



Fresh Clinics–Licensed Professional Management Services Agreement

IMPORTANT –
PLEASE READ EVERYTHING BELOW CAREFULLY BEFORE ACCEPTING.

BY REGISTERING FOR OR USING ANY FRESH CLINICS SERVICES, SIGNING THE CONTRACTS SUMMARY, ENTERING YOUR NAME AND CLICKING “ACCEPTED AND AGREED,” OR USING ANY FRESH CLINICS SERVICES, THE PARTIES TO THIS FRESH CLINICS–LICENSED PROFESSIONAL MANAGEMENT SERVICES AGREEMENT (“FC MSA”) AGREE TO THIS FC MSA.

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1. DEFINITIONS

1.1 **Parties.** The parties to this Fresh Clinics–Licensed Professional Management Services Agreement (“**FC MSA**”) are the Licensed Professional and Fresh Clinics (each as defined below) that enter into this FC MSA in any of the ways stated above. Licensed Professional and Fresh Clinics may each be referred to as (each a “**Party**,” and collectively, the “**Parties**”).

1.2 For Purposes of this FC MSA:

1.2.1 “**Affiliate**” means, with respect to an entity, any other past, current or future entity that controls, is controlled by, or is under common control with such entity; provided that such entity shall be considered an Affiliate only for the time during which such control exists, and “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise. A list of Fresh Clinics Affiliates is set forth in the Fresh Clinics Affiliates Table at the end of the Contracts Summary.

1.2.2 “**Authorized Treatments**” means, collectively, only those non-surgical medical cosmetic and related procedures, treatments and related services performed by Treatment Providers (defined in [Section 2.5](#), below) at the applicable Med Spa for which the applicable Treatment Provider has been approved by the applicable FC Licensed Professional and Fresh Clinics to perform. The Authorized Treatments schedule for the Treatment Providers (“**Authorized Treatments Schedule**”) shall be provided by Fresh Clinics during the Med Spa onboarding process. The Authorized Treatments Schedule for each Health Practitioner may be amended with the approval of the applicable FC Licensed Professional upon written notice by Fresh Clinics from time to time in its discretion, and the Med Spa and the respective Health Practitioners should immediately review each such amended Authorized Treatments Schedule.

1.2.3 “**Client**” has the meaning set forth in [Section 2.5](#), below.

1.2.4 “**Consulting Request**” has the meaning set forth in [Section 4.4.1](#), below.

1.2.5 “**Contracts Summary**” has the meaning set forth in [Section 1.2.9](#), below.

1.2.6 “**FC Licensed Professional**” means a Licensed Professional who (a) is a registered User of the Fresh Clinics Services Platform, (b) uses the Services Platform only to perform, assist in performing or supervise the performance of Authorized Treatments, and (c) is a Party to this FC MSA.

1.2.7 “**FC Physician**” means a Physician who: (a) is a registered User of the Fresh Clinics Services Platform, (b) uses the Services Platform only to perform, assist in performing or supervise the performance of Authorized Treatments, and (c) is a party to the FC MSA.

1.2.8 “**FC Medical Director**” means an FC Physician offered by Fresh Clinics to serve as the Medical Director for one or more Med Spas.

1.2.9 “**FC Services**” has the meaning set forth in [Section 3.1.3](#), below.

1.2.10 “**Fresh Clinics**” means the Affiliate of Fresh Clinics Management, LLC (“**FC Management**”), registered and operating in the State and identified in the Fresh Clinics Contracts Summary (“**Contracts Summary**”) to which this FC MSA is attached and which the Licensed Professional signs to evidence their agreement hereto and to the other addenda to the Contracts Summary.

1.2.11 “**GFE**” means an initial medical assessment performed by a Licensed Professional to determine if a Med Spa Client is an appropriate candidate for one or more specific Treatments which, if so determined, establishes a provider–patient relationship and forms the clinical basis for the Treatment(s). (A GFE may also be referred to as a “good faith examination,” “initial exam,” “physical exam” or “initial consult,” and is referred to herein as a GFE.)

1.2.12 “**Licensed Professional**” means a person who is a (a) Physician, or (b) a licensed and certified advanced practice registered nurse (“**NP**”) or physician assistant (“**PA**” and each a “**Midlevel Practitioner**”), in each case under the direct supervision of a Physician, each of whom performs, assists in performing or supervises

the performance of Treatments, is licensed to practice medicine in the State, has the requisite education, training, experience, and is otherwise qualified and competent to perform the Treatments, and whose scopes of practice includes the Treatments.

1.2.13 **“Med Spa”** means a business (person or entity) that both: (a) owns and operates the non-medical aspects of cosmetic medical spas in support of the Licensed Professionals in providing Treatments to their Patients, and (b) is a registered User of the Services Platform.

1.2.14 **“Med Spa-Arranged Medical Director”** has the meaning set forth in [Section 2.3](#), below.

1.2.15 **“Med Spa MSA”** has the meaning set forth in [Section 3.1.1](#), below.

1.2.16 **“Parties”** has the meaning set forth in Section 1.1. Notwithstanding anything to the contrary in this FC MSA, Fresh Clinics will be deemed to be entering into a separate two-party (bilateral) FC MSA with each individual Licensed Professional on a two-party (bilateral) basis, not with multiple Licensed Professionals.

1.2.17 **“NP”** has the meaning set forth in [Section 1.2.11](#), below.

1.2.18 **“PA”** has the meaning set forth in [Section 1.2.11](#), below.

1.2.19 **“Patients”** are Clients of Med Spas that become patients of the Physician and other applicable Licensed Professionals in the manner set forth in this FC MSA.

1.2.20 **“Physician”** means a physician licensed to practice medicine in the State, who has the requisite education, training, experience, and is otherwise qualified and competent to perform the Treatments, and whose scope of practice includes the Treatments.

1.2.21 **“Services Platform”** means the online services platform available to Users through the FC Management network of websites at www.FreshClinics.com and related subdomains.

1.2.22 **“State”** means the U.S. state (or District of Columbia) in which the Med Spa and Patient are located and the subject Treatments are performed.

1.2.23 **“TOS”** means the Terms of Service governing the terms of use of the Site and the FC Services (defined below), including the Services Platform, at [Terms of Service](#).

1.2.24 **“Treatment Provider”** has the meaning set forth in [Section 3.5](#), below.

1.2.25 **“Treatments”** means elective, non-surgical, cosmetic medical and related procedures, wellness and health treatments, and related services performed at the applicable Med Spa.

1.3 **Capitalized terms in this FC MSA not specifically defined in this FC MSA shall have their respective meanings set forth in the TOS.**

2. BACKGROUND.

2.1 **Licensed Professional Consulting Services for Med Spas.** Members of the public may from time to time wish to receive Treatments and purchase related Products (as defined in the TOS). Certain of the Treatments and certain related Products, including but not limited to cosmetic injectables and other prescription medicines (**“Substances”**), require a Physician and/or other Licensed Professional to examine a Med Spa’s Client, establish a Physician-Patient relationship, prepare a treatment plan, and authorize, procure, supervise and/or administer Treatments under applicable Law and to be available to provide related medical consulting services (collectively, **“Consulting Services”**). For purposes of this FC MSA, **“Law”** means any law, statute, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction, or other applicable regulatory body, including but not limited to medical, nursing, pharmacy and other healthcare provider and regulatory boards.

2.2 Med Spas own and operate the non-medical aspects of cosmetic medical spas in support of the Physicians and Midlevel Practitioners in providing Authorized Treatments to the FC Physician's Patients where the FC Licensed Professionals and Med Spas use the Services Platform as described in this FC MSA.

2.3 In performing and supporting the performance of Treatments, Med Spas are not required to use the Consulting Services of FC Licensed Professionals or even the Services Platform. Where the Med Spa does not use the Consulting Services of FC Licensed Professionals, subject to the terms of the Agreement (as defined in the Contracts Summary), it may still use the Services Platform solely to purchase Products for Treatments, including to purchase Substances and to maintain EMR (defined below), only on the condition that the Med Spa has arranged for other Licensed Professionals, including Physicians, to supervise the Treatments in accordance with all applicable Laws ("**Med Spa-Arranged Licensed Professionals**" and "**Med Spa-Arranged Physicians**," respectively), and on the further condition that, as between the Med Spa and Fresh Clinics (and its Affiliates), the Med Spa is exclusively responsible for the Treatments, its own Med Spa-Arranged Licensed Professionals, and its own Clients (defined below). In such cases, Med Spa shall defend, indemnify and hold harmless Fresh Clinics and its Affiliates against any and all Claims related to such Treatments in accordance with Section 10.1.1, "Indemnification by Med Spa," of the FC-MS Agreement. Applicable Product orders will require fully compliant prescriptions from and shall be in the name of the applicable Med Spa-Arranged Licensed Professional for each such Treatment.

2.4 The Fresh Clinics Services Platform may be used for, and Fresh Clinics supports, only the Authorized Treatments listed in the Authorized Treatments Schedule for each respective Treatment Provider and no other procedures. If a Treatment is not listed on the Authorized Treatments Schedule, or if Fresh Clinics does not have an FC-Licensed Professional or the Med Spa does not have any Treatment Providers for a particular Treatment that meet the requirements for such Treatment (in each case, a "**Non-Authorized Treatment**"), the Med Spa may only use the FC Platform to purchase Products for the Non-Authorized Treatment and prepare and use related EMR; provided, however, that it is fully supervised and supported by appropriate Med Spa-Arranged Licensed Professionals, including a Med Spa-Arranged Medical Director, in accordance with all applicable Laws.

2.5 Each Med Spa provides to the FC Licensed Professionals various management and administrative services, including but not limited to, marketing to potential Patients (who are the Clinics' existing or prospective clients ("**Clients**")); providing examination and related facilities, equipment and qualified personnel to administer Substances under the supervision of FC Licensed Professionals as described in this FC MSA; inventorying, ordering, storing and supplying Substances and other Products; receiving and collecting payments from Patients arising out of or related to Treatments or Products ("**Patient Payments**") using POS terminals connected to the Services Platform, which Patient Payments are automatically transferred directly to the applicable Med Spa for the payment of the FC Licensed Professionals' Consulting Fees and other Fees (defined in Section 6, below) as more fully described in Section 6, below, and in Section 4.2.2 of the Med Spa MSA; using appropriate FC Services to process and account for Patient Payments and related transactions; and providing medical record inputting and other services and resources for Licensed Professionals ("**Med Spa Services**"). FC Licensed Professionals may wish to avail themselves of Med Spa Services with respect to the Med Spa's Clients in order to devote their full efforts on a concentrated basis to providing their professional Consulting Services, and at the same time in their discretion provide their Consulting Services to the Clients who, upon their agreement, would become the FC Licensed Professionals' Patients as described above and more fully below.

