consent to the proposed transfer until all of these conditions are completely satisfied.

**15.04 Right of First Refusal.** Any individual or entity holding any direct or indirect interest in this Agreement or in a substantial portion of the assets of the Restaurant, Kiosk, or Food Truck or in you (if you are an entity) and who desires to accept any bona fide offer from a third party to purchase the relevant interest or assets must notify us in writing of each offer, and must provide the information and documentation relating to the offer as we may require. We have the right and option, exercisable within 30 days after receipt of this written notification, to send written notice to the seller that we or our designee intend to purchase the seller’s interest on the same terms and conditions offered by the third party. If we or our designee elect to purchase the seller’s interest, closing of the purchase will occur within 60 days from the date of notice to the seller of the election to purchase by us or our designee. If we decline to purchase the seller’s interest, the seller will have 90 days from the date it gives written notice to us of its purchase offer to sell its interest on the same terms and conditions and to the same transferee as described

to us in the written notice. Any material change thereafter in the terms of the offer from a third party will constitute a new offer which will be subject to our right of first refusal under this Agreement. Our failure to exercise the option afforded by this Section 15.04 will not constitute a waiver of any other provision of this Agreement, including all of the other requirements of Section 15.03 with respect to the proposed Transfer. If the consideration, terms or conditions offered by a third party are of the type that we or our designee may not reasonably be able to furnish the same consideration, terms or conditions, then we or our designee may purchase the relevant interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration terms or conditions offered by the third party, then each party will select an independent appraiser. The two appraisers will then have up to 15 business days to agree on a reasonable equivalent in cash. If they cannot agree during that period, then the reasonable equivalent in cash will be the average of the two (2) appraisals. Our right of first refusal is fully assignable by us. If we fail or refuse to exercise our option and the Restaurant, Kiosk, or Food Truck is not subsequently sold to the proposed purchaser for any reason, we shall continue to have, upon the same conditions, a first option to purchase the Restaurant, Kiosk, or Food Truck upon the terms and conditions of any subsequent offer.

**15.05 Death, Divorce or Incapacity.** Upon the death, divorce or incapacity of you (if you are an individual) or in your majority owner of you (if you are an entity), we will have the right to take over your lease and to purchase some or all of the assets of the Franchised Business under Section 17.11. If we exercise this right, you and your majority owner (in the event of divorce), or the executor, administrator, personal representative, trustee or heirs of such person (in the event of death or incapacity) must fully cooperate with us in an orderly transfer and also pay us a Management Fee of \$500 per day plus expenses for as long as we continue to manage the Franchised Business. If we do not elect to exercise this right, you, your majority owner, or the executor, administrator, personal representative, trustee or heirs of such person must transfer the relevant interest to a third party approved by us as soon as practically possible, and in no event more than within 180 days of such after the relevant death, divorce or incapacity. This transfer, including any transfer by devise or inheritance, will be subject to the same conditions as other Transfers under this Agreement. However, in the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable or unwilling to meet the conditions in Section 15.03, the executor, administrator, trustee or personal representative of the deceased person will have a reasonable time (but no longer than 180 days) to dispose of the interest in the Franchised Business, which will be subject to all the terms and conditions for Transfers contained in this Agreement. If the interest is not disposed of within 180 days following the relevant death or incapacity, we may terminate this Agreement under Section 16.01.

**15.06 No Waiver.** Our consent to a Transfer hereunder will not constitute a waiver of any claims we may have against you or the transferring party or our right to demand exact compliance with any provision of this Agreement.

## **16. DEFAULT AND TERMINATION**

**16.01 Termination by Us without Right to Cure.** You will be deemed to be in material incurable default under this Agreement, and we may terminate this Agreement for good cause effective immediately upon delivery of notice of termination to you, for any of the following grounds: (a) you (or any of your owners) are judged a bankrupt, become insolvent, make an assignment for the benefit of creditors, are unable to pay your debts as they become due, a petition under any bankruptcy law is filed against you, or a receiver or other custodian is appointed for a substantial part of the assets of the Restaurant, Kiosk, or Food Truck; (b) you or any of your owners are convicted of a felony or other crime which substantially impairs the goodwill associated with the Marks; (c) you or your owners made any material misrepresentation or omission in the application for the Franchise; (d) you make an unauthorized Transfer; (e) the interest of a deceased, divorced or incapacitated person is not timely Transferred in

accordance with the terms of this Agreement; (f) you intentionally understate the Restaurant's, Kiosk's, or Food Truck's revenues in any report or financial statement; (g) you commit any two (2) or more defaults under this Agreement within any 12-month period, regardless of whether any default is cured; (h) you fail to operate or keep the Franchised Business open for more than five (5) consecutive business days without our express written approval; (i) you default under any loan, lending agreement, mortgage, deed of trust or lease with any party covering the Restaurant's, Kiosk's, or Food Truck's premises, and the other party treats the relevant act or omission as a default, and you fail to timely cure the default; (j) you fail to begin operation of the Restaurant, Kiosk, or Food Truck within 12 months from the Effective Date of this Agreement or your Designated Manager fails to complete our training program to our satisfaction, after giving you the opportunity to designate a successor Designated Manager; (k) you sell, offer for sale, or give away at the Restaurant, Kiosk, or Food Truck any items or services which have not been previously approved by us in writing, or which have been subsequently disapproved, and you fail to cease these sales or gifts within 24 hours after receipt of notice by us; (l) you suffer termination of any other agreement with us or any of our affiliates; (m) you fail to comply with all applicable laws and ordinances relating to the Franchised Business, including Anti-Terrorism Laws, or if your or any of your owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of your owners otherwise violate any such law, ordinance, or regulation; (n) you duplicate all or any portion of our System or make or cause a disclosure of the System; (o) you fail to follow any laws or regulations for products or prepare products which are not in accordance with the methods set forth by us; or (q) you fail or refuse to sell products designated by us.

**16.02 Termination by Us with 10-Day Cure Period.** If you fail or refuse to timely pay any amounts owed to us or any of our affiliates, or if you fail to obtain or maintain insurance as required by this Agreement, we may, at our option, terminate this Agreement by giving you 10 days' written notice of default. If you do not cure the default within this 10-day period, we may terminate this Agreement for good cause effective upon delivery of notice of termination to you.

**16.03 Other Termination by Us.** Except as provided in Sections 16.01 and 16.02, if you are in any other default under the terms of this Agreement, we, at our option, may terminate this Agreement by giving you 30 days' written notice of default. If you do not cure any the default within this 30-day period, we may terminate this Agreement for good cause effective upon delivery of notice of termination to you.

**16.04 Additional Remedies.** We may deny you the benefits of the System for any default under this Agreement and discontinue System benefits to you for the duration of the default, including, but not limited to, suspension of your access to any intranet we may develop and/or suspension of any listing or web page for your Restaurant, Kiosk, or Food Truck on our website. We may institute proceedings to collect amounts due under this Agreement without first issuing a default or termination notice. Our consent or approval as may be required under this Agreement or the System Standards may be withheld while you are in default under this Agreement or may be conditioned on the cure of all of your defaults. Our termination of this Agreement pursuant to this Section 16 will be in addition to all other remedies, in law or in equity, available to us. Additionally, you must reimburse us for us for any legal or accounting fees that we incur as a result of any breach or termination of the Agreement or that we incur in enforcing the Agreement.

**16.05 Termination by Franchisee.** If you and your owners are in full compliance with this Agreement, and we materially fail to comply with this Agreement and we do not correct the failure within thirty (30) days after you deliver notice of the material failure to us or, if we cannot correct the failure within thirty (30) days, give you, within thirty (30) days after your notice, reasonable evidence of our effort to correct the failure within a reasonable time, you may terminate this Agreement effective an additional thirty (30) days after you deliver to us written notice of termination. Your termination of this

Agreement other than according to this Section 16.05 will be deemed a termination without cause and a breach of this Agreement.

**16.06 Governing State Law.** If a longer notice or cure period or a different good cause standard is prescribed by applicable law, this law will apply to any termination of this Agreement.

## **17. POST-TERMINATION RIGHTS AND OBLIGATIONS**

**17.01 Cease Use of System and Marks.** Upon the expiration or termination of this Agreement by any means or for any reason, you will immediately cease to be a franchisee of ours and you will cease to operate the Restaurant, Kiosk, or Food Truck under the System or Marks. You will also immediately cease to use, in any manner whatsoever, any methods, procedures, or techniques associated with the System and cease to use the Marks. Unless otherwise approved in writing by us, you will return to us all copies of materials bearing the Marks. You will not, directly or indirectly, represent to the public that the former Franchised Business is or was operated or in any way connected with the System or hold yourself out as a present or former franchisee of ours.

**17.02 Payment of Amounts Owed.** Upon the expiration or termination of this Agreement by any means or for any reason, you will immediately pay all sums you owe us and our affiliates. Upon termination for any default by you, the sums you owe will include actual and consequential damages, costs, and expenses we incurred as a result of your default.

**17.03 Return Operations Manual and Other Materials.** Upon the expiration or termination of this Agreement by any means or for any reason, you will immediately return to us the Operations Manual, any training materials, other proprietary information, all trade secrets and confidential materials owned or licensed by us, and all copies thereof. If you fail to return the Operations Manual to us within five (5) days after any expiration or termination of this Agreement, you must pay the manual replacement fee specified in Section 7.04.

