



# Licensed Professional Consulting and Med Spa Management Services Agreement

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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 LICENSED PROFESSIONAL CONSULTING AND MED SPA MANAGEMENT SERVICES AGREEMENT (“MED SPA MSA”) AGREE TO THIS MED SPA MSA.

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# 1. DEFINITIONS

1.1 **Parties.** The parties to this Licensed Professional Consulting and Med Spa Management Services Agreement (“**Med Spa MSA**”) are the Licensed Professional and the Med Spa (each as defined below) that enter into this Med Spa MSA. Licensed Professional and Med Spa may each be referred to as a “**Party**” and collectively as the “**Parties**.”

1.2 For Purposes of this Med Spa MSA:

1.2.1 “**Affiliate**” means, with respect to an entity, any other 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 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 Treatment Provider 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 Treatment Providers 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 5.1.3](#), below.

1.2.5 “**Contracts Summary**” has the meaning set forth in [Section 1.2.11](#), 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 the 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 MSA**” has the meaning set forth in [Section 3.1.4](#), below.

1.2.10 “**FC Services**” has the meaning set forth in [Section 3.1.4](#), below.

1.2.11 “**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 Med Spa MSA is attached and which Med Spa and Licensed Professional sign to evidence their agreement hereto and to the other addenda to the Contracts Summary.

1.2.12 “**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.)

1.2.13 “**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 Practitioners**”),

in each case under the direct supervision of a Physician, each of whom performs, assists in performing or supervises the performance of Treatments, and is licensed in the State, 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.

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

1.2.15 **“Med Spa-Arranged Medical Director”** has the meaning set forth in Section, below.

1.2.16 **“NP”** has the meaning set forth in Section 1.2.13, above.

1.2.17 **“PA”** has the meaning set forth in Section 1.2.13, above.

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

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 Med Spa 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](http://www.FreshClinics.com) and related subdomains.

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1.2.23 **“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.

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

1.2.25 **“Treatment Provider”** has the meaning set forth in Section 3.5 and Section 3.5.1, below.

1.2.26 **“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 Med Spa MSA not specifically defined in this Med Spa 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. Certain of the Treatments and certain related Products (as defined in the TOS, 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 Med Spa 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 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 Med Spa 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, 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 11.2, 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 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 one or more Med Spa-Arranged Physicians, in accordance with all applicable Laws.

2.5 Each Med Spa provides to FC Licensed Professionals various management and administrative services, including but not limited to, marketing to potential Patients (who are the Med Spa's 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 LP-C MSA; inventorying, ordering, storing and supplying of 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 Licensed Professionals' Consulting Fees and other Fees (defined in Section 6, below) as more fully described in Section 4.2.2.2 and Section 6.4, below; using appropriate FC Services to process and account for such 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 seeking Treatments 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 would at that point become the FC Licensed Professional's Patients as described above and in more detail below.

### 3. RELATIONSHIP OF THIS MED SPA MSA WITH THE FC-MS AGREEMENT AND THE FC MSA

#### 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 an Authorized Treatment or Authorized Treatments on a Patient and provide related Consulting Services to Med Spa as described herein, the Med Spa and each such FC Licensed Professional enter into a separate Med Spa MSA with respect to such engagement. Under this Med Spa MSA, in exchange for such Consulting Services Med Spa in turn provides certain management, administrative and support services to and for the applicable FC Licensed Professional as their management services organization with respect to the Med Spa's Clients and the FC Licensed Professional's Patients. ***By signing the Contracts Summary, registering for or using any FC Services, entering the Licensed Professional's or Med Spa's name, as the case may be, and clicking "accepted and agreed" to this Med Spa MSA, or using any FC Services, the***

**respective Licensed Professional and Med Spa agree to this 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. Each Party represents that he, she or it, as the case may be, has read, understands and agrees to this Med Spa MSA, and that his, her or its consent, respectively, to this Med Spa MSA is without limitation or qualification