3. RELATIONSHIP OF THIS FC MSA WITH THE CLINIC MSA AND THE FC-MS AGREEMENT

3.1 Related Agreements.

3.1.1 **Separate Med Spa MSAs.** Each time a Med Spa engages an FC Licensed Professional, to perform or delegate and supervise the performance of Authorized Treatments on Patients and provide related Consulting Services to Clinics using the FC Platform as described herein, the Med Spa and each such FC Licensed Professional enter into a separate Licensed Professional Consulting and Med Spa Management Services Agreement in the form of Addendum C to the TOS ("**Med Spa MSA**"). Under the Med Spa MSA, Med Spa in turn provides certain management, administrative and support services to and for the applicable FC Licensed Professionals as their Management Services Organization with respect to the Med Spa's Clients and FC Licensed Professional's Patients. Fresh Clinics is an express third-party beneficiary under each Med Spa MSA. Upon such engagement, the Med Spa MSA shall constitute a binding contract between the Med Spa and each such FC Licensed Professional. Fresh Clinics is an express third-party beneficiary under each Med Spa MSA.

3.1.2 **The FC-MS Agreement.** Fresh Clinics provides similar, complementary, and/or related services of a general nature directly to Clinics related to Authorized Treatments and the Clinics' Clients pursuant to a separate Fresh Clinics – Med Spa Services Agreement in the form of Addendum B to the TOS (“**FC-MS Agreement**”). Fresh Clinics and/or FC Management provide their respective services to Med Spa primarily but not exclusively through the Services Platform.

3.1.3 **This FC MSA.** Fresh Clinics provides to FC Licensed Professionals certain complementary management and administrative services of a general non-medical nature related to such Treatments and their Patients. Fresh Clinics and/or its Affiliate, FC Management, provides its respective services to Licensed Professionals and Med Spas (for purposes of this FC MSA, also collectively, “**FC Services**”) primarily but not exclusively through the Services Platform. This FC MSA sets forth certain terms and conditions for such FC Services that relate primarily to the Treatments performed on or related to Patients and/or the Consulting Services the Licensed Professionals provide to Med Spas. This FC MSA is in the form of Addendum A to the TOS, as well as to the Contracts Summary. ***A separate FC MSA is entered into on an individual (bilateral) basis between each respective Licensed Professional and Fresh Clinics when the Licensed Professional agrees to the TOS, a corresponding Med Spa MSA, and this FC MSA, and becomes a registered User of the Services Platform. By signing the Contracts Summary, registering for or using any FC Services, entering the Licensed Professional's name and clicking “accepted and agreed” to this FC MSA, or using any FC Services, the respective Licensed Professional agrees to this FC MSA.***

3.1.4 **Binding Agreement.** This FC MSA constitutes a binding contract between Fresh Clinics and each Licensed Professional. Each Licensed Professional represents that the Licensed Professional has read, understands and agrees to this FC MSA, and that his or her consent to it is without limitation or qualification.

3.1.5 **Changes to this FC MSA.** Fresh Clinics reserves the right, in its sole discretion, to change the terms of this FC MSA at any time, effective thirty (30) days after posting of the revised FC MSA on the Site. Fresh Clinics encourages each Licensed Professional to revisit this FC MSA as so posted whenever he or she has a question and from time to time, as it may be updated frequently. The Licensed Professional's continued use of the Services Platform or any FC Service after such posting or notification constitutes the Licensed Professional's acceptance of any and all revisions. If Licensed Professional does not agree to the revised FC MSA, he or she must terminate this FC MSA pursuant to the termination provisions below, and upon such termination immediately discontinue his or her use of the Services Platform and all FC Services. Except solely as provided in this paragraph and the severability provision of this FC MSA, this FC MSA may not be changed without the signature of an authorized executive officer of Fresh Clinics and an authorized executive officer of FC Management, each expressly consenting to the change.

3.2 **Primary Purpose.** The primary purpose of this FC MSA, the Med Spa MSA, the FC-MS Agreement, and the Agreement (as defined in the TOS) is to secure for the Licensed Professionals the FC Services and the Med Spa Services and to permit the Licensed Professionals to devote their efforts on a concentrated and continuous basis to the provision of medical services to Patients, and to secure for Patients and their respective Med Spa the applicable Licensed Professionals' Consulting Services and the applicable FC Services.

3.3 **Engagement of Fresh Clinics to Provide FC Services.** Subject to and during the Term of this FC MSA between the Licensed Professional and Fresh Clinics, the Licensed Professional hereby appoints and engages Fresh Clinics to provide the FC Services.

3.4 **Management Authority of the Med Spa and Fresh Clinics.**

3.4.1 Subject to [Section 3.5](#), each Med Spa shall have full responsibility and authority to operate and manage the non-medical day-to-day aspects of its operations within the scope of the Med Spa Services in any reasonable manner that the Med Spa deems appropriate, and to perform the specific functions set out elsewhere in this Med Spa MSA, all without the prior consultation or approval of Fresh Clinics, except as otherwise required by this Med Spa MSA or applicable Law. Such operational decisions may include, without limitation, its hours of operation, the locations and maintenance of its facilities, the selection, procurement, use of, and ownership of clinical equipment and supplies, all management decisions over Med Spa personnel, and other ongoing, major, or central operations of the Med Spa.

3.4.2 Subject to [Section 3.5](#), Fresh Clinics shall have full responsibility and authority to operate and manage the non-medical day-to-day aspects of its operations within the scope of the FC Services in any reasonable manner that Fresh Clinics deems appropriate, and to perform the specific functions set out elsewhere in this FC MSA, all without the prior consultation or approval of the Med Spa except as otherwise required by this FC

MSA or applicable Law. Such operational decisions may include, without limitation, the features and functionality of the Services Platform, including but not limited to its support and updating, provision and scheduling of educational training services and resources, the forms of Documentation to be provided, the supply chain logistics for Products, and other FC Services.

3.5 **Authority of the Licensed Professionals.** Under the FC MSA, the Med Spa MSA, this FC-MS Agreement, and the Agreement, *the Licensed Professionals shall have exclusive authority and responsibility for (i) all decision-making relating to the delivery of professional medical care, including all Consulting Services to Clinics and all medical care to their respective Patients; and (ii) setting the professional fees charged by the Licensed Professionals for their Consulting Services.* Such fees are described more fully in Section 6.1, below. (For the avoidance of doubt, the parties to this Med Spa MSA and the Agreement have agreed on such Consulting Fees for GFEs, as set forth in the Medical Director Fee Schedule available through the Services Platform at: [Medical Director Fee Schedule](#).) The Licensed Professionals shall have authority within their respective scopes of practice and competence to, among other things, obtain a Patient's medical history, examine the Patient, make a diagnosis, develop a treatment plan, determine whether and what Treatments or other Consulting Services are appropriate for each Patient with respect to such Treatments; determine the appropriate Substances (if any) to prescribe and procure for a specific Patient; delegate, oversee, supervise, and ensure the proper qualifications, quality of services, and other applicable medical regulatory compliance of all Midlevel Practitioners (as applicable) and Med Spa personnel engaged in Treatment-related activities in accordance with applicable Law; and administer and prescribe any other related professional medical care to their Patients. Such oversight and quality assurance includes, among other things, ensuring proper medical recordkeeping and confirming proper training of Med Spa-staffed registered nurses (each an "RN") and any other Med Spa-employed, licensed, qualified healthcare practitioners permitted under applicable Law to administer Substances or perform other Treatments (collectively with RNs, each a "Treatment Provider"). Neither Fresh Clinics nor any Med Spa or its Treatment Providers shall interfere with the exercise of the Licensed Professionals' medical judgment or in their care or treatment of their Patients.

3.5.1 "Treatment Provider" may also include Midlevel Practitioners who own or operate the Med Spa and receive Consulting Services of FC Physicians. In such cases, for purposes of the applicable Med Spa MSA, the FC Physician would be the supervising Licensed Professional and the Med Spa's Midlevel Practitioner would have the roles of Med Spa and Treatment Provider. The Midlevel Practitioner would also function as the Med Spa's own Midlevel Practitioner, obviating the need for a Consulting Request to be made to (other) Midlevel Practitioners. In such case the Midlevel Practitioner functioning in the role of Med Spa and Treatment Provider, would not be an FC Licensed Professional for purposes of Section 5 of the Med Spa MSA or the Fees provision of this FC MSA, and would not be entitled to Consulting Fees as an FC Licensed Professional but would be a Licensed Professional for other purposes of this FC MSA, including, without limitation, Section 4.5 and Section 5.3 of this FC MSA requiring the Midlevel Practitioner to have appropriate collaborative and prescriptive agreements with each applicable Licensed Physician, including any Med Spa-Arranged Physicians and for purposes of Section 5.2.5 of the FC-MS Agreement requiring the Med Spa's staff to have the required education, training, skill, experience, and qualifications to perform the Med Spa Services, including all Treatments. Such Midlevel Practitioners would also be Treatment Providers for purposes of the FC-MS Agreement.

3.6 **Practice of Medicine.** Notwithstanding any provision in any agreement to the contrary, this FC MSA, the FC-MS Agreement, the Med Spa MSA and the Agreement, separately or together, are not intended to (i) constitute the use of a medical license or the practice of medicine by anyone other than a Licensed Professional; (ii) aid any Clinic, Fresh Clinics, FC Management, or any other unlicensed person or entity or association to practice medicine; or (iii) create any other arrangements in violation of any applicable Law. The Physician first and foremost, and the Midlevel Practitioners, if any, supervised by the Physician with respect to each Patient of theirs, are solely responsible to such Patients for the nature and character of all Consulting Services, and all other medical, professional and ethical matters. As between such Physician, on the one hand, and such Midlevel Practitioners, the Midlevel Practitioners will be under the direct medical supervision of the Physician, and agree to follow the Physician's direction in a professional manner in accordance with applicable Law. As between such Licensed Professionals, on the one hand, and the Med Spa's Treatment Providers, the Treatment Providers will be under the medical supervision of the Licensed Professionals, and agree to follow the Licensed Professionals' direction in a professional manner in accordance with applicable Law. In case of a conflict between directions of the Physician and a Midlevel Practitioner, the directions of the Physician shall control.