**17.04 Change of Identification.** Upon the expiration or termination of this Agreement by any means or for any reason, you will, upon our request, immediately remove or obliterate the Marks from all marketing materials, supplies, signage and other items bearing any Marks. You will follow the other steps we may require in the Operations Manuals or otherwise in writing for changing the identification of your premises and/or operations. You will promptly paint over or remove the distinctive System trade dress, color schemes, signage and other physical features. You will not use any reproduction, counterfeit copy, or colorable imitation of the Marks either in connection with any business or the promotion thereof, which is likely to cause confusion, mistake, or deception or which is likely to dilute our exclusive rights in and to the Marks, and you will not utilize any designation of origin or description or representation which falsely suggests or represents an association or connection with us so as to constitute unfair competition. You will make modifications or alterations to the Restaurant, Kiosk, or Food Truck premises immediately upon expiration or termination of this Agreement as may be necessary to prevent any association between us or the System and any business later operated by you or others, and will make specific additional changes thereto as we may reasonably request for that purpose. If you fail or refuse to comply with the requirements of this Section 17.04, we will have the right to enter upon the Restaurant, Kiosk, or Food Truck premises, without liability for trespass or any other tort, to make or cause to be made any changes as may be required at your expense, which expense you agree to pay us upon demand. We will exercise reasonable care in making these changes, but we will have no obligation or liability to restore your premises to its condition before making these changes. We will have the right to remove or obliterate the Mark-bearing portion of your supplies and equipment, and you will promptly pay or reimburse us for our costs of doing so.



**17.05 Identifiers.** You acknowledge that all telephone numbers, facsimile numbers, social media websites, Internet addresses and email addresses (collectively “**Identifiers**”) used in the operation of your Restaurant, Kiosk, or Food Truck constitute our assets, and upon termination or expiration of this Agreement, you will take such action within five (5) days to cancel or assign to us or our designee as determined by us, all of our right, title and interest in and to such Identifiers and will notify the telephone company and all listing agencies of the termination or expiration of your right to use any Identifiers, and any regular, classified or other telephone directory listing associated with the Identifiers and to authorize a transfer of the same to, or at our direction. You agree to take all action required cancel all assumed name or equivalent registrations related to your use of the Marks. You acknowledge that, we have the sole rights to, and interest in, all Identifiers used by Franchisee to promote the Restaurant, Kiosk, or Food Truck and/or associated with the Marks. You hereby irrevocably appoint us, with full power of substitution, as your true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing. You further appoint us to direct the telephone company, postal service, registrar, Internet service provider, listing agency, website operator, or any other third party to transfer such Identifiers to us or our designee. The telephone company, postal service, registrar, Internet Service Provider, listing agency, website operator, or any other third party may accept such direction by us pursuant to this Agreement as conclusive evidence of our rights to the Identifiers and our authority to direct their transfer.

**17.06 Cancel Assumed Name.** You will take whatever action is necessary to cancel any assumed name or equivalent registration which contains the Marks, and you will furnish us with evidence satisfactory to us of compliance with this obligation within 10 days after termination or expiration of this Agreement.

**17.07 Customer Lists.** Upon the expiration or termination of this Agreement by any means or for any reason, you must immediately provide to us all customer lists and contact information in your possession or control.

**17.08 Assignment of Lease.** If we request, you will assign to us your lease for the Approved Location.

**17.09 Non-Competition.** You will not, directly or indirectly, for a period of two (2) years after the expiration or termination of this Agreement or any Transfer:

(a) engage in or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend your name or any similar name to, or render services or advice to any business that offers or sells any crepe-based food items or gelato within a 25-mile radius of your Restaurant’s, Kiosk’s, or Food Truck’s location; or

(b) engage in or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend your name or any similar name to, or render services or advice to any business that offers or sells any crepe-based food items or gelato within a 25-mile radius of any Restaurant, Kiosk, or Food Truck owned or operated by us or any of our affiliates or franchisees; or

(c) interfere with the Restaurant’s, Kiosk’s, or Food Truck’s and/or our relationship with any person, including any person who at any time during the term of this Agreement was an employee, contractor, supplier, or customer.

The parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 17.09 is held unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which we are a party, you expressly agree to be bound by any lesser covenant imposing the maximum duty permitted by law that is subsumed within the terms of the covenant, as if the resulting covenant were separately stated in and made a part of this Section 17.09. You further 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 the enforcement by us of the covenants in this Section 17.09. You understand and acknowledge that we will have the right, in our sole discretion, to unilaterally reduce the scope of any covenant set forth in this Section 17.09 or any portion hereof, without your consent, effective immediately upon receipt by you of written notice thereof; and you agree that you will comply immediately with any covenant as so modified.

**17.10 Other Post-Termination Obligations.** Upon the expiration or termination of this Agreement by any means or for any reason, you will immediately and strictly comply with all other provisions of this Agreement pertaining to post-termination obligations. You must follow any procedures established by us to ensure the expiration or termination of this Agreement (or any successor term thereof) creates the least disruption possible to the System, including those procedures set forth in the Operations Manual.

**17.11 Right to Purchase.** Upon the expiration or termination of this Agreement by any means or for any reason, we will have the right, but not the obligation, to purchase some or all of the assets of the Franchised Business, including any furnishings, fixtures, equipment, signs, items, inventory, supplies and marketing materials, as well as all items bearing any Mark, at the lesser of your cost or fair market value. Before exercising any rights under this Section 17.11, we will have the right to enter the Restaurant, Kiosk, or Food Truck during reasonable hours to inspect the assets. If we elect to exercise our purchase rights, we will give you written notice of intent to do so within 30 days after termination or expiration of this Agreement. In the event of such a purchase, there shall be no payment by us for any intangible assets of the Franchised Business. If the parties cannot agree on fair market value within 15 days after we provide notice of intent to purchase, then each party will select an independent appraiser. The two (2) appraisers will then have up to 15 business days to agree on a fair market value for the relevant assets. If they cannot agree during that period, then the final fair market value will be determined by averaging the amounts determined by the two (2) appraisers. If we elect to exercise our purchase rights, closing will take place within 45 days after we provide notice of intent to purchase, to the extent reasonably possible. We will have the right to offset all amounts you owe to us or our affiliates against any payment due to you under this Section 17.11. This provision will also apply in the event of death, divorce or incapacity under Section 15.05.

**17.12 Survival of Certain Provisions.** Certain rights and obligations in Sections 8, 11, 12, 14, 17, 18, and 19 survive termination or expiration of this Agreement (regardless of whether termination is wrongful) or a Transfer by you. You will continue to comply with your obligations under these sections following termination or expiration of this Agreement or a Transfer until the obligations, by their nature or by the relevant express provisions, expire.

**17.13 Liquidated Damages.** Upon termination of this Agreement by us for any reason other than the expiration of the contract term, you agree to pay to us within 15 days after the effective date of this Agreement's termination, in addition to the amounts owed hereunder, liquidated damages equal to the combined average monthly Royalty Fees and Advertisement Fund Contributions payable by you (without regard to any fee waivers or other reductions) from the date you open your Restaurant, Kiosk, or Food Truck through the date of early termination multiplied by the lesser of (a) thirty-six (36) or (b) the number



of months remaining in the term of the Agreement had it not been terminated, except that liquidated damages will not under any circumstances be less than \$30,000.

The parties hereto acknowledge and agree that it would be impracticable to determine precisely the damages we would incur from this Agreement's termination and the loss of cash flow from Royalty Fees and Advertisement Fund Contributions due to, among other things, the complications of determining what costs, if any, we might have saved and how much the Royalty Fees and Advertisement Fund Contributions would have grown over what would have been this Agreement's remaining term. The parties hereto consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

The liquidated damages provision only covers our damages from the loss of cash flow from the Royalty Fees and Advertisement Fund fees. It does not cover any other damages, including damages to our reputation with the public and landlords and damages arising from a violation of any provision of this Agreement other than the Royalty Fee and Advertisement Fund sections. You and each of your owners agree that the liquidated damages provision does not give us an adequate remedy at law for any default under, or for the enforcement of, any provision of this Agreement other than the Royalty Fee and Advertisement sections.

## **18. DISPUTE RESOLUTION**

**18.01 Mediation.** Except as set forth in Section 18.03 below, all claims or disputes between you and us or our affiliates arising out of, or in any way relating to, this Agreement, or any of the parties' respective rights and obligations arising out of this Agreement, shall be submitted first to mediation prior to a hearing in binding arbitration or a trial court proceeding. Such mediation shall take place in Toronto, Ontario, Canada (or our then-current headquarters) under the auspices of the ADR Institute of Canada ("ADR"), in accordance with ADR's Commercial Mediation Rules then in effect. You may not commence any action against us or our affiliates with respect to any such claim or dispute in any court unless mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by us. The parties shall each bear their own costs of mediation and shall share equally the filing fee imposed by ADR and the mediator's fees. We reserve the right to specifically enforce our right to mediation. Prior to mediation, and before commencing any legal action against us or our affiliates with respect to any such claim or dispute, you must submit a notice to us, which specifies in detail, the precise nature and grounds of such claim or dispute. We shall not be required to first attempt to mediate or arbitrate a controversy, dispute or claim against you through mediation or arbitration as set forth in Section 18 if such controversy, dispute or claim concerns an allegation by us that you have violated (or threaten to violate, or pose an imminent risk of violating): (a) any of our federally protected intellectual property rights in the Marks, the System, or in any of our trade secrets or confidential information; (b) any claims pertaining to or arising out of any warranty issued; or (c) any of the restrictive covenants contained in this Agreement. We and you (and your owners) agree that the mediation provision shall apply during the term of this Agreement and following the termination, expiration or non-renewal of this Agreement.