3.7 **Facilitation through the FC Services.** While not a party to any Physician-Patient or Midlevel Practitioner-Patient relationship, Fresh Clinics facilitates and otherwise supports such relationships through the FC Services. Without limitation, the Services Platform facilitates the Med Spa's access to the accepting Licensed Professionals by videoconference or other appropriate telehealth modality to consult with Patients; facilitates the communication of instructions by Licensed Professionals to qualified Treatment Providers on how to administer

cosmetic injectables to Patients at the Med Spa and perform other Authorized Treatments; and otherwise helps coordinate the provision of Consulting Services between the applicable Licensed Professionals and Med Spas Through the Services Platform, Physicians and appropriate Midlevel Practitioners may authorize the procurement and administering of Substances and other Treatments for Patients making appointments through Med Spas, and Med Spas may store and make available such Substances and other supplies to such Patients, all as permitted under applicable Law. As part of the FC Services, Fresh Clinics uses Protected Health Information (“PHI,” as defined in the BAA) to perform the FC Services, including data aggregation services for its Customers to, among other things, help improve the standard of care for Patients.

3.8 Independent Contractors.

3.8.1 The Parties to this FC MSA and the Agreement agree that, except as expressly provided herein otherwise, the Licensed Professionals, Med Spas, and Fresh Clinics are not employees, employers, partners, or joint venturers of one another, but are independent contractors as between and among them. No such party shall be authorized and shall not hold itself out as being authorized to bind any other party, and shall not make any agreements or representations on any other party’s behalf without that party’s prior written consent. The Physician must not subcontract any part of the Consulting Services to any third party, but may delegate certain Consulting Services to Midlevel Practitioners and Treatment Providers under the Physician’s supervision as may be allowed by applicable Law, and the terms of the applicable Med Spa MSA or this FC MSA.

3.8.2 Without limiting the generality of [Section 3.8.1](#), no Licensed Professional or Med Spa will be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by Fresh Clinics to its employees, and Fresh Clinics will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining workers’ compensation insurance on behalf of any Licensed Professional, Midlevel Practitioner, Med Spa or Treatment Provider. Each Licensed Professional and Med Spa shall be responsible for, and shall defend and indemnify Fresh Clinics against, all such taxes or contributions, including penalties and interest, as applicable. Anyone employed or engaged by a Licensed Professional or Med Spa in connection with the performance of the Services shall be the respective Licensed Professional’s or Med Spa’s employee or contractor and such Licensed Professional or Clinic, as the case may be, shall be fully responsible for them and shall also defend and indemnify Fresh Clinics against any claims made by or on behalf of any such employee or contractor.

3.9 **Confidential Relationship.** Upon the sharing of any Patient or prospective Patient PHI, regardless of whether a Patient-Physician/Licensed Professional relationship is formed, all Licensed Professionals and Med Spas agree to comply with all Confidentiality and Privacy requirements under this FC MSA, the Med Spa MSA, the FC-MS Agreement, the TOS, Fresh Clinics’ Privacy Policy, applicable Business Associate Agreements in the form attached to the TOS as Addendum D (“BAA”), Notices of Privacy Practices in the form attached to the TOS as Addendum E (“NPP”), other privacy-related policies of Fresh Clinics, and all applicable Law, including but not limited to HIPAA, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, and the Privacy Rule.

3.9.1 By entering into a FC MSA, the Parties are also entering into separate BAAs in the applicable form or forms attached as Addendum D to the TOS with respect to each Patient, which are incorporated herein by this reference. For purposes of such BAAs, the Licensed Professionals and the Med Spas, on the one hand, are each Covered Entities and Fresh Clinics, on the other hand, is a Business Associate.

4. FC SERVICES

4.1 **Provision of FC Services.** Fresh Clinics provides services to both Med Spas and to Licensed Professionals. These are summarized below.

4.2 **FC Services for Med Spas.** Pursuant to the FC-MS Agreement, Fresh Clinics agrees to provide three broad categories of services to Med Spas: Platform Services, Membership Services and FC Medical Director Services.

4.2.1 The Platform services include a subscription to use FC Management’s online Services Platform and the FC App (defined in and) pursuant to the TOS and EULA, respectively (collectively, “**Platform Services**”). The Platform Services include electronic medical records storage and retrieval, inventory control, supply chain management, and Updates to the Services Platform from time to time in FC Management’s discretion.

4.2.2 The Membership Services for Med Spas are a suite of standard services that may include:

- access to FC Licensed Professionals to perform GFEs;
- access to exclusive clinical and other Med Spa-related training and training materials;
- access to and facilitation of purchasing products, particularly Substances;
- access to supply chain management resources for Substances that Med Spas may order after Licensed Professionals issue appropriate authorizations to procure for the Licensed Professional's Patients;
- making available or providing Point Of Sale ("**POS**") equipment and related financial administration services;
- access to Fresh Clinics community events; and
- access to clinical and complication guidelines and other resources for Core Treatments (defined below).

4.2.3 In order to receive FC Medical Director Services, a Med Spa must subscribe to one of a number of different medical oversight packages or tiers. These tiers may correspond in general to different sets of Treatments for which FC Medical Director Services are provided. As of the revision date of this FC-MS Agreement, these tiers are: "Bloom," "Blossom" and "Flourish." (A Med Spa may have no need, however, to subscribe to any of these tiers in order to receive FC Medical Director Services where, for example, the Med Spa has a Med Spa-Arranged Medical Director.)

4.2.4 Where a Med Spa does not have a Med Spa-Arranged Medical Director, Fresh Clinics offers to Med Spas different suites or levels of Medical Director services provided by an FC Medical Director ("**FC Medical Director Services**"). (FC Medical Director Services may be delegated in the FC Medical Director's discretion and as allowed by applicable Law to other FC Licensed Professionals.) A current list of FC Medical Director Services can be found at: [Fresh Clinics Treatment Support](#).

4.2.5 FC Medical Director Services for Med Spas are presently divided into two levels, Core and Connect. A current list of Core and Connect Services can be found at: [Fresh Clinics Treatment Support](#).

4.2.5.1 "**Core Services**" provides the most comprehensive level of support. It generally includes offering to connect the Med Spa with a FC Medical Director to supervise, conduct GFEs, prepare Treatment plans, and related activities for specified Treatments, including through delegating to appropriate Midlevel Practitioners in the FC Medical Director's sole discretion. Core Services also include providing suggested protocols and standard operating procedures (collectively, "**Treatment Protocols**") for different Treatments to assist the FC Medical Director for a limited set of Treatments. The FC Medical Director may use, modify, or reject, in whole or in part, in their sole professional medical judgment any of the suggested Treatment Protocols.

4.2.5.2 "**Connect Services**" is similar to Core Services but does not include providing Treatment Protocols for any Treatments outside of those provided for Core Services. For any Treatments outside of the Core Services, FC Medical Directors whose scopes of practice include Treatments supported by the Connect Services may in their sole discretion elect to accept a Consulting Request for such a Treatment. Whenever it accepts such a request, the FC Medical Director shall be solely responsible for providing to the Med Spa all Treatment Protocols for Connect Services and all other Consulting Services under the Med Spa MSA. The FC Medical Director shall also be solely responsible for setting the fee for their Consulting Services for each such Treatment included in the Connect Services, the amounts of which may be subject to negotiation between the FC Medical Director and Med Spa.

4.3 **FC Services for Licensed Professionals.** During the Term of this FC MSA and subject to its terms and to the TOS, Fresh Clinics or one or more of its Affiliates shall provide to the applicable FC Licensed Professional the Platform Services and other FC Services that Fresh Clinics and/or FC Management may offer from time to time. In general, the FC Services shall include, without limitation, the Platform Services and Treatment Protocols for the Core Services.

4.4 **Engagement between Licensed Professionals and Med Spas.**

4.4.1 Each Med Spa may request Consulting Services from FC Licensed Professionals through the Fresh Clinics Services Platform (each a "**Consulting Request**"). Consulting Requests for Treatments will be for an individual Client of the Clinic, and shall include the information required by the Services Platform, such as but not limited to:

4.4.1.1 the proposed Treatment, including Substances sought to be authorized and administered, date and time of the proposed Treatment, and location (city, state) where the Treatment will be performed;

4.4.1.2 the Client's name, address, date of birth, basic medical history, any prior Treatments, general suitability for the proposed Treatment and other relevant information;

4.4.1.3 names and qualifications of the Treatment Providers, including any Med Spa dual-role Midlevel Practitioners, who will participate in the Treatment;

4.4.1.4 such other information as may be required by the Services Platform or the applicable Licensed Professionals.

4.4.2 FC Licensed Professionals may accept a Consulting Request for the applicable Client through the Services Platform. Upon such acceptance by an FC Licensed Professional, a separate Med Spa MSA shall be deemed to be entered into by and between each such FC Licensed Professional and each such Med Spa with respect to the Med Spa's Client. If the Consulting Request is for a GFE and a treatment plan is developed, a Licensed Professional-Patient relationship shall be formed between the applicable FC Licensed Professionals and the Client who, at that point, becomes a Patient of the FC Licensed Professionals.

4.4.3 As between Fresh Clinics and its Affiliates and the FC Licensed Professional, the FC Licensed Professional shall ensure that the FC Licensed Professional has all required, appropriate and/or applicable collaborative, prescriptive, management services and/or other agreements with any other applicable Licensed Professional involved in the Consulting Request. As an example, and not a limitation, an FC Physician delegating to another FC Licensed Professional (i.e., a Midlevel Practitioner) or to a Med Spa-Arranged Licensed Professional or to a dual-role Med Spa Midlevel Practitioner shall ensure that it has any required collaborative and/or prescriptive agreements with each such Licensed Professional.

4.5 **Engaging FC Services.** During the term of this FC MSA and subject to its terms and to the TOS, the Licensed Professional must have an active Account as a registered User of the Services Platform. In order to engage any FC Services, the following apply:

4.5.1 Clinics may issue Consulting Requests as described above.

4.5.2 The FC Licensed Professional may select themselves as available (or not) in the Services Platform at any time. When an FC Licensed Professional indicates he or she is available, but not otherwise, the FC Licensed Professional may from time to time receive Consulting Requests from Clinics through the Services Platform. The FC Licensed Professional may accept a Consulting Request through the FC App in the FC Licensed Professional's sole discretion.

4.5.3 The FC Licensed Professional acknowledges that there is no guarantee that a Med Spa will make a Consulting Request, and Med Spa acknowledges that there is no guarantee that an FC Licensed Professional will accept a Consulting Request.