**18.02 Binding Arbitration.** Without limiting our rights and remedies under Section 16, the parties hereto acknowledge and agree that any dispute or controversy arising out of or relating to this Agreement not settled by informal negotiations will, at the request of either party, be settled by final and binding arbitration conducted in the State of Delaware (or the state in which we then have our then-current principal place of business) by the ADR in accordance with the then-current National Arbitration Rules of the ADR and otherwise as set forth below on an individual basis (not a class action):

(a) Notice of Arbitration. Either party may initiate the arbitration proceeding by making a written demand to the other party, and both parties will then be obligated to engage in arbitration. The demand for arbitration must be served on the other party within the period provided by the applicable statute of limitations, and must contain a statement setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. A demand for arbitration will not operate to stay, postpone or rescind the effectiveness of any termination of this Agreement. Arbitration will not proceed until any protest of arbitrability is resolved by the arbitrator or by an appropriate court, if necessary.

(b) Selection of Arbitrator. Arbitration will be conducted before a single arbitrator who is familiar with legal disputes of the type at issue and who has at least 10 years' experience as a lawyer or in the franchise business. The parties will mutually agree on the selection of the arbitrator; however, if the parties have not agreed on the selection of an arbitrator within 30 days after the arbitration demand, either party may request the ADR or successor organization, to appoint a qualified arbitrator.

(c) Preliminary Conference. Within 10 days after appointment of the arbitrator, the parties will meet with the arbitrator, in person or by telephone, for a preliminary conference. At the preliminary conference, the parties will establish the extent of and schedule for discovery, including the production of relevant documents, identification of witnesses, depositions, and the stipulation of uncontested facts. At this preliminary conference, the date for the hearing will be set which will not, unless both parties agree, be more than 60 days after the date of the preliminary conference. At the preliminary conference, the arbitrator will set forth the procedures to be followed at the hearing.

(d) Discovery. Should a dispute arise over the extent of or propriety of any discovery request, the arbitrator will make a final determination after hearing each party's position. All discovery must be completed within 45 days after the preliminary conference, unless otherwise agreed by the parties.

(e) Statement of Case. At least 5 days before the scheduled hearing, each party must deliver to the arbitrator and to the other party a written summary of its position on the issues in dispute.

(f) Hearing. Unless otherwise mutually agreed by the parties, all arbitration proceedings will be held in the city in which we then have our principal place of business.

(g) Arbitrator's Decision. The arbitrator will issue a written decision within 10 days after conclusion of the hearing, explaining the basis for the decision. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction. This decision will be binding upon both parties. The arbitrator will have authority to assess actual damages sustained by reason of any breach or wrongful termination of this Agreement, but will not have any authority to amend or modify the terms of this Agreement or to assess punitive damages. Except for claims excluded from mediation and arbitration herein, the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.

(h) Time Schedule. The parties will use due diligence to meet the foregoing time schedule, and the arbitrator will have the right to impose appropriate sanctions against any party who fails to comply with the agreed-upon time schedule. The arbitrator will use his best efforts to comply with the foregoing time schedule, but may unilaterally modify it if, in his opinion, modification is necessary for a proper and just resolution of the dispute. The parties may jointly modify the agreed-upon time schedule, subject to the arbitrator's approval.

(i) Arbitration Expenses. The fees of, and authorized costs incurred by, the arbitrator will be shared equally by the parties, and each party will bear all of its own costs of arbitration; provided, however, that the arbitration decision will provide that the substantially prevailing party will recover from the other party its actual costs and expenses (including arbitrator's fees and expenses, and attorney fees and expenses) incurred in connection with the dispute.

(j) Confidentiality. The entire arbitration proceedings and related documents are confidential. Except as necessary to enforce the decision of the arbitrator hereunder, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the arbitration by any of the parties, their agents, employees or representatives and by the arbitrator, are confidential. These matters will not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties, and will not be disclosed to anyone who is not an agent, employee, expert witness, or representative for any of the parties; however, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the arbitration.

(k) Survival. We and you (and your owners) agree that the arbitration provisions of this Section 18.02 shall apply during the term of this Agreement and following the termination, expiration or non-renewal of this Agreement.

**18.03 Provisional Remedies.** Despite the provisions of Sections 18.01 or 18.02, each party will have the right to seek from an appropriate court any provisional remedies, including declaratory relief, specific enforcement, temporary restraining orders or preliminary injunctions, before, during or after informal dispute resolution or arbitration. Neither party is required to await the outcome of any informal dispute resolution or arbitration before seeking provisional remedies. The seeking of provisional remedies will not be deemed to be a waiver of either party's right to compel informal dispute resolution or arbitration. You acknowledge that any failure to fully and strictly comply with Section 17 will result in irreparable injury to us for which there is no adequate remedy at law, and you agree that, in the event of any noncompliance with any of Section 17, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may deem just and proper. An action seeking provisional remedies will be brought in any state or federal court within the jurisdiction in which we then have our principal place of business, or in any other state court or federal district court with proper jurisdiction. The parties consent to the exercise of personal jurisdiction over them by these courts, and to the propriety of venue in these courts for the purpose of this Section 18.03, and the parties waive any objections that they would otherwise have in this regard.

**18.04 Costs of Enforcement.** If we secure any provisional remedy pursuant to Section 18.03 of this Agreement, or if any provision of this Agreement is otherwise enforced at any time by us, or if any amounts due from you to us are collected by or through an attorney at law or collection agency, you will be liable to us for all costs and expenses of enforcement and collection including, but not limited to, court costs and reasonable attorney fees and expenses incurred by us (including the fair market value of any time expended by in-house legal counsel).

**18.05 Jurisdiction.** The parties hereto agree that it is in their best interest to resolve disputes between them in an orderly fashion and in a consistent manner. Therefore, except for those claims set forth in Section 18.03, the parties consent to the exclusive jurisdiction of the United States District Court for the District of Delaware or the Delaware Court of Chancery in the State of Delaware or the federal or state court for the jurisdiction in which we then have our principal place of business for any litigation relating to this Agreement or the operation of the Franchised Business hereunder; provided that we have the option to bring suit against any you in any state or federal court within the jurisdiction where your Restaurant, Kiosk, or Food Truck is or was located or where any of your owners lives. The parties

consent to the exercise of personal jurisdiction over them by these courts, and to the propriety of venue in these courts for the purpose of this Agreement, and the parties waive any objections that they would otherwise have in this regard. Each of the parties specifically waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto. THE PARTIES WAIVE ANY RIGHT TO JURY TRIAL THAT THEY MAY HAVE IN ANY ACTION ARISING OUT OF OR UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT ANY LITIGATION BETWEEN THEM WILL BE OF INDIVIDUAL CLAIMS, AND THAT THE CLAIMS SUBJECT TO LITIGATION WILL NOT BE LITIGATED AS A CLASS ACTION.

## **19. GENERAL PROVISIONS**

**19.01 Partial Invalidity.** If all or any part of a provision of this Agreement violates applicable law, the affected provision or part will not be given effect. If all or any part of a provision of this Agreement is declared invalid or unenforceable, for any reason, or is not given effect by reason of the prior sentence, the remainder of the Agreement will not be affected, and the parties will modify the invalid or unenforceable provision to the extent required to be valid and enforceable. However, if in our judgment this result substantially impairs the value of this Agreement to us, then we may at any time terminate this Agreement by written notice to you, without penalty or compensation owed by either party.

**19.02 Waivers, Modifications and Approvals.** Whenever this Agreement requires our prior approval or consent, you will make a timely written request to us therefor, and we may withhold, condition or withdraw our consent in our sole discretion. No failure of ours to exercise any power reserved to us by this Agreement and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of our right to demand exact compliance with any of the terms herein. A waiver or approval by us of any particular default by you or any other franchisee or acceptance by us of any payments due hereunder will not be considered a waiver or approval by us of any preceding or subsequent breach by you of any term, covenant, or condition of this Agreement. We will not be deemed to have waived any of our rights under this Agreement, nor will you be deemed to have been excused from performance of any of your obligations pursuant to this Agreement, unless the waiver or excuse is written and signed by an authorized representative of us and you. To be effective, any modifications, waivers, approvals and consents of, or under, this Agreement by us must be designated as such, in writing, and signed by our authorized representative. Notwithstanding anything to the contrary herein, you acknowledge and agree that Sections 2.02(c) and 17.09 of this Agreement permit us to unilaterally modify this Agreement.

**19.03 Notices.** Any notice, reports, and other information and documents permitted or required to be delivered under Agreement will be in writing, and will be delivered to us at 147 Citation Drive, Unit 30, Concord, Ontario, Canada L4K 2P8, or to you at the address of the Approved Location or the address listed on the signature page hereof. Either party may modify its address periodically by written notice to the other party. Notices will be effective if in writing and delivered to the appropriate party by: delivery service, with proof of delivery; or by first class, prepaid certified or registered mail, return receipt requested. Notices will be deemed given on the date delivered or on the date of the first attempted delivery, if delivery is refused or unclaimed.

**19.04 Governing Law.** This Agreement takes effect upon its acceptance by us in the State of Delaware, and will be governed by and interpreted in accordance with Delaware law applicable to contracts made and to be wholly performed therein without regard to its conflicts of law rules; provided, however, that this provision is not intended to subject this Agreement to any franchise or similar law, rule or regulation of the State of Delaware to which it would not otherwise be subject.

**19.05 Counterparts.** This Agreement may be signed in any number of counterparts, each of which when signed and delivered will be deemed an original, but all counterparts together will constitute one and the same instrument.

**19.06 Construction.** No provision of this Agreement will be interpreted in favor of or against either party merely because of that party's role in the preparation of this Agreement, or because of the nature or type of this Agreement. The headings and captions contained herein are for the purpose of convenience and reference only, and are not to be construed as part of this Agreement. All terms and words used herein will be construed to include the number and gender as the context of this Agreement may require. The parties agree that each section of this Agreement will be construed independently of any other section or provision of this Agreement. All references in this Agreement to Sections or Attachments refer to the relevant sections and attachments, respectively, of this Agreement. This Agreement, together with the exhibits and any addenda attached, is the entire agreement, and supersedes all prior representations, agreements and understandings (oral or written) of the parties; provided, however, that nothing in this or any related agreement is intended to disclaim the representations made by us in the Franchise Disclosure Document that was furnished to you by us. Except for the Indemnitees, or as otherwise expressly provided in this Agreement, there are no third party beneficiaries hereunder. No agreement between us and any third party else is for your benefit. Except as expressly provided in this Agreement, this Agreement is binding on and will inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. Time is of the essence.

**19.07 Force Majeure.** Notwithstanding anything contained in this Agreement to the contrary, neither party will be in default hereunder by reason of its delay in performance of, or failure to perform, any of its obligations hereunder, if this delay or failure is caused by strikes or other labor disturbance; acts of God, or the public enemy, riots or other civil disturbances, fire, or flood; interference by civil or military authorities; compliance with governmental laws, rules, or regulations which were not in effect and could not be reasonably anticipated as of the date of this Agreement; delays in transportation, failure of delivery by suppliers, or inability to secure necessary governmental priorities for materials; or, any other fault beyond its control or without its fault or negligence. In this case, the time required for performance of the relevant obligation will be the duration of the unavoidable delay. "Force majeure" shall specifically exclude your lack of available financing.

**19.08 State Addendum.** The laws of certain states may supersede some of the provisions of this Agreement, and certain states require us to supplement or modify the provisions of this Agreement. If applicable, these supplements and modifications are contained in the addendum to the Franchise Disclosure Document as Exhibit E. When you sign this Agreement, you will also properly sign the addenda, if applicable. The multi-state addendum will be construed and applied as narrowly as possible, consistent with applicable state law, in order to avoid potential conflicts between state laws.

**19.09 Operation in the Event of Absence or Disability; Step-In Rights.**

(a) In order to prevent any interruption of the Franchised Business operations which would cause harm to the Franchised Business, thereby depreciating the value thereof, we have the right, but not the obligation, in our sole discretion, to step-in and designate an individual of our choosing ("**Interim Manager**") to temporarily manage your Franchised Business: (i) if you are in breach of this Agreement; (ii) upon your or the Designated Manager's absence, termination, death, or disability; or (iii) we deem you incapable of operating the Franchised Business due to operational problems ("**Step-in Rights**"). You authorize us to exercise our Step-In Rights and operate your Franchised Business for as long as we deem necessary and practical, and without waiver of any other rights or remedies which we may have under this Agreement.



(b) In the event we exercise our Step-in Rights, you will pay us a daily management fee equal to \$500 for every day the Franchised Business is managed by the Interim Manager. In addition, you agree to pay all costs and expenses incurred by us in connection with our exercise of Step-in Rights, including but not limited to reasonable attorney, accountant and other professional fees and costs. All monies from the operation of the Franchised Business during such period of operation by us shall be kept in a separate account, and the expenses of the Franchised Business, including reasonable compensation and expenses for our representative, shall be charged to said account. If we exercise the Step-In Rights, you agree to indemnify and hold harmless us, the Interim Manager and any representative of ours who may act hereunder, from any and all acts which we may perform, as regards the interests of you or third parties. Nothing contained herein shall prevent us from exercising any other right which we may have under this Agreement, including, without limitation, termination.

## **20. SECURITY INTEREST**

**20.01 Collateral.** You grant to us a security interest (“**Security Interest**”) in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Franchised Business, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Franchised Business. All items in which a security interest is granted are referred to as the “Collateral.”

**20.02 Indebtedness Secured.** The Security Interest is to secure payment of the following (“**Indebtedness**”):

- (a) All amounts due under this Agreement or otherwise by you;
- (b) All sums which we may, at our option, expend or advance for the maintenance, preservation, and protection of the Collateral, including, without limitation, payment of rent, taxes, levies, assessments, insurance premiums, and discharge of liens, together with interest, or any other property given as security for payment of the Indebtedness;
- (c) All expenses, including reasonable attorney fees, which we incur in connection with collecting any or all Indebtedness secured hereby or in enforcing or protecting our rights under the Security Interest and this Agreement; and
- (d) All other present or future, direct or indirect, absolute or contingent, liabilities, obligations, and indebtedness of you to us or third parties under this Agreement, however created, and specifically including all or part of any renewal or extension of this Agreement, whether or not you execute any extension agreement or renewal instruments.

Our security interest, as described herein, shall be subordinated to any financing related to your operation of the Franchised Business, including, but not limited to, a real property mortgage and equipment leases.

**20.03 Additional Documents.** You will from time to time as required by us join with us in executing any additional documents and one or more financing statements pursuant to the Uniform Commercial Code (and any assignments, extensions, or modifications thereof) in form satisfactory to us.

**20.04 Possession of Collateral.** Upon default and termination of your rights under this Agreement, we shall have the immediate right to possession and use of the Collateral.

**20.05 Our Remedies in Event of Default.** You agree that, upon the occurrence of any default set forth above, the full amount remaining unpaid on the Indebtedness secured shall, at our option and without notice, become due and payable immediately, and we shall then have the rights, options, duties, and remedies of a secured party under, and you shall have the rights and duties of a debtor under, the Uniform Commercial Code of Delaware (or other applicable law), including, without limitation, our right to take possession of the Collateral and without legal process to enter any premises where the Collateral may be found. Any sale of the Collateral may be conducted by us in a commercially reasonable manner. Reasonable notification of the time and place of any sale shall be satisfied by mailing to you pursuant to the notice provisions set forth above.

**20.06 Special Filing as Financing Statement.** This Agreement shall be deemed a Security Agreement and a Financing Statement. This Agreement may be filed for record in the real estate records of each county in which the Collateral, or any part thereof, is situated and may also be filed as a Financing Statement in the counties or in the office of the Secretary of State, as appropriate, in respect of those items of Collateral of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code as in effect in the appropriate jurisdiction.

## **21. ACKNOWLEDGMENTS**

**21.01. Accurate Information.** You represent that all information set forth in any and all applications, financial statements and submissions to us is true, complete and accurate in all respects. You acknowledge that we are relying upon the truthfulness, completeness and accuracy of this information in our decision to enter into this Agreement with you.

Your initials: \_\_\_\_\_

**21.02 No Warranty or Guarantee.** You acknowledge that you have not received or relied upon any warranty or guarantee, express or implied, as to the potential revenues, income, profits, volume or success of the business venture contemplated by this Agreement. You acknowledge that you have read this Agreement and our Franchise Disclosure Document, and that you have no knowledge of any representation by us or any of our officers, directors, shareholders, employees or agents that are contrary to the statements made in our Franchise Disclosure Document or contrary to the terms hereof. We expressly disclaim the making of any warranty, guarantee or representations of this type.

Your initials: \_\_\_\_\_

**21.03 Reasonable Covenants.** The covenants not to compete in this agreement are fair and reasonable, and will not impose any undue hardship on you or your owners, since you and your owners have other considerable skills, experience and education which afford you and your owners the opportunity to derive income from other endeavors.

Your initials: \_\_\_\_\_

**21.04 No Other Agreements.** You acknowledge that this Agreement, the documents referred to herein, the attachments hereto, and other agreements signed concurrently with this Agreement, if any, constitute the entire, full and complete Agreement between us and you concerning the subject matter hereof. This Agreement terminates and supersedes any prior agreement between the parties concerning

the same subject matter, and any oral or written representations which are inconsistent with the terms of this Agreement or our Franchise Disclosure Document.

Your initials: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly signed this Agreement as of the Effective Date.