4.5.4 The Licensed Professional is not required to use the FC App for any minimum period. Subject to [Section 7](#), Privacy, and [Section 8.9](#), Restrictions, nothing in this FC MSA or the Agreement restricts any FC Licensed Professional from engaging in any other business, work or employment without the use of the Services Platform at any time.

4.5.5 The FC Licensed Professional shall immediately notify Fresh Clinics and each applicable Med Spa of any actual or potential complaint or claim, and all relevant details of such complaint or claim, received by the Licensed Professional in respect of the Licensed Professional providing Consulting Services for the same Patient, Clinic, Treatment Provider or Med Spa Service, of any response or proposed response, and of related communications.

5. LICENSED PROFESSIONAL'S CONSULTING SERVICES

5.1 **Acceptance of a Consulting Request.** If the FC Licensed Professional accepts a Med Spa's Consulting Request, the FC Licensed Professional acknowledges that a Med Spa MSA is formed automatically

between the FC Licensed Professional and the Med Spa, and the FC Licensed Professional will have a direct contractual relationship with the Med Spa with respect to (i) the Consulting Services the FC Licensed Professional agrees to provide, as well as a professional medical relationship with the Patient that is the subject of the Consulting Request and Consulting Services, and (ii) the Med Spa Services the Med Spa agrees to provide to the FC Licensed Professional. Such relationships shall be governed by the applicable Med Spa MSA.

5.2 General Duties.

5.2.1 In general, FC Licensed Professional will receive Consulting Requests from and supervise up to twenty different Clinics at any one time. FC Licensed Professional Consulting Request responsibilities include, but are not limited to:

5.2.1.1 being on call at reasonable times for telehealth calls from Med Spas and their Clients, performing good faith examinations, being on call to provide complication management services with respect to Treatments performed at the FC Licensed Professional's assigned Med Spas, and providing other related Consulting Services;

5.2.1.2 complying with applicable limitations, conditions and requirements under applicable State Law, including without limitation with respect to the delegation to Midlevel Practitioners of medical authority, including the number of such Midlevel Practitioners to whom the FC Physician may delegate such authority at any one time.

5.2.2 FC Physician supervisory responsibilities include, but are not limited to:

5.2.2.1 supervising and/or being available to consult with and supervise such Midlevel Practitioners as the FC Physician's discretion determine are appropriate and helpful to provide their Consulting Services, which may include the performance of good faith examinations, authorizations to procure and administer, perform Treatments, proper auditing of Treatments by the Med Spas, providing Treatment Protocols for Connect Services Treatments, and the provision of all other necessary or appropriate Consulting Services;

5.2.2.2 supervising and/or being available to supervise applicable Med Spa Treatment Providers with respect to the performance of Treatments;

5.2.2.3 ensuring that applicable Midlevel Practitioners and Treatment Providers have the proper qualifications and training;

5.2.2.4 reviewing and supervising proper storage and management of Substances; and

5.2.2.5 reviewing and ensuring that medical records, including EMR, are proper and properly maintained.

5.2.3 A Midlevel Practitioner's responsibilities may include, but are not limited to:

5.2.3.1 providing Consulting Services to Clients and medical services to Patients under the direct medical supervision of the supervising Physician, following the Physician's directions in a professional manner in accordance with applicable Law, and, subject to such supervision, being exclusively responsible vis-à-vis Fresh Clinics for exercising their professional medical judgment with each Patient and the respective Med Spa in performing the Midlevel Practitioner's Consulting Services;

5.2.3.2 being responsible for entering into and complying with applicable Law governing any required, appropriate and/or applicable management services, collaborative, prescriptive, or other agreements for the Consulting Services to be provided to the respective Med Spa and Patient in relation to the applicable Treatment;

5.2.3.3 performing GFEs if and when properly delegated by the supervising Physician, providing where appropriate authorizations to procure and/or administer, performing Treatments, and providing other necessary or appropriate Consulting Services;

5.2.3.4 preparing an appropriate treatment plan for applicable Patients and their respective Treatments;

5.2.3.5 supervising and/or being available to supervise applicable Treatment Providers with respect to the administering of Substances and performance of other appropriate Treatments;

5.2.3.6 assisting the consulting Physician to ensure that the applicable Treatment Providers have the proper qualifications and training;

5.2.3.7 reviewing and supervising the proper storage and management of Substances; and

5.2.3.8 preparing, reviewing and ensuring that medical records are proper and properly maintained.

5.3 Licensed Professional's Representations, Warranties and Covenants. Each FC Licensed Professional represents, warrants and covenants, for himself or herself, to Fresh Clinics that:

5.3.1 entering into this FC MSA does not, and the FC Licensed Professional's performance of the Consulting Services, do not and will not conflict with or result in any breach or default under any other agreement to which the FC Licensed Professional is subject;

5.3.2 the FC Licensed Professional is not a party to any pending, or, to the Licensed Professional's knowledge, threatened, claims, actions or proceedings arising out of the FC Licensed Professional's profession, and there are no unsatisfied settlements or judgments against the FC Licensed Professional;

5.3.3 the FC Licensed Professional has the required education, training, skill, experience, and qualifications to perform the FC Licensed Professional's respective Consulting Services;

5.3.4 the FC Licensed Professional shall during the Term perform such Consulting Services in accordance with each FC MSA to which the FC Licensed Professional is a party, and all applicable Law;

5.3.5 without limiting the generality of the foregoing, the applicable FC Licensed Professional shall promptly and properly prepare or cause to be prepared all appropriate or required electronic medical records ("EMR") of all examinations, treatment plans, treatments, Treatments, prescriptions, consultations, and other medical Consulting Services performed for Patients by the FC Licensed Professional using the Services Platform, along with any supporting documentation as required by Fresh Clinics' policies and procedures ("EMR Reports"), and shall complete such records no later than forty-eight (48) hours after each Patient visit. Such obligations shall survive any termination or expiration of this FC MSA. Fresh Clinics shall make available to the FC Licensed Professionals and Clinics such EMR as may be required by applicable Law;

5.3.6 subject to [Sections 3.5](#) and [3.6](#), the FC Licensed Professional shall comply with all applicable Training Requirements and FC Standards, and shall perform the Consulting Services in accordance with the policies, procedures, manuals, and training provided by Fresh Clinics, as such may be established, amended or supplemented from time-to-time;

5.3.7 the FC Licensed Professional has and will continue to have during the Term the required education, training, skill, experience, and qualifications to perform the Consulting Services;

5.3.8 the FC Licensed Professional shall perform the Consulting Services in a professional, courteous, and competent manner in accordance with best industry standards for similar services, and shall devote sufficient resources to ensure that the Consulting Services are performed in a timely and reliable manner;

5.3.9 the FC Licensed Professional shall comply with all applicable professional and industry standard of care and ethics codes and guidelines, for Physicians including but not limited to the American Medical Association and American Medical Board Code of Ethics, and for Midlevel Practitioners that may include but is not limited to the American Association or American Academy of Physician Assistants and American Association of Nurse Practitioners' respective standards of practice, as applicable, as well as any applicable state-specific standards of care;

5.3.10 the FC Licensed Professional shall maintain at all applicable times all licenses, permits, registrations required to perform the Consulting Services, and accreditation in good standing in all appropriate professional societies and organizations, including, without limitation, that each Physician shall maintain an

unrestricted license to practice medicine in the State, and each Midlevel Practitioner shall maintain an unrestricted license to practice as a registered professional nurse in the State and certification as an NP/PA, as applicable;

5.3.11 any Midlevel Practitioner (NP or PA) also acting in a dual role as a Med Spa Treatment Provider as described in [Section 3.5.1](#) shall have entered into and shall maintain at all relevant times appropriate collaborative and prescriptive agreements with each respective FC Licensed Physician and Med Spa-Arranged Physician who provides Consulting Services for Med Spa Treatments, all in accordance with applicable Law;

5.3.12 the FC Licensed Professional is current on all applicable continuing professional education (“CPE”) requirements, including, but not limited to, any minimum CPE requirements imposed by applicable Law or specialty boards, and will, during the term of this FC MSA, remain current on such CPE requirements;

5.3.13 the FC Licensed Professional has never been and during the Term will not be the subject of or suffer an action by (including denial, suspension or termination), or had or have any medical professional privileges limited by, any: (i) federal, state, or local licensing, credentialing or accreditation agency or board, (ii) managed care, health maintenance, preferred provider, indemnity, insurance or other commercial health plan or third party payor, including, but not limited to, Medicare or Medicaid agencies, or (iii) hospital, licensed health facility, accrediting body, medical group or other similar or applicable agency, board, or body, and has not been the subject of any professional disciplinary proceedings;

5.3.14 the Licensed Professional has never been and during the Term will not be excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the “**Federal Healthcare Programs**”) or any state healthcare programs, is not presently and will not be under investigation, and does not have any knowledge of a pending investigation, and is not otherwise aware of any circumstances which may result in being excluded from participation in the Federal Healthcare Programs or any state healthcare programs;

5.3.15 the Licensed Professional has never been convicted of or pled no contest to: (i) a felony or crime of moral turpitude in any state or country, (ii) any offense related to the delivery of a healthcare item or service, or (iii) fraud (including but not limited to wire fraud), embezzlement, or other financial misconduct;

5.3.16 the Licensed Professional does not and during the Term shall not habitually or excessively use unhealthy or maladaptive amounts of addictive (whether or not legal) or psychoactive drugs or substances, including but not limited to prescription drugs, over-the-counter medications, tobacco and alcohol, and is under no physical or mental disability that would prevent the Licensed Professional from performing the essential functions in connection with providing the Consulting Services, with or without a reasonable accommodation;

5.3.17 during the Term, the Licensed Professional shall subscribe to the Platform Services by downloading and using the Platform Services and FC App, as applicable, by becoming a registering User and complying with the TOS. Unless otherwise specified in the TOS or applicable Med Spa MSA, each Licensed Professional shall furnish, at the Licensed Professional’s own expense, all other materials, equipment, and other resources necessary or reasonably appropriate to perform the Consulting Services.; and

5.3.18 the Licensed Professional will notify Fresh Clinics immediately in writing if each material breach of any representation, warranty or covenant in any of [Sections 5.3.1 – 5.3.17](#).

5.4 **Time of Essence.** Time is of the essence in the Licensed Professionals’ performance of their respective Consulting Services and their obligations under this FC MSA.