**FRANCHISEE:**

\_\_\_\_\_  
Entity name (if any)

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

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

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

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

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

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

Franchisee's Address for Notices:

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

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

**FRANCHISOR:**

**CREPE DELICIOUS HOLDING USA, INC.**

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

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

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

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

## ATTACHMENT A TO THE FRANCHISE AGREEMENT

### APPROVED LOCATION AND TERRITORY

1. If a particular site for the Restaurant, Kiosk, or Food Truck has been selected and approved at the time of the signing this Agreement, it shall be entered on Attachment A-1 as the Approved Location and the Approved Location shall have the Territory listed in Attachment A-1. If a particular site has not been selected and approved at the time of the signing this Agreement, Section 3 of this Attachment will describe the location in general terms below in the “**General Description.**” The General Description does not confer any territory rights to you and is only used for a reference. We may sell other franchised locations in the area in the General Description.
1. After we have approved a location for your Restaurant, Kiosk, or Food Truck, we shall complete the Approved Location and the Territory in Attachment A-1. As the Territory is dependent on the location of the Restaurant, Kiosk, or Food Truck, we will present you with the Territory upon the identification of the site for the Restaurant, Kiosk, or Food Truck. If you do not wish to accept the Territory, you may choose another site location and we will present you with another Territory based on the site selected.
2. General Description of Area For Approved Location:  
(if the Approved Location is not specified above as of the signing of the Agreement)

\_\_\_\_\_

\_\_\_\_\_

#### **FRANCHISOR:**

**CREPE DELICIOUS HOLDING USA, INC.**

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

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

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

#### **FRANCHISEE:**

\_\_\_\_\_  
Entity name (if any)

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

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

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



## **ATTACHMENT A-1 TO THE FRANCHISE AGREEMENT**

You have received approval for site location for the Restaurant, Kiosk, or Food Truck that satisfies the demographics and location requirements minimally necessary a Restaurant or Kiosk and that meets our minimum current standards and specifications for the build-out, interior design, layout, floor plan, signs, designs, color and décor of a Restaurant, Kiosk, Food Truck. You and we have mutually agreed-upon a Territory based on the site for the Restaurant, Kiosk, or Food Truck which is indicated below. You acknowledge that the Territory is in conformance with the territory guidelines stated in Item 12 of the Franchise Disclosure Document.

### **Approved Location for Restaurant or Kiosk:**

The Approved Location for your Restaurant, Kiosk, or Food Truck as provided in Section 2.02(c) of the Agreement is:

---

### **Territory:**

The Territory as provided in Section 2.03 of the Agreement is:

---

---

### **FRANCHISOR:**

**CREPE DELICIOUS HOLDING USA, INC.**

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

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

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

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

### **FRANCHISEE:**

\_\_\_\_\_  
Entity name (if any)

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

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

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

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

## ATTACHMENT B TO THE FRANCHISE AGREEMENT

Franchisee: \_\_\_\_\_

### Form of Ownership (Check One)

☐ Individual ☐ Partnership ☐ Corporation ☐ Limited Liability Company

If a **Partnership**, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a **Corporation**, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a **Limited Liability Company**, give the state and date of formation, the name and address of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.

State and date formed or incorporated: \_\_\_\_\_

Management (managers, officers, board of directors, etc.):

Name	Address	Title

Members, Stockholders, Partners:

Name	Address	Percentage Owned

Franchisee acknowledges this Form of Ownership applies to the Franchised Business authorized under the Franchise Agreement. Use additional sheets if necessary. Any and all changes to the above information must be reported to Franchisor in writing.

*(Signature on following page)*

**FRANCHISEE:**

\_\_\_\_\_  
Entity name (if any)

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

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

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

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

## **ATTACHMENT C TO THE FRANCHISE AGREEMENT**

### **OWNERS AGREEMENT**

As a condition to the execution by Crepe Delicious Holding USA, Inc. (“we” or “us”), of a Franchise Agreement with \_\_\_\_\_ (“**Franchisee**”), each of the undersigned individuals (“**Owners**”), who constitute all of the owners of a direct or indirect beneficial interest in Franchisee, as well as their respective spouses, covenant and agree to be bound by this Owners Agreement (“**Owners Agreement**”).

#### **1. Acknowledgments.**

1.1 **Franchise Agreement.** Franchisee entered into a franchise agreement with us effective as of \_\_\_\_\_, 20\_\_\_\_ (“**Franchise Agreement**”). Capitalized words not defined in this Owners Agreement will have the same meanings ascribed to them in the Franchise Agreement.

1.2 **Role of Owners.** Owners are the beneficial owners or spouses of the beneficial owners of all of the equity interest, membership interest, or other equity controlling interest in Franchisee and acknowledge there are benefits received and to be received by each Owner, jointly and severally, and for themselves, their heirs, legal representatives and assigns. Franchisee’s obligations under the Franchise Agreement, including the confidentiality and non-compete obligations, would be of little value to us if Franchisee’s owners were not bound by the same requirements. Under the provisions of the Franchise Agreement, Owners are required to enter into this Owners Agreement as a condition to our entering into the Franchise Agreement with Franchisee. Owners will be jointly and severally liable for any breach of this Owners Agreement.

#### **2. Non-Disclosure and Protection of Confidential Information.**

2.1 Under the Franchise Agreement, we will provide Franchisee with specialized training, proprietary trade secrets, and other Confidential Information relating to the establishment and operation of a franchised business. The provisions of the Franchise Agreement governing Franchisee’s non-disclosure obligations relating to our Confidential Information are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with each obligation as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement. Any and all information, knowledge, know-how, techniques, and other data, which we designate as confidential, will also be deemed Confidential Information for purposes of this Owners Agreement.

2.2 Owners acknowledge that they could circumvent the purpose of Section 2.1 by disclosing Confidential Information to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). Owners also acknowledge that it would be difficult for us to prove whether Owners disclosed the Confidential Information to family members. Therefore, each Owner agrees that he or she will be presumed to have violated the terms of Section 2.1 if any member of his or her immediate family uses or discloses the Confidential Information or engages in any activities that would constitute a violation of the covenants listed in Section 3, below, if performed by Owners. However, Owners may rebut this presumption by furnishing evidence conclusively showing that Owners did not disclose the Confidential Information to the family member.

### **3. Covenant Not To Compete.**

3.1 Non-Competition During and After the Term of the Franchise Agreement. Owners acknowledge that as a participant in our system, they will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques which we have developed. The provisions of the Franchise Agreement governing Franchisee's restrictions on competition both during the term of the Franchise Agreement and following the expiration or termination of the Franchise Agreement are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with and perform each such covenant as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement.

3.2 Construction of Covenants. The parties agree that each such covenant related to non-competition will be construed as independent of any other covenant or provision of this Owners Agreement. If all or any portion of a covenant referenced in this Section 3 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, Owners agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 3.

3.3 Our Right to Reduce Scope of Covenants. Additionally, we have the right, in our sole discretion, to unilaterally reduce the scope of all or part of any covenant referenced in this Section 3 of this Owners Agreement, without Owners' consent (before or after any dispute arises), effective when we give Owners written notice of this reduction. Owners agree to comply with any covenant as so modified.

### **4. Guarantee.**

4.1 Payment. Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement on the dates and in the manner required for payment in the relevant agreement.

4.2 Performance. Owners unconditionally guarantee full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement on the date and times and in the manner required in the relevant agreement.

4.3 Indemnification. Owners will indemnify, defend and hold harmless us, all of our affiliates, and the respective shareholders, directors, partners, employees, and agents of such entities, against and from all losses, damages, costs, and expenses which we or they may sustain, incur, or become liable for by reason of: (a) Franchisee's failure to pay the monies payable (to us or any of our affiliates) pursuant to the Franchise Agreement, or to do and perform any other act, matter, or thing required by the Franchise Agreement; or (b) any action by us to obtain performance by Franchisee of any act, matter, or thing required by the Franchise Agreement.

4.4 No Exhaustion of Remedies. Owners acknowledge and agree that we will not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this Owners Agreement, and the enforcement of such obligations can take place before, after, or contemporaneously with, enforcement of any of Franchisee's debts or obligations under the Franchise Agreement.



4.5 Waiver of Notice. Without affecting Owners' obligations under this Section 4, we can extend, modify, or release any of Franchisee's indebtedness or obligation, or settle, adjust, or compromise any claims against Franchisee, all without notice to the Owners. Owners waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

4.6 Effect of Owner's Death. Upon the death of an Owner, the estate of such Owner will be bound by the obligations in this Section 4, but only for defaults and obligations hereunder existing at the time of death; and the obligations of any other Owners will continue in full force and effect.

## **5. Transfers.**

Owners acknowledge and agree that we have granted the Franchise Agreement to Franchisee in reliance on Owners' business experience, skill, financial resources and personal character. Accordingly, Owners agree not to sell, encumber, assign, transfer, convey, pledge, merge or give away any direct or indirect interest in this Franchisee, unless Owners first comply with the sections in the Franchise Agreement regarding Transfers. Owners acknowledge and agree that any attempted Transfer of an interest in Franchisee requiring our consent under the Franchise Agreement for which our express written consent is not first obtained will be a material breach of this Owners Agreement and the Franchise Agreement.

## **6. Notices.**

6.1 Method of Notice. Any notices given under this Owners Agreement shall be in writing and delivered in accordance with the provisions of the Franchise Agreement.

6.2 Notice Addresses. Our current address for all communications under this Owners Agreement is:

Crepe Delicious Holding USA, Inc.  
147 Citation Drive, Unit 30  
Concord, Ontario, Canada L4K 2P8

The current address of each Owner for all communications under this Owners Agreement is designated on the signature page of this Owners Agreement. Any party may designate a new address for notices by giving written notice to the other parties of the new address according to the method set forth in the Franchise Agreement.

## **7. Enforcement of This Owners Agreement.**

7.1 Dispute Resolution. Any claim or dispute arising out of or relating to this Owners Agreement shall be subject to the dispute resolution provisions of the Franchise Agreement. This agreement to engage in such dispute resolution process shall survive the termination or expiration of this Owners Agreement.

7.2 Choice of Law; Jurisdiction and Venue. This Owners Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations under this Owners Agreement, and any other claim or controversy between the parties, will be governed by the choice of law and jurisdiction and venue provisions of the Franchise Agreement.

7.3 Provisional Remedies. We have the right to seek from an appropriate court any provisional remedies, including temporary restraining orders or preliminary injunctions to enforce

Owners' obligations under this Owners Agreement. Owners acknowledge and agree that there is no adequate remedy at law for Owners' failure to fully comply with the requirements of this Owners Agreement. Owners further acknowledge and agree that, in the event of any noncompliance, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may deem just and proper. If injunctive relief is granted, Owners' only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Owners expressly waive all claims for damages they incurred as a result of the wrongful issuance.

## **8. Miscellaneous.**

8.1 No Other Agreements. This Owners Agreement constitutes the entire, full and complete agreement between the parties, and supersedes any earlier or contemporaneous negotiations, discussions, understandings or agreements. There are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Owners Agreement, other than those in this Owners Agreement. No other obligations, restrictions or duties that contradict or are inconsistent with the express terms of this Owners Agreement may be implied into this Owners Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.3 (or as otherwise expressly provided in this Owners Agreement), no amendment, change or variance from this Owners Agreement will be binding on either party unless it is mutually agreed to by the parties and executed in writing. Time is of the essence.

8.2 Severability. Each provision of this Owners Agreement, and any portions thereof, will be considered severable. If any provision of this Owners Agreement or the application of any provision to any person, property or circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Owners Agreement will be unaffected and will still remain in full force and effect. The parties agree that the provision found to be invalid or unenforceable will be modified to the extent necessary to make it valid and enforceable, consistent as much as possible with the original intent of the parties (i.e. to provide maximum protection for us and to effectuate the Owners' obligations under the Franchise Agreement), and the parties agree to be bound by the modified provisions.

8.3 No Third Party Beneficiaries. Nothing in this Owners Agreement is intended to confer upon any person or entity (other than the parties and their heirs, successors and assigns) any rights or remedies under or by reason of this Owners Agreement.

8.4 Construction. Any term defined in the Franchise Agreement which is not defined in this Owners Agreement will be ascribed the meaning given to it in the Franchise Agreement. The language of this Owners Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Owners Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation

8.5 Binding Effect. This Owners Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Owners Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors and (permitted) assigns.

8.6 Successors. References to "Franchisor" or "the undersigned," or "you" include the respective parties' heirs, successors, assigns or transferees.

8.7 Nonwaiver. Our failure to insist upon strict compliance with any provision of this Owners Agreement shall not be a waiver of our right to do so. Delay or omission by us respecting any breach or default shall not affect our rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Owners Agreement shall be cumulative.

8.8 No Personal Liability. You agree that fulfillment of any and all of our obligations written in the Franchise Agreement or this Owners Agreement, or based on any oral communications which may be ruled to be binding in a court of law, shall be our sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with us shall be personally liable to you for any reason.

8.9 Owners Agreement Controls. In the event of any discrepancy between this Owners Agreement and the Franchise Agreement, this Owners Agreement shall control.

*(Signatures on following page)*

IN WITNESS WHEREOF, the parties have entered into this Owners Agreement as of the effective date of the Franchise Agreement.

**OWNERS:**

_____	_____
_____	_____
_____	_____
_____	_____

Crepe Delicious Holding USA, Inc. hereby accepts the agreements of the Owner(s) hereunder.

**CREPE DELICIOUS HOLDING USA, INC.**

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

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





## STATE ADDENDA AND AGREEMENT RIDERS

### ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS, AND FRANCHISE DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR CREPE DELICIOUS HOLDING USA, INC.

The following modifications are made to the Crepe Delicious Holding USA, Inc. (“**Franchisor**,” “**us**,” “**we**,” or “**our**”) Franchise Disclosure Document (“**FDD**”) given to franchisee (“**Franchisee**,” “**you**,” or “**your**”) and may supersede, to the extent then required by valid applicable state law, certain portions of the Franchise Agreement between you and us dated \_\_\_\_\_, 20\_\_\_\_ (“**Franchise Agreement**”). When the term “**Franchisor’s Choice of Law State**” is used, it means Delaware. When the term “Supplemental Agreements” is used, it means: none.

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. This State Specific Addendum (“**State Addendum**”) will modify these agreements to comply with the state’s laws. The terms of this State Addendum will only apply if you meet the requirements of the applicable state independently of your signing of this State Addendum. The terms of this State Addendum will override any inconsistent provision of the FDD, Franchise Agreement or any Supplemental Documents. This State Addendum only applies 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 this State Addendum along with the Franchise Agreement and any Supplemental Agreements.

#### **CALIFORNIA**

The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the FDD.

California Corporations Code Section 31125 requires us to give to you a FDD approved by the Department of Financial Protection and Innovation before we ask you to consider a material modification of your Franchise Agreement.

The Franchise Agreement contains provisions requiring binding arbitration with the costs being awarded to the prevailing party. The arbitration will occur in Franchisor’s Choice of Law State, which is the State of Delaware. 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 the Franchise Agreement restricting venue to a forum outside the State of California. The Franchise Agreement may contain a mediation provision. If so, the parties shall each bear their own costs of mediation and shall share equally the filing fee and the mediator’s fees.

The Franchise Agreement requires the application of the law of Franchisor’s Choice of Law State, which is the State of Delaware. This provision may not be enforceable under California law.

Neither Franchisor nor any other person listed in Item 2 of the FDD 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. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

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

The Franchise Agreement may provide for termination upon bankruptcy. Any such provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. SEC. 101 et seq.).

Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable. Any such provisions contained in the Franchise Agreement may not be enforceable.

You must sign a general release of claims if you renew or transfer your Franchise. 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 §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).

Our website has not been reviewed or approved by the California Department of Business Oversight. Any complaints concerning the content of this website may be directed to the California Department of Financial Protection and Innovation at <https://dfpi.ca.gov/>.

Item 6 of the FDD is amended to state the highest interest rate allowed by law in California is 10% annually.

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the Commissioner.**

### **Fee Deferral**

The Department has determined that either the Franchisor has not demonstrated it is adequately capitalized or that the franchisor must rely on franchise fees to fund operations. The Commissioner has imposed a fee deferral condition, which requires that we defer the collection of all initial fees from California franchisees until we have completed all of our pre-opening obligations and you are open for business.

Payment of the Initial Franchise Fee is deferred until all of our initial obligations under the Franchise Agreement or Supplemental Agreements have been fulfilled by us and you have commenced doing business pursuant to the Franchise Agreement. This requirement has been imposed by the California Department of Financial Protection and Innovation based on our financial condition.

### **HAWAII**

The following is added to the Cover Page:

**THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A**

**FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED IN THIS FRANCHISE DISCLOSURE DOCUMENT 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 YOU OR SUBFRANCHISOR AT LEAST SEVEN (7) DAYS PRIOR TO THE EXECUTION BY YOU OR SUBFRANCHISOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN (7) DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS 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 US AND YOU.**

Registered agent in the state authorized to receive service of process:

Commissioner of Securities of the State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

The status of the Franchisor's franchise registrations in the states which require registration is as follows:

- 1 States in which this proposed registration is effective are listed on the third page of the FDD on the page entitled, "State Effective Dates."
2. States which have refused, by order or otherwise, to register these Franchises are:  
  
None
3. States which have revoked or suspended the right to offer the Franchises are:  
  
None
4. States in which the proposed registration of these Franchises has been withdrawn are:  
  
California

## **ILLINOIS**

Sections 4 and 41 and Rule 608 of the Illinois Franchise Disclosure Act states that court litigation must take place before Illinois federal or state courts and all dispute resolution arising from the terms of this Agreement or the relationship of the parties and conducted through arbitration or litigation shall be subject to Illinois law. The FDD, Franchise Agreement and Supplemental Agreements are amended accordingly.

The governing law or choice of law clause described in the FDD and contained in the Franchise Agreement and Supplemental Agreements is not enforceable under Illinois law. This governing law clause shall not be construed to negate the application of Illinois law in all situations to which it is applicable.

Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void.” The Franchise Agreement is amended accordingly. To the extent that the Franchise Agreement would otherwise violate Illinois law, such Agreement is amended by providing that all litigation by or between you and us, arising directly or indirectly from the Franchise relationship, will be commenced and maintained in the state courts of Illinois or, at our election, the United States District Court for Illinois, with the specific venue in either court system determined by appropriate jurisdiction and venue requirements, and Illinois law will pertain to any claims arising under the Illinois Franchise Disclosure Act.

Item 17.v, Choice of Forum, of the FDD is revised to include the following: “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act.”

Item 17.w, Choice of Law, of the FDD is revised to include the following: “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act.”