6. FEES AND PRICES.

6.1 **Fees and Prices Generally.** The fees for the FC Services, including but not limited to Platform Services Fees, FC Services Fees and other related fees (collectively, “**FC Fees**”), as well as the fees set by FC Physicians for their respective Consulting Services to Med Spas and the fees of other FC Licensed Professionals (collectively, “**Consulting Fees**,” and collectively with the FC Fees, “**Fees**”) are set forth in the Fee Schedule (“**Fee Schedule**”) available on the Services Platform at: [Medical Director Fee Schedule](#). (Midlevel Practitioners who perform GFEs and related Consulting Services for Patients interested in having Treatments performed have set their Consulting Fees for performing GFEs in accordance with the Parties’ mutual agreement.) Fees may be changed and reflected in the applicable Fee Schedule on the Services Platform upon 30 days’ prior notice. Clinics may be charged additional fees, including without limitation, fees for POS terminals, and prices for any Products it purchases through

the Services Platform, training, Training Materials and other Documentation (collectively, “**Prices**”) as may be set forth separately from the Fee Schedule. Clinics may receive fees for their Med Spa Services (individually, “**Med Spa Fees**,” and collectively with FC Fees and Consulting Fees, “**Fees**”) as described in the FC-MS Agreement and/or the Med Spa MSA.

6.2 **Taxes and the Like.** All Fees in the Fees Schedule are exclusive of any and all taxes, excises, duties, fees, assessments and charges of any kind imposed by any federal, state, local or federal government on or related to the Consulting Services, Med Spa Services, Products, this FC MSA, the Med Spa MSA, the Platform Services, or the Agreement, including but not limited to sales, use, value added, ad valorem and withholding taxes, GST, superannuation guarantee charges, duties and the like, but excluding only taxes assessed on gross or net income of the applicable Med Spa or Fresh Clinics (collectively “**Taxes**”). Any such Taxes are for the account of the FC Licensed Professionals or the Clinic, as applicable in accordance with applicable Law, and the respective FC Licensed Professionals or Med Spa hereby agrees to pay such Taxes.

6.3 **Patient Payments and Processing.** Each Med Spa shall cooperate with Fresh Clinics (acting on behalf of applicable FC Licensed Professionals) in arranging for one or more POS terminals to be made available for Patients to pay for Treatments and Products provided by the Med Spa. Each Med Spa shall require Patients to make such Patient Payments through the POS terminal or associated account. The Parties acknowledge and agree that Fresh Clinics (or FC Management as its delegate) will arrange for such POS terminals as part of Fresh Clinics’ separate management services to FC Licensed Professionals, but that the Med Spa shall be responsible for applicable POS-related FC Fees and for keeping secure and maintaining the POS terminals in good working order. Med Spa will receive Patient Payments through the POS and Services Platform on behalf of the respective FC Licensed Professionals in the first instance and Fresh Clinics secondarily. Each FC Licensed Professional hereby appoints Fresh Clinics and FC Management as the FC Licensed Professional’s attorney-in-fact to: (i) process Patient Payments through the POS connected to the Services Platform; (ii) transfer such Patient Payments directly to the Med Spa automatically through the Platform Services for the payment (or deduction, as applicable,) for the Med Spa to pay first and foremost all Consulting Fees, Taxes, application and processing fees, and other appropriate amounts for and on behalf of the FC Licensed Professional; (iii) with the prior written consent of the FC Licensed Professional, initiate the institution of legal proceedings in the name of the FC Licensed Professional to collect any accounts receivable and monies owed to the Licensed Professional; and (v) enforce the rights of the FC Licensed Professional as creditor under any contract or in connection with the rendering of any Service. The Med Spa will deposit promptly all such Patient Payments in a payment platform, bank, or other appropriate account established for and in the name of the applicable Licensed Professional and/or Fresh Clinics under applicable Law (“**Revenue Account**”). The FC Licensed Professional and Med Spa acknowledge and agree that an applicable amount of such Patient Payments shall be used to pay, first, the Consulting Fees and Product Prices (including any applicable Taxes and other third-party related transactional expenses), and next, to the extent funds are available in the Revenue Account, the FC Fees and then the Med Spa Fees. For each Patient and each Treatment or other Consulting Services (e.g., episode of complication management) and each Product, the Services Platform will track the applicable Consulting Fees, Med Spa Fees, FC Fees, and Prices. The Parties acknowledge and agree that Fresh Clinics (or FC Management as its delegate) and the Med Spa, in providing its or their respective management services to FC Licensed Professionals as their agent, will process all such payments through the Services Platform. Fresh Clinics and/or the Med Spa is authorized to and will deduct from the Patient Payments applicable amounts as described above and as set forth in the Fee Schedule for the Consulting Fees, Med Spa Fees, FC Fees and Prices. The applicable Med Spa shall maintain full and complete records of all Patient Payments and the processing thereof using best bookkeeping practices. Fresh Clinics and the applicable FC Licensed Professional shall have access to and be provided copies of such records upon request. All prices and Fees are in and shall be paid in U.S. currency from and to accounts within the United States. Each FC Licensed Professional hereby appoints Fresh Clinics, FC Management and the applicable Med Spa as its attorney-in-fact to process payments for Treatments for which the FC Licensed Professional performs, supervises or is otherwise responsible in the manner set forth in this FC MSA, the Med Spa MSA and/or the TOS.

6.3.1 The applicable FC Licensed Professional agrees not to assess, collect or receive any Consulting Fees, Med Spa Fees or Patient Payments for Treatments using the FC Services other than through the POS terminals and the Services Platform, or to engage in any acts or provide any services corresponding to the Consulting Services or provide to any Clinics any Authorizations to Procure, Order or Administer any Substances, or perform any GFEs or Treatments that use any aspect of the Services Platform without assessing, invoicing, paying, or collecting any related Fees or Prices through the POS terminals and the Services Platform. Any Consulting Fees, Med Spa Fees, or corresponding fees earned or paid outside of the POS terminals and the Services Platform shall be immediately reported to Fresh Clinics, and the FC Licensed Professional and Med Spa shall remain jointly and severally liable to Fresh Clinics for the corresponding applicable FC Fees, and any consequential damages, claims, charges or Fees, as if the POS terminals and the Services Platform been used.

6.3.2 Each FC Licensed Professional agrees to provide to Fresh Clinics promptly (upon request, on a daily basis or otherwise as soon as possible) such information under his or her control, and execute such documents, as may be necessary or appropriate for Fresh Clinics to prepare, process and collect bills for the applicable Consulting Services and Med Spa Services, shall fully cooperate with Fresh Clinics' billing efforts, and shall assign, endorse, and turn over to Fresh Clinics all fees, checks, payments or reimbursements made payable to or paid to such FC Licensed Professional for any such services to be processed in accordance with this Section 6. This provision shall expressly survive the expiration or termination of this FC MSA for any reason.

6.4 **Recourse.** All Consulting Fees and FC Fees are due regardless of, and not contingent upon, the collection by Clinics of Patient Payments for their corresponding Treatments and Products. In addition to any other rights or remedies Fresh Clinics may have, Fresh Clinics shall have the right to set off any amounts owed by it or any Med Spa to the FC Licensed Professional against any amounts the FC Licensed Professional may owe, now or in the future, to Fresh Clinics or such Clinic, as applicable, in Fresh Clinics' discretion and without notice. If Fresh Clinics is unable to collect any Consulting Fees due from any Med Spa on behalf of any FC Licensed Professional, Fresh Clinics will notify the applicable FC Licensed Professional, and such FC Licensed Professional shall retain any legal rights they may have to recover such Consulting Fees directly from the Clinic. Fresh Clinics shall cooperate reasonably in any such efforts, and may charge reasonable amounts for time and resources so expended. The delinquent or non-paying Med Spa shall remain fully responsible to the respective FC Licensed Professionals for their respective net Consulting Fees, and to Fresh Clinics for its FC Fees. In any case, the FC Licensed Professionals shall have no recourse against Fresh Clinics or its Affiliates, or any of its or their managers, officers, members, employees, agents or representative for any loss or damage arising out of a Med Spa's failure to pay any Fees that may be due.

7. PRIVACY

7.1 **Privacy.** The Parties acknowledge and agree to the following:

7.1.1 Licensed Professionals and Med Spas both serve as HIPAA Covered Entities to the Patients;

7.1.2 Fresh Clinics and FC Management serve as HIPAA Business Associates to both Licensed Professionals and Med Spas;

7.1.3 Licensed Professionals and Med Spas shall each independently present the HIPAA-mandated NPP to the Patients in the form set forth in Addendum E to the TOS;

7.1.4 By signing their respective Contract Summaries, each Licensed Professional and Med Spa shall each independently enter into a bilateral BAA with one another, and separate bilateral BAAs with Fresh Clinics and FC Management, each in the form set forth in Addendum D to the TOS;

7.1.5 Licensed Professional and Med Spa each request FC Management to perform data aggregation services for quality assurance and other activities to improve their health care operations;

7.1.6 Licensed Professional and Med Spa each request FC Management to perform de-identification of PHI for quality assurance and other activities to improve their health care operations;

7.1.7 Licensed Professional and Med Spa understand that once PHI is de-identified, it is no longer PHI and Fresh Clinics and FC Management can use the same for any purpose, even for sale to unrelated third parties;

7.1.8 Notwithstanding anything to the contrary in this FC-Licensed Professional Agreement or related agreements, Licensed Professional and Med Spa acknowledge that they are ultimately responsible as providers and are independently complying with their responsibilities as providers and Covered Entities under HIPAA, HITECH, and applicable state and federal Law, including but not limited to regularly conducting and adopting self-audits, HIPAA Compliance Programs, and technical safeguards; and

7.1.9 Notwithstanding any unanticipated effects of the provisions herein or in the Agreement, the Parties intend to comply with applicable Law, including HIPAA and HITECH, and this FC MSA and the Agreement shall be construed in a manner consistent with compliance with such Law, and the Parties hereto agree to take such actions necessary to construe and administer this FC MSA and the Agreement in compliance therewith. In the event

any court or administrative agency of competent jurisdiction determines that this FC MSA or the Agreement violates any such Law, the Parties shall be deemed to have taken such actions as necessary to amend this FC MSA and the Agreement to comply with the same in accordance with the Severability provision of the applicable agreement.