The termination and non-renewal provisions in the Franchise Agreement and the FDD may not be enforceable under Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Under Section 705/27 of the Illinois Franchise Disclosure Act, no action for liability under the Illinois Franchise Disclosure Act can be maintained unless brought before the expiration of three (3) years after the act or transaction constituting the violation upon which it is based, the expiration of one (1) year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to you of a written notice disclosing the violation, whichever shall first expire. To the extent that the Franchise Agreement is inconsistent with the Illinois Franchise Disclosure Act, Illinois law will control and supersede any inconsistent provision(s).

#### Fee Deferral

Payment of the Initial Franchise Fee is deferred until all of our initial obligations under the Franchise Agreement or Supplemental Agreements have been fulfilled by us and you have commenced doing business pursuant to the Franchise Agreement. This requirement has been imposed by the Illinois Attorney General’s Office based on our financial condition.

#### INDIANA

Item 8 of the FDD is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), we will not accept any rebates from any person with whom you do business or associate in relation to transactions between you and the other person, other than for compensation for services rendered by us, unless the rebate is properly accounted for and submitted to you.

Item 17 of the FDD is amended to add the following:

Indiana Code 23-2-2.7-1(7) makes it unlawful for us to unilaterally terminate your Franchise Agreement unless there is a material violation of the Franchise Agreement and termination is not in bad faith.

Indiana Code 23-2-2.7-1(5) prohibits us to require you to agree to a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Act.

The “Summary” column in Item 17.r. of the FDD is deleted and the following is inserted in its place:

No competing business for two (2) years within the Territory.

The “Summary” column in Item 17.t. of the FDD is deleted and the following is inserted in its place:

Notwithstanding anything to the contrary in this provision, you do not waive any right under the Indiana Statutes with regard to prior representations made by us.

The “Summary” column in Item 17.v. of the FDD is deleted and the following is inserted in its place:

Litigation regarding Franchise Agreement in Indiana; other litigation in Franchisor’s Choice of Law State. This language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement, including all venue provisions, is fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

The “Summary” column in Item 17.w. of the FDD is deleted and the following is inserted in its place:

Indiana law applies to disputes covered by Indiana franchise laws; otherwise Franchisor’s Choice of Law State law applies.

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the FDD, the Franchise Agreement, or Franchisor’s Choice of Law State law, if such provisions are in conflict with Indiana law.
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 under law as including any material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement relating to termination for cause, to the extent those provisions may be inconsistent with such prohibition.
3. Any provision in the Franchise Agreement that 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 Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.

4. The covenant not to compete that applies after the expiration or termination of the Franchise Agreement for any reason is hereby modified to the extent necessary to comply with Indiana Code 23-2-2.7-1 (9).
5. The following provision will be added to the Franchise Agreement:

No Limitation on Litigation. Despite the foregoing provisions of this Agreement, any provision in the Agreement which limits in any manner whatsoever litigation brought for breach of the Agreement will be void to the extent that any such contractual provision violates the Indiana Deceptive Franchise Practices Law.

## **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 (3) 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 (10) 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 twenty (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 Crepe Delicious Holding USA, Inc., 147 Citation Drive, Unit 30, Concord, Ontario, Canada L4K 2P8, or send a fax to Crepe Delicious Holding USA, Inc. at (905) 326-9305 not later than midnight of the third business day after the Effective Date.



I hereby cancel this transaction.

Franchisee: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

## **MARYLAND**

### **AMENDMENTS TO FRANCHISE DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENTS**

Item 17 of the FDD and the Franchise Agreement are amended to state: “The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Item 17 of the FDD and sections of the Franchise Agreement are amended to state: “A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the Franchise.”

Item 17 of the FDD and the Franchise Agreement are amended to state: “The Franchise Agreement provides that disputes are resolved through arbitration. A Maryland Franchise regulation states that it is unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

The Franchise Agreement and Franchise Disclosure Questionnaire are amended to state: “All representations requiring prospective franchisees to assent to a release, estoppel, or waiver of liability are not intended to nor shall they act as a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.”

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.).

### **Fee Deferral**

Item 5 of the FDD and the Franchise Agreement are revised to state: Based upon the franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement.

## **MICHIGAN**

**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.**

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

- (a) A prohibition on your right to join an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver, or estoppel which deprives you of rights and protections provided in this act. This shall not preclude you, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits us to terminate a Franchise prior to the expiration of its term except for good cause. Good cause shall include your failure to comply with any lawful provision 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 us to refuse to renew your Franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration of your inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to us and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the Franchise business are not subject to compensation. This subsection applies only if: (i) the term of the Franchise is less than five (5) years; and (ii) you are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the Franchise or you do not receive at least six (6) months' advance notice of our intent not to renew the Franchise.
- (e) A provision that permits us 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 the State of Michigan. This shall not preclude you from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits us to refuse to permit a transfer of ownership of a Franchise, except for good cause. This subdivision does not prevent us 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 transferee to meet our then-current reasonable qualifications or standards.
  - (ii) the fact that the proposed transferee is a competitor of us or our subfranchisor.
  - (iii) the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (iv) your or proposed transferee's failure to pay any sums owing to us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.
- (h) A provision that requires you to resell to us items that are not uniquely identified with us. This subdivision does not prohibit a provision that grants to us 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 us the right to acquire the assets of a Franchise for the market or appraised value of such assets if you have breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits us to directly or indirectly convey, assign, or otherwise transfer our obligations to fulfill contractual obligations to you 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.**

Any questions regarding this notice should be directed to:

State of Michigan  
Department of Attorney General  
Consumer Protection Division  
Attn: Franchise  
670 Law Building  
525 W. Ottawa Street  
Lansing, Michigan 48913  
Telephone Number: (517) 373-7117

**MINNESOTA**

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Minnesota:

1. Any provision in the Franchise Agreement which would require you to assent to a release, assignment, novation or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22 will be void to the extent that such contractual provision violates such law.
2. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota. In addition, nothing in the FDD or Franchise Agreement 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 Minnesota.
3. Minn. Rule Part 2860.4400J prohibits a franchisee from waiving his rights to a jury trial or waiving his rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes. Any provision in the Franchise Agreement which would require you to waive your rights to any procedure, forum or remedies provided for by the laws of the State of Minnesota is deleted from any agreement relating to Franchises offered and sold in the State of Minnesota; provided, however, that this paragraph will not affect the obligation in the Franchise Agreement relating to arbitration.
4. With respect to Franchises governed by Minnesota law, we will comply with Minnesota Statute Section 80C.14, Subds. 3, 4 and 5, which 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; and that consent to the transfer of the Franchise will not be unreasonably withheld.

5. Item 13 of the FDD is hereby amended to state that we will protect your rights under the Franchise Agreement to use the Marks, or indemnify you from any loss, costs, or expenses arising out of any third-party claim, suit or demand regarding your use of the Marks, if your use of the Marks is in compliance with the provisions of the Franchise Agreement and our System standards.
6. Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release. As a result, the FDD and the Franchise Agreement, which require you to sign a general release prior to renewing or transferring your Franchise, are hereby deleted from the Franchise Agreement, to the extent required by Minnesota law.
7. The following language will appear as a new paragraph of the Franchise Agreement:

No Abrogation. Pursuant to Minnesota Statutes, Section 80C.21, nothing in the dispute resolution section of this Agreement will in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80.C.
8. Minnesota Statute Section 80C.17 states that no action for a violation of Minnesota Statutes, Sections 80C.01 to 80C.22 may be commenced more than three (3) years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.
9. Item 6 of the FDD and Section 8.05 of the Franchise Agreement is hereby amended to limit the Insufficient Funds Charge to \$30 per occurrence pursuant to Minnesota Statute 604.113.

## **NEW YORK**

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 D 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 NEW YORK STATE DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, 28 LIBERTY STREET, 21<sup>ST</sup> FLOOR, NEW YORK, NY 10005, 212-416-8236. 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.**

The following information is added to the Special Risks to Consider About This Franchise page of the Franchise Disclosure Document:

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 to you.

The following is added at the end of Item 3:

Except as provided above, with regard to 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 injunction 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.

The following is added to the end of Item 4:

Neither the Franchisor, its affiliate, its predecessor, officers or general partner during the 10-year period immediately before the date of the offering circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of the franchisor held this position in the company or partnership.

The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

The following is added to the end of the “Summary” sections 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 Sections 687.4 and 687.5 be satisfied.

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.

The following is added to the end of the “Summary” section of Item 17(j), titled “Assignment of contract by Franchisor”:

However, no assignment will be made except to an assignee who in good faith and judgment of the Franchisor, is willing and financially able to assume the Franchisor’s obligations under the Franchise Agreement.

The following is added to the end of the “Summary” sections 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.

## **NORTH DAKOTA**

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring that you sign a general release, estoppel or waiver as a condition of renewal and/or assignment may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements relating to choice of law may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to liquidated damages and/or termination penalties may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.



Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Item 17(r) of the FDD and Sections 5.21 and 17.09 of the Franchise Agreement disclose the existence of certain covenants restricting competition to which Franchisee must agree. The Commissioner has held that 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, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The FDD and the Franchise Agreement are amended accordingly to the extent required by 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 (5) 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 (10) 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 Crepe Delicious Holding USA, Inc., 147 Citation Drive, Unit 30, Concord, Ontario, Canada L4K 2P8, or send a fax to Crepe Delicious Holding USA, Inc. at (905) 326-9305 not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

Franchisee:

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

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

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

Its: \_\_\_\_\_

## **RHODE ISLAND**

§ 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.” The FDD, the Franchise Agreement, and the Supplemental Agreements are amended accordingly to the extent required by law.