8. CONFIDENTIAL INFORMATION

8.1 Confidential Information. Subject to the BAA and Section 7 of the TOS, “**Confidential Information**” means any non-public information, data, ideas, trade secrets or know-how of a disclosing party (in each case, a “**Disclosing Party**”), that relates, without limitation, to any: Products, Services, Materials, Documentation, vendors, current or identified prospective customers, employees, suppliers, vendors, Patients, fees and pricing (including but not limited to any fee and pricing schedules), marketing, product plans, software, developments, Fresh Clinics IP, Aggregated Data, De-Identified Data, research, lists, collections or compilations, processes, designs, drawings, engineering, hardware specifications, financial information, or any other information or ideas that would be reasonably understood under the circumstances to be confidential or proprietary at the time of disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the receiving Party’s (“**Recipient**”) possession at the time of disclosure; (ii) is independently developed by the Recipient without use of or reference to any Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Recipient’s improper action or inaction; or (iv) is approved for release in writing by the Disclosing Party.

8.2 Nondisclosure. Subject to the BAA and Section 7 of the TOS, the Recipient shall not use the Disclosing Party’s Confidential Information for any purpose other than for Recipient’s internal business purposes in performing or using the FC Services or Med Spa Services, as the case may be, Services Platform, or Products in accordance with the Agreement (the “**Purpose**”). Each Recipient: (i) shall not disclose such Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this [Section 8](#); and (ii) shall not disclose Confidential Information to any other third party without the Disclosing Party’s prior written consent. Without limiting the generality of the foregoing, each Recipient shall protect all Confidential Information with the same degree of care the Recipient uses to protect the Recipient’s own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information that comes to the Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information to the extent such disclosure is required or protected by applicable Law or by proper legal or governmental authority. To the extent permitted under applicable Law, Recipient shall give the Disclosing Party prompt written notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party’s expense, and limit the scope of such disclosure to the minimum required or protected by legal process or the applicable Law.

8.3 Medical Records. Each party hereto shall maintain the strict confidentiality of all EMR, EMR Reports, and other records, reports, PHI with respect to any Patients, and all billing, collection, financial and other business records with respect thereto (collectively, the “**Medical Records**”), and shall adhere to all applicable Law governing the privacy and confidentiality of PHI, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) and any rules promulgated thereunder, as may be amended from time-to-time, including the applicable BAA between the parties, as provided in the TOS. Each party shall comply strictly with all applicable Laws currently in existence or promulgated in the future that provides for privacy measures that exceed the requirements of HIPAA and HITECH and that are not otherwise preempted by such federal laws. Without limiting the general applicability of the foregoing, each FC Licensed Professional shall: (a) use and disclose the Medical Records only as reasonably necessary to perform the FC Licensed Professional’s duties, responsibilities and obligations hereunder and in conformity with applicable Laws; (b) immediately report to Fresh Clinics any unauthorized acquisition, access, use, or disclosure of the Medical Records which compromises the security or privacy of the PHI therein; (c) comply with Fresh Clinics’ NPP, as may be amended, modified or supplemented from time-to-time; and (d) attend any HIPAA compliance training as may be required by Fresh Clinics.

8.4 Injunction. Each Recipient agrees that a breach of this [Section 8](#) would cause the Disclosing Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Disclosing Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

8.5 Termination and Return. Upon the Disclosing Party’s request or any termination of this Agreement, the applicable Recipients shall immediately return all copies of Confidential Information to the Disclosing Party, or certify in writing the destruction thereof.

8.6 Retention of Rights. This Section 8 does not transfer ownership of Confidential Information or grant a license thereto. Each Disclosing Party, as between the Disclosing Party and each Recipient, will retain all right, title, and interest in and to all Confidential Information.

8.7 Defend Trade Secrets Act. Notwithstanding the other provisions of this Agreement, pursuant to the federal Defend Trade Secrets Act of 2016, the Parties acknowledge that an individual shall not have criminal or civil liability under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (b) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if an individual files a lawsuit for retaliation by the Disclosing Party for reporting a suspected violation of law, the individual may disclose the trade secret to the individual's attorney and may use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal and (B) does not disclose the trade secret, except pursuant to court order.

8.8 No Privacy Using Fresh Clinics' Systems. Each FC Licensed Professional recognizes and agrees that the Licensed Professional has no expectation of privacy with respect to Fresh Clinics' telecommunications, videoconferencing, networking, the Services Platform, or information processing systems (including, without limitation, stored computer files, e-mail messages and voice messages) and that the FC Licensed Professional's activities, and any files or messages, on or using any of those systems may be monitored at any time without notice.

8.9 Restrictions. Each FC Licensed Professional acknowledges and agrees that the ability of Fresh Clinics and its Affiliates (for purposes of this Section 8.9, collectively, "**FC Group**") to reserve their Confidential Information for the exclusive knowledge and use of FC Group is of great competitive importance and commercial value to FC Group, and that the improper use or disclosure by any FC Licensed Professional of such Confidential Information is likely to result in unfair or unlawful competitive activity to FC Group. Nothing in this FC MSA shall be construed to limit or restrict FC Licensed Professional's access to and possession of a copy, electronic or otherwise, of the medical records of any Patient seen or treated by any Midlevel Provider under said FC Licensed Professional's supervision as may be required under applicable Law.

8.9.1 Protecting Fresh Clinics' Business Interests.

8.9.1.1 The FC Licensed Professional understands and acknowledges that because of the Med Spa's experience with and relationship to the FC Group, the FC Licensed Professional will have access to and will learn about much of FC Group's Confidential Information ("**FC Information**"). FC Information includes, but is not limited to, the FC Services, FC Group's business model, ideas, strategies, operations, internal procedures, data, staffing, training, recordkeeping systems, names and contact information of Licensed Professionals and others, suppliers, order history, order preferences, financial information, Fee and Pricing Schedule and other pricing information, Documentation, contract forms, legal information, and information of third parties entrusted to FC Group in confidence.

8.9.1.2 The FC Licensed Professional further acknowledges and agrees that FC Group has expended and continues to expend significant time and expense in recruiting and training their respective employees and independent contractors, and that the loss of FC Group's employees and independent contractors would cause significant and irreparable harm to FC Group.

8.9.1.3 The FC Licensed Professional understands and acknowledges that: (i) the FC Group's relationships with its and their other Clinics and FC Licensed Professionals is of great competitive value; (ii) the FC Group has invested and continues to invest substantial resources in developing and preserving its Med Spa and Licensed Professional relationships and goodwill; and (iii) the loss of any such customer relationship or goodwill will cause significant and irreparable harm to the FC Group.

8.9.2 Non-Competition. Because of FC Group's legitimate business interest as described in this Section 8.9, and in consideration for receiving the FC Services and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, during the Restricted Period, the FC Licensed Professional agrees and covenants not to engage in any Prohibited Activity within the Restricted Territory.

8.9.2.1 For purposes of this FC MSA, "**Restricted Period**" means the Term of this FC MSA and the twelve months immediately following such Term, regardless of the reason for the termination, whether voluntary or involuntary; "**Prohibited Activity**" means either (i) engaging in the same or substantially similar

non-medical, technology-based business as Fresh Clinics or the FC Group, or (ii) any activity that may require or inevitably require the use or disclosure of any Fresh Clinics' or FC Group's trade secrets, proprietary information, or FC Information, in either case whether directly or indirectly, in whole or in part, as an employee, contractor, employer, owner, operator, manager, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or in any other similar capacity; and "**Restricted Territory**" means anywhere in the State.

8.9.2.2 For the avoidance of doubt, this Section 8.9 does not preclude or restrain the FC Licensed Professional from providing any healthcare services, including cosmetic procedures for a medical practice or Med Spa that the Licensed Professional owns or is employed by in the Restricted Territory; provided, however, that the FC Licensed Professional does not use, directly or indirectly, any FC Information, except that FC Physicians may continue to use the medical records of Patients of the Physician.

8.9.2.3 Nothing in this Agreement shall prohibit the FC Licensed Professional from purchasing or owning less than five percent (5%) of the publicly traded securities of any corporation, provided that such ownership represents a strictly passive investment, or to restrict the FC Licensed Professional to the extent the restriction is not permissible under applicable State or federal Law. Additionally, the Parties agree that Sections 8.9.2– 8.9.4 of this Agreement shall be deemed to include any provisions to the minimum extent required by applicable State or federal Law.

8.9.3 Non-Solicitation of Employees.

8.9.3.1 The FC Licensed Professional agrees and covenants not to directly or indirectly solicit, hire, engage, or attempt to solicit, hire, or engage, any employee or independent contractor who has been employed or retained by FC Group, or any other Med Spa with which FC Group has contracted, in the twelve months preceding the last day of such employee's, independent contractor's or Med Spa's relationship as such (collectively, "**Covered Persons**"), or induce the termination for any reason of the employee, independent contractor or other contractual relationship of any Covered Person, during the Term and for a period of twelve months immediately following the termination of such relationship.

8.9.3.2 This non-solicitation provision explicitly covers all forms of oral, written, or electronic communication, including, but not limited to, communications by email, regular mail, express mail, telephone, fax, instant message, and social media, including, but not limited to, Facebook, LinkedIn, Instagram, Twitter, TikTok, and any other social media platform, whether or not in existence at the time of entering into this Agreement. However, it will not be deemed a violation of this Section 8.9.3 if the Licensed Professional merely updates the FC Licensed Professional's LinkedIn profile or connects with a Covered Person on Facebook, LinkedIn, or other social media platform without engaging in any other substantive communication, by social media or otherwise, that is prohibited by this non-solicitation provision.

8.9.4 Non-Solicitation of Customers.

8.9.4.1 The FC Licensed Professional agrees and covenants, during the Term and for a period of twelve months immediately following the termination of all FC MSAs with the FC Group, regardless of the reason for the termination, whether voluntary or involuntary, not to directly or indirectly solicit, contact, or attempt to solicit or contact, using any other form of oral, written, or electronic communication, including, but not limited to, email, regular mail, express mail, telephone, fax, or instant message, or social media, including but not limited to Facebook, LinkedIn, Instagram, Twitter, TikTok, or any other social media platform, whether or not in existence at the time of entering into this agreement, or meet with the FC Group's current, former, or prospective Med Spa customers for purposes of offering or accepting goods or services similar to or competitive with those offered by the FC Group. However, it will not be deemed a violation of this Agreement if the Licensed Professional merely updates the FC Licensed Professional's LinkedIn profile, or connects with a Med Spa customer or former such customer on Facebook or LinkedIn, without engaging in any other substantive communication, by social media or otherwise, that is prohibited by this non-solicitation provision.

8.9.5 Non-Disparagement. The FC Licensed Professional agrees and covenants that the FC Licensed Professional will not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning Fresh Clinics or the FC Group or its or their respective businesses, or any of its or their respective employees, officers, or existing or prospective Customers, suppliers, investors, or other associated third parties.

8.9.6 Acknowledgments.

8.9.6.1 The FC Licensed Professional acknowledges and agrees that: (i) the restrictive covenants and other terms and conditions of this FC MSA are reasonable and reasonably necessary to protect the legitimate business interests of Fresh Clinics and the FC Group; (ii) the FC Licensed Professional will be reasonably able to earn a living and provide unfettered healthcare services without violating the terms of this FC MSA; and (iii) the FC Licensed Professional may wish to consult with counsel before signing this FC MSA.

8.9.6.2 The Licensed Professional further acknowledges that: (i) the amount of compensation the Licensed Professional is entitled to under this FC MSA reflects, in part, the Licensed Professional's obligations and Fresh Clinics' and the FC Group's rights under this FC MSA; (ii) the Licensed Professional has no expectation of any additional compensation, royalties, or other payment of any kind not otherwise referenced herein in connection herewith; and (iii) the Licensed Professional will not be subject to undue hardship by reason of the Licensed Professional's full compliance with the terms and conditions of this FC MSA or Fresh Clinic's or the FC Group's enforcement of it.

8.9.7 This Section 8.9 does not, in any way, restrict or impede any Licensed Professional from exercising rights protected under applicable Law to the extent that such rights cannot be waived by agreement.

8.9.8 Tolling. Should a Licensed Professional violate this Section 8.9, such violation would toll and suspend the Restricted Period for the amount of time that the violation continues.

8.9.9 Remedies. The parties hereto agree that a breach or threatened breach of this Section 8.9 cannot adequately be compensated in damages, that there is no adequate remedy at law, and that such breach will cause the non-breaching party irreparable loss or damage. Accordingly, Fresh Clinics and its Affiliates, in addition to all other rights, shall be entitled to injunctive or other equitable relief, including, but not limited to, a preliminary injunction, permanent injunction, and/or temporary restraining order, preventing the FC Licensed Professional, his or her representatives, successors, attorneys, and/or assigns, and/or persons who conspire with the FC Licensed Professional, from committing or continuing such a breach. The FC Licensed Professional will also be liable to pay court costs and reasonable attorney's fees of Fresh Clinics and its Affiliates incurred in enforcing the FC Licensed Professional's representations and agreements hereunder.

9. LIMITATIONS OF LIABILITY– PLEASE READ THIS SECTION CAREFULLY.

9.1 EXCLUSION OF CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANY FC LICENSED PROFESSIONAL, MED SPA, TREATMENT PROVIDER, OR FRESH CLINICS OR FRESH CLINICS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, OR PROPERTY DAMAGE OR LOSS OF USE OF PROPERTY OR GOODWILL, LOSS CAUSED BY MALWARE OR DISABLING CODE (E.G. RANSOMWARE) OR MALEVOLENT THIRD-PARTY ACTORS, ARISING FROM OR RELATING TO ANY CONSULTING SERVICES, MED SPA SERVICES OR FC SERVICES, AS APPLICABLE, OR ANY PRODUCTS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages in certain circumstances, so certain of the foregoing limitations or exclusions may not apply.

9.2 LIMITATIONS OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF FRESH CLINICS AND ITS AFFILIATES, IN EACH CASE AS MAY BE APPLICABLE, ARISING OUT OF OR RELATED TO ITS RESPECTIVE SERVICES OR PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF: (1) THE AGGREGATE FEES OR PRICES ACTUALLY PAID TO FRESH CLINICS FOR THE PRODUCTS OR SERVICES, RESPECTIVELY, DIRECTLY GIVING RISE TO THE LIABILITY, OR (2) THE AMOUNT OF INSURANCE PROCEEDS ACTUALLY RECOVERED UNDER ANY APPLICABLE INSURANCE OF THE PARTY OR PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT ARE REASONABLE UNDER THE CIRCUMSTANCES, AND WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

10. MUTUAL INDEMNIFICATION; INSURANCE.

10.1 **Indemnification by Licensed Professionals.** The FC Licensed Professional who is a party to this FC MSA (“**Indemnifying Party**”) agrees to defend, indemnify and hold harmless Fresh Clinics and its directors, managers, officers, employees, agents, Treatment Providers, contractors and representatives (each an “**Indemnified Party**”) from and against any and all claims, demands, suits, proceedings, settlements, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) (collectively, “**Claims**”) arising out of the Consulting Services or this FC MSA, except to the extent solely caused by the negligence or intentional misconduct of Fresh Clinics.

10.2 **Indemnification by Fresh Clinics.** Fresh Clinics (also an “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the applicable Licensed Professional (also an “**Indemnified Party**”) from and against third-party Claims for bodily injury or property damage arising out of this FC MSA only to the extent solely caused by the negligence or intentional misconduct of Fresh Clinics with respect to any Core Services.

10.3 **Procedures.** With respect to any Claim falling within the scope of the foregoing indemnifications, the applicable Indemnified Party agrees to promptly notify in writing the corresponding Indemnifying Party of any Claim for which it seeks to be indemnified pursuant to this Agreement, and to cooperate reasonably with the Indemnifying Party at the Indemnifying Party’s expense. The Indemnifying Party shall immediately take control of the defense and investigation of such Claim and may employ counsel in its reasonable discretion to handle and defend against the Claim, and shall keep each applicable Indemnified Party fully advised with respect to such Claim. The Indemnified Party shall have the right to participate, at its own expense, in any suit instituted against it. The Indemnifying Party shall have control of the defense of such action but shall not settle, compromise or otherwise enter into any agreement regarding the disposition of any suit against the Indemnified Party that requires such Indemnified Party to admit liability or contribute any asset (other than a mutual release) in order to dispose of the Claim.

10.4 **Insurance.** At all times during the term of this FC MSA, Fresh Clinics and the FC Physician each agrees to use its commercially reasonable efforts to maintain medical errors and omissions insurance with coverage limits of at least One Million U.S. Dollars (\$1,000,000) per claim and Three Million U.S. Dollars (\$3,000,000) in the aggregate annually, which policy shall cover the Consulting Services rendered by the FC Licensed Professional under this FC MSA. With respect to Core Services only, the professional liability coverage under the Fresh Clinics policy or policies shall be primary, and the professional liability coverage under the FC Physician’s policy or policies shall be excess. With respect to any Connect Services, the professional liability coverage under the FC Physician’s policy or policies shall be primary, and the professional liability coverage under the Fresh Clinics policy or policies shall be excess.

11. TERM AND TERMINATION.

11.1 **Term.** The term of this FC MSA (“**Term**”) shall commence as set forth in [Section 3.1.3](#), and shall continue until terminated as set forth in this FC MSA.

11.2 **Termination.** Fresh Clinics may terminate this FC MSA at any time with or without cause by giving the other party hereto ten (10) days’ written notice pursuant to [Section 13.5](#), below. Licensed Professional may terminate this FC MSA at any time with or without cause by giving Fresh Clinics thirty (30) days’ written notice.

11.3 **Termination by Fresh Clinics for Cause.** Fresh Clinics may terminate this FC MSA, or may suspend any FC Services, *immediately* upon written notice in the event:

11.3.1 the Licensed Professional breaches any material term of this FC MSA, including but not limited to any representation or warranty;

11.3.2 the Licensed Professional violates or is charged with violating any applicable Law or the rights of any third party;

11.3.3 the failure by the Licensed Professional to timely remit a payment when due;

11.3.4 the Licensed Professional commits any act or omission which causes harm to Fresh Clinics or its brand, reputation or business (including any disparagement of Fresh Clinics) as Fresh Clinics may determine in its discretion; or

11.3.5 the Licensed Professional (i) files a petition for bankruptcy or is otherwise adjudicated to be bankrupt; (ii) a petition for bankruptcy is filed against the Licensed Professional and such petition is not dismissed within ninety (90) days; (iii) the Licensed Professional becomes insolvent, discontinues the Licensed Professional's business or voluntarily submits to, or is ordered by the Bankruptcy Court to undergo, liquidation pursuant to Chapter 7 of the Bankruptcy Code; (iv) the Licensed Professional admits his or her inability to pay his or her debts when due; or (v) the Licensed Professional ceases normal business operations.

11.4 Termination by Licensed Professional for Cause. Licensed Professional may terminate this FC MSA, or may suspend any FC Services, upon written notice in the event:

11.4.1 Fresh Clinics breaches any material term of this FC MSA and fails to cure the breach within 15 days of receipt of such notice;

11.4.2 Immediately if Fresh Clinics breaches any material term of this FC MSA and the breach is not of a nature that can be cured; or

11.4.3 Immediately if Fresh Clinics (i) files a petition for bankruptcy or is otherwise adjudicated to be bankrupt; (ii) a petition for bankruptcy is filed against Fresh Clinics and such petition is not dismissed within ninety (90) days; (iii) Fresh Clinics becomes insolvent, discontinues its business or voluntarily submits to, or is ordered by the Bankruptcy Court to undergo, liquidation pursuant to Chapter 7 of the Bankruptcy Code; (iv) Fresh Clinics admits his or her inability to pay his or her debts when due; or (v) Fresh Clinics ceases normal business operations.

11.5 Effect of Termination.

11.5.1 Upon the expiration, cancellation, or termination of this FC MSA for any reason, the Licensed Professional shall cease providing Consulting Services, shall cease using any FC Services, including the Services Platform, and shall turn over to Fresh Clinics all Confidential Information, Work Product, and other information, documents and deliverables prepared or developed as a result of this FC MSA, together with all copies thereof, and certify in writing to Fresh Clinics that the Licensed Professional has complied with the requirements of this provision. The termination of this FC MSA will automatically cause any Med Spa MSAs between the Licensed Professional and any Med Spa to be terminated.

11.6 Survival. Section 1, Sections 3.5 and 3.6, Section 6 (with respect to all Fees and payment obligations arising prior to the termination), Sections 7-10, and Sections 11.4-13 shall survive termination of this FC MSA.

12. BINDING ARBITRATION – PLEASE READ THIS SECTION CAREFULLY

12.1 Progressive Dispute Resolution. Except as provided in Section 12.10, any dispute between the parties arising out of this FC MSA, including but not limited to matters of validity, interpretation, application, or breach of this FC MSA (each a “Dispute”), shall be resolved exclusively by the procedures set forth in this Section 12.

12.2 Resolution by Negotiation. In the event of a Dispute, the parties thereto agree to use their diligent good faith efforts to negotiate with one another to resolve the Dispute. Such efforts shall include, promptly upon notice by any such party, at least one in-person meeting or videoconference among the parties at least five business days prior to which the parties shall exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations that have taken place and attaching relevant documents. All communications and writings exchanged between the parties in connection with such discussions shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the parties thereto.