The above language has been included in this FDD as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement and the Supplemental Agreements, including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement, the Supplemental Agreements, and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

## **SOUTH DAKOTA**

Intentionally left blank.

## **VIRGINIA**

Item 17(h). The following is added to Item 17(h):

“Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement or Supplemental Agreements involve the use of undue influence by the Franchisor to induce a franchisee to surrender any rights given to franchisee under the Franchise, that provision may not be enforceable.”

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the FDD for Crepe Delicious Holding USA, Inc. for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 8 and 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 does 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.

## **WASHINGTON**

The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement and Supplemental Agreements 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. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

In any arbitration involving a Franchise purchased in Washington, the arbitration site shall be either in Washington or in a place as mutually agreed upon at the time of the arbitration, or as determined

by the arbitrator. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act 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, rights or remedies under the Act such as a right to a jury trial may not be enforceable. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer. The FDD, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

### **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.

*(Signatures on following page)*

### **APPLICABLE ADDENDA**

If any one of the preceding Addenda for specific states (“**Addenda**”) is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement and any other specified agreement(s) 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 and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

<input type="checkbox"/>	California	<input type="checkbox"/>	Michigan	<input type="checkbox"/>	Rhode Island
<input type="checkbox"/>	Hawaii	<input type="checkbox"/>	Minnesota	<input type="checkbox"/>	South Dakota
<input type="checkbox"/>	Illinois	<input type="checkbox"/>	New York	<input type="checkbox"/>	Virginia
<input type="checkbox"/>	Iowa	<input type="checkbox"/>	North Dakota	<input type="checkbox"/>	Washington
<input type="checkbox"/>	Indiana	<input type="checkbox"/>	Ohio	<input type="checkbox"/>	Wisconsin
<input type="checkbox"/>	Maryland				

Dated: \_\_\_\_\_, 20\_\_\_\_

#### **FRANCHISOR:**

CREPE DELICIOUS HOLDING USA, INC.

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

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

#### **FRANCHISEE:**

\_\_\_\_\_

\_\_\_\_\_

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

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

## **EXHIBIT G-2**

### **CREPE DE LICIOUS FRANCHISE**

#### **SAMPLE SYSTEM PROTECTION AGREEMENT**

This System Protection Agreement (“Agreement”) is entered into by the undersigned (“you” or “your”) in favor of Crepe Delicious Holding USA, Inc., a Delaware corporation, and its successors and assigns (“us,” “we” or “our”), upon the terms and conditions set forth in this Agreement.

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

“*Competitive Business*” means any business that: (i) sells or offers to sell products the same as or similar to the type of products sold by you in and/or from the Franchisee Territory (including, but not limited to, the products we authorize); or (ii) provides or offers to provide services the same as or similar to the type of services sold by you in and/or from the Franchisee Territory (including, but not limited to, the services we authorize), but excludes a Crepe de licious business operating pursuant to a franchise agreement with us.

“*Copyrights*” means all works and materials for which we or our affiliate have secured common law or registered copyright protection and that we allow franchisees to use, sell, or display in connection with the marketing and/or operation of a Crepe de licious business or the solicitation or offer of a Crepe de licious franchise, whether now in existence or created in the future.

“*Franchisee*” means the Crepe de licious franchisee for which you are a manager or officer.

“*Franchisee Territory*” means the territory granted to you pursuant to a franchise agreement with us.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrights, Know-how, and System.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Crepe de licious business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“*Manual*” means our confidential operations manual for the operation of a Crepe de licious business, which may be periodically modified by us.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Crepe de licious business, including “CREPE DE LICIOUS,” and any other trademarks, service marks, or trade names that we designate for use by a Crepe de licious business. The term “Marks” also includes any distinctive trade dress used to identify a Crepe de licious business, whether now in existence or hereafter created.

“*Prohibited Activities*” means any or all of the following: (i) owning, operating, or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent, or in any similar capacity) in a Competitive Business (other than owning an interest of five percent (5%) or less in a publicly-traded company that is a Competitive Business); and/or (ii) diverting or attempting to divert any business from us (or one of our affiliates or franchisees).

“*Restricted Period*” means the two-year period after you cease to be a manager or officer of Franchisee’s Crepe de licious business; provided, however, that if a court of competent jurisdiction

determines that this period of time is too long to be enforceable, then the “Restricted Period” means the 12 month period after you cease to be a manager or officer of Franchisee’s Crepe de licious business.

“*Restricted Territory*” means the geographic area within: (i) a 25-mile radius from Franchisee’s Crepe de licious business (and including the premises of the approved location of Franchisee); and (ii) a 25-mile radius from all other Crepe de licious businesses that are operating or under construction as of the beginning of the Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the “Restricted Territory” means the geographic area within a 12-mile radius from Franchisee’s Crepe de licious business (and including the premises of the approved location of Franchisee).

“*System*” means our system for the establishment, development, operation, and management of a Crepe de licious business, including Know-how, proprietary programs and products, Manual, and operating system.

**2. Background.** You are a manager or officer of Franchisee. As a result of this relationship, you may gain knowledge of our System. You understand that protecting the Intellectual Property and our System are vital to our success and that of our franchisees and that you could seriously jeopardize our entire System if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.

**3. Know-How and Intellectual Property.** You agree: (i) you will not use the Know-how in any business or capacity other than the Crepe de licious business operated by Franchisee; (ii) you will maintain the confidentiality of the Know-how at all times; (iii) you will not make unauthorized copies of documents containing any Know-how; (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 Know-how; and (v) you will stop using the Know-how immediately if you are no longer a manager or officer of Franchisee’s Crepe de licious business. You further agree that you will not use all or part of the Intellectual Property or all or part of the System for any purpose other than the performance of your duties for Franchisee and within the scope of your employment or other engagement with Franchisee. These restrictions on Know-how, Intellectual Property and the System shall not apply to any information which is information publicly known or becomes lawfully known in the public domain other than through a breach of this Agreement or is required or compelled by law to be disclosed, provided that you will give reasonable notice to us to allow us to seek protective or other court orders.

**4. Unfair Competition During Relationship.** You agree not to unfairly compete with us at any time while you are a manager or officer of Franchisee’s Crepe de licious business by engaging in any Prohibited Activities.

**5. Unfair Competition After Relationship.** You agree not to unfairly compete with us during the Restricted Period by engaging in any Prohibited Activities; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business will only apply with respect to a Competitive Business that is located within or provides competitive goods or services to customers who are located within the Restricted Territory. If you engage in any Prohibited Activities during the Restricted Period, then you agree that your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity.

**6. Immediate Family Members.** You acknowledge that you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, grandparent or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you agree that you will be presumed to have violated the terms of this Agreement if any member of your immediate family: (i) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the



Prohibited Activities; or (ii) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing that you did not disclose the Know-how to the family member.

**7. Covenants Reasonable.** You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) 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.**

**8. Breach.** You agree that failure to comply with the terms of this Agreement will cause substantial and irreparable damage to us and/or other Crepe de licious franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree that we 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, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement 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. Any claim, defense, or cause of action that you may have against us, our owners or our affiliates, or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

**9. Miscellaneous.**

a. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.

b. This Agreement will be governed by, construed, and enforced under the laws of Delaware, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

c. Each section of this Agreement, including each subsection and portion thereof, is severable. If 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.

d. You and we both believe that the covenants in this Agreement are reasonable in terms of scope, duration, and geographic area. However, we may at any time unilaterally modify the terms of this Agreement upon written notice to you by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory, and/or reducing the scope of any other covenant imposed upon you under this Agreement to ensure that the terms and covenants in this Agreement are enforceable under applicable law.

*(Signatures on following page)*

EXECUTED on the date stated below.

Date \_\_\_\_\_

Signature

\_\_\_\_\_  
Typed or Printed Name

-

## **EXHIBIT G-4**

### **AUTOMATED CLEARING HOUSE PAYMENT AUTHORIZATION FORM**

#### **Franchisee Information:**

Franchisee Name	Business No.
Franchisee Mailing Address (street)	Franchisee Phone No.
Franchisee Mailing Address (city, state, zip)	
Contact Name, Address and Phone number (if different from above)	
Franchisee Fax No.	Franchisee Email Address

#### **Bank Account Information:**

Bank Name		
Bank Mailing Address (street, city, state, zip)		
<input type="checkbox"/> Checking <input type="checkbox"/> Savings		
Bank Account No.	(check one)	Bank Routing No. (9 digits)
Bank Mailing Address (city, state, zip)		Bank Phone No.

#### **Authorization:**

Franchisee hereby authorizes Crepe Delicious Holding USA, Inc. ("Franchisor") to initiate debit entries to Franchisee's account with the Bank listed above, and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee's account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Franchisor pursuant to any agreement between Franchisor and Franchisee as well as to cover any purchases of goods or services from Franchisor or any affiliate of Franchisor. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Franchisor has received written notification from Franchisee of its termination in such time and in such manner as to afford Franchisor and the Bank a reasonable opportunity to act on it. Franchisee shall notify Franchisor of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

**NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.**