12.3 Resolution by Mediation. In the event a Dispute that is not resolved through informal negotiations within twenty (20) days after the initial notice of a Dispute is delivered, then either party thereto may elect to have the Dispute attempted to be resolved by confidential mediation under the auspices of JAMS, or such other dispute resolution organization as the parties may agree in writing (“Mediation Administrator”), utilizing such organization's

then applicable mediation procedures (“**Mediation**”). The Mediation shall take place in Harris County, Texas, or virtually (at each Party’s discretion) and be completed within sixty (60) days after a Party’s written notice to the Mediation Administrator or as soon as practicable thereafter as determined by the Mediation Administrator. A copy of any such notice shall be provided by the initiating party to each other party. Each party shall engage in the Mediation at its own cost and expense, and use its diligent good faith efforts to resolve the Dispute at the Mediation.

12.4 Binding Arbitration. Except as provided in Section 12.10, any Dispute that has not been resolved through the Dispute resolution procedures required under Sections 12.2 and 12.3 shall be determined by binding arbitration by a single arbitrator selected in accordance with Section 12.6 (“**Arbitration Agreement**”). Arbitration is generally more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Where so authorized, arbitrators can award the same damages and relief that a court can award. BY AGREEING TO THIS SECTION 12, EACH LICENSED PROFESSIONAL AGREES THAT THE LICENSED PROFESSIONAL IS WAIVING HIS OR HER RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

12.5 Arbitration Notice. If a party to a Dispute intends to demand arbitration, such party shall first send a written notice to all other involved parties (“**Arbitration Notice**”) that includes the following: (i) the nature and basis of the Dispute; and (ii) the specific relief sought. If you and we do not reach an agreement resolving the Dispute within 30 days after the Arbitration Notice is sent, you or we may commence an arbitration proceeding by thereafter filing a copy of the Demand with JAMS (“**Arbitration Administrator**”) under its streamlined commercial arbitration rules, and the Discovery Protocols of JAMS or their equivalent (collectively, “**Rules**”). Notwithstanding anything to the contrary in this Arbitration Agreement, the arbitrator shall be bound by the terms of this Arbitration Agreement and this FC MSA, which shall govern over the Rules and the Federal Arbitration Act.

12.6 Selection of Arbitrator. If the parties to the Dispute are unable to agree on an arbitrator from the list of arbitrators from the Arbitration Administrator, each of whom shall have substantial experience with matters involving the types of claims and industries that are the subject of the claims in the Dispute, within thirty (30) days of the initiation of the arbitration, such parties shall request from the Arbitration Administrator a list available arbitrators with experience in similar disputes (numbering 2 times the number of parties to the Dispute minus one), and each Party may within five (5) business days strike two names, leaving the remaining name(s) as the arbitrator. If more than one name remains, the Arbitration Administrator will make the selection from the remaining names. In the event that a party does not exercise its right to strike in accordance with the time frames above, the other party may select the arbitrator.

12.7 Electronic/In-Person Hearing; Procedures. The arbitration hearing shall take place in Harris County, Texas, except that any party to the Dispute may attend any hearings or conferences by videoconference. Regardless of the manner in which the arbitration is conducted, the arbitrator shall have the authority to require and supervise the exchange of relevant information, keeping in mind the parties’ desire to have an efficient, speedy and just dispute resolution process, as well as the parties’ respective needs and availability of material information; grant motions dispositive of all or part of any claim; award monetary damages; and grant any non-monetary remedy or relief available to a single individual or entity (and not a class or as a private attorney general) under and in accordance with applicable Law, the Rules, and this FC MSA. The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the Rules. The decision of the arbitrator shall be binding and conclusive upon the parties, their successors and assigns, and they shall comply with such decision in good faith. Judgment on the award may be entered in any court having jurisdiction. If Fresh Clinics or its Affiliate, as may be applicable, prevails on any claim that is part of the Dispute, Fresh Clinics and its Affiliates shall be entitled to receive its and their reasonable attorneys’ fees, expert witness fees and out-of-pocket costs, in addition to any other relief to which it or they may be entitled.

12.8 Confidentiality. All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain the confidentiality of all communications and documents related to any arbitration except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by applicable Law.

12.9 Claims Only in Individual Capacity. LICENSED PROFESSIONAL AND FRESH CLINICS AGREE THAT EACH MAY BRING CLAIMS/DISPUTES AGAINST THE OTHER ONLY IN THEIR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless both you and we agree otherwise, the

arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If a court decides that applicable Law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

12.10 **Exceptions to Arbitration of a Dispute.** The Arbitration Agreement shall not preclude Fresh Clinics from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Additionally, any claim by Fresh Clinics for a preliminary injunction, temporary restraining order or other equitable relief, and any claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of its IP or Confidential Information, may be brought in any court of competent jurisdiction.

13. GENERAL PROVISIONS.

13.1 **Further Assurances.** Upon Fresh Clinics' reasonable request, the Licensed Professional shall cooperate reasonably and execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this FC MSA.

13.2 **Force Majeure.** A party shall not be responsible for any delay or failure to perform its obligations under this FC MSA if such delay or failure was caused by or arises out of any event or circumstance beyond its reasonable control, including, without limitation, labor disturbance, denial of service attack, Internet outage or interruption of service, communication outage, inability to obtain raw materials or supplies of Product(s), fire, flood, explosion, Act of God, natural disaster, war, act or threatened act of terrorism, strike, civil unrest, embargo, emergency governmental requirement, civil or military authority, epidemic, pandemic, shelter-in-place order, revolution, Law or governmental regulation or other reasonably unforeseeable cause.

13.3 **Governing Law and Jurisdiction.** This FC MSA is governed by the laws of the state of Texas, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. Licensed Professional agrees to submit to the exclusive jurisdiction and venue of the state and federal courts in and for Harris County, Texas, and consent to the personal jurisdiction of such courts for the purpose of litigating all claims or disputes, except for such claims or disputes that are required to be arbitrated as set forth in [Section 12](#), Binding Arbitration. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

13.4 **Waiver.** No delay or omission by Fresh Clinics in enforcing any of its rights or remedies hereunder will impair such right or remedy or be deemed to be a waiver thereof. No waiver by Fresh Clinics of any right or remedy hereunder with respect to any occurrence or event on one occasion will be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion. No amendment or waiver by Fresh Clinics will be valid except with the handwritten (non-electronic) signature of an Executive Officer of Fresh Clinics.

13.5 **Notice.** Any notice, request, consent, claim, demand, waiver, or other communication under this FC MSA shall have legal effect only if in writing and addressed to a party hereto as follows (or to such other address or such other address that such addressee party may designate from time to time in accordance with this [Section 13.5](#)): Fresh Clinics may provide notice to Licensed Professionals through the Services Platform, or by certified or registered mail, postage prepaid, and addressed to the Licensed Professional at the address the Licensed Professional provided to the Services Platform. A Licensed Professional shall provide notice to Fresh Clinics by certified or registered mail, postage prepaid, or national overnight delivery service, and addressed to: Attn: Fresh Clinics – Legal, Williams Tower, 41st Floor, 2800 Post Oak Boulevard, Houston, TX 77056, USA, or such other address of which Fresh Clinics may subsequently provide notice, with an email copy addressed to Legal_Notices@freshclinics.com. Notice sent by certified or registered mail shall be deemed to have been given three (3) business days after posting, and notice sent by national overnight delivery service shall be deemed to have been given on the scheduled or actual delivery date, whichever is later.

13.6 **Interpretation.** Headings are for convenience only and are not to be used in the interpretation of this FC MSA. No term of the FC MSA shall be construed in favor of, or against, a party as a consequence of a party having had a greater role in the preparation or drafting thereof, but shall be construed as if the language were mutually drafted by both parties with full assistance of counsel.

13.7 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of this FC MSA, Fresh Clinics, if it is the prevailing party, shall be entitled to recover its reasonable attorneys' fees and court costs from the Licensed Professional.

13.8 Assignment. Except as expressly provided in this FC MSA, this FC MSA and any associated rights or obligations, may not be assigned or otherwise transferred, expressly, impliedly or by operation of law, by any Licensed Professional without Fresh Clinics' prior written consent. Any purported assignment without such consent is void *ab initio*. Fresh Clinics may assign this FC MSA, and its rights and duties hereunder, without restriction. This FC MSA is binding upon any permitted assignee.

13.9 Remedies. All remedies available to Fresh Clinics for one or more breaches by a Licensed Professional shall be cumulative and may be exercised separately or concurrently without waiver of any other remedies. Each Licensed Professional acknowledges that the Licensed Professional's breach of this FC MSA may cause Fresh Clinics immediate and irreparable damage for which recovery of money damages would be inadequate, and agrees that Fresh Clinics and its Affiliates shall be entitled to seek injunctive relief to protect its or their rights under this FC MSA in addition to any other remedies available to them. If any legal action by Fresh Clinics or any of its Affiliates is necessary or appropriate to enforce this FC MSA, it or they shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which it or they may be entitled.

13.10 Severability. In the event any provision of this FC MSA is determined by an arbitrator or court to be illegal, invalid, unenforceable, or prohibited in any respect under any applicable Law in any jurisdiction, such provision or part thereof will be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the Parties shall receive the benefits contemplated herein to the fullest extent permitted by Law. If such provision or part may not be so modified, it shall be deemed to not form part of this FC MSA, but only in such jurisdiction(s) and not any other jurisdictions, and the legality, validity or enforceability of the remainder of this FC MSA will remain in full force and effect. For illustrative purposes only, in the event any provision of this FC MSA relating to a time period, scope of activities or areas of restrictions shall be so found to exceed the maximum time period, scope of activities or area such arbitrator or court deems reasonable and enforceable, the time period, scope of activities or areas of restrictions shall thereafter be deemed the maximum which such arbitrator or court deems reasonable and enforceable. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed omitted, *ab initio*, and the validity and enforceability of the remaining provisions shall not be affected thereby.

13.11 Entire Agreement. This FC MSA and the agreements and documents referenced herein, including the Agreement, the TOS and its Addenda, exhibits and schedules, Fresh Clinics' Privacy Policy and the Documentation, constitute the sole and entire agreement between the Licensed Professional and Fresh Clinics regarding the FC Services provided the Licensed Professional and the relationship between them, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the subject thereof.

Rev.: September 15, 2025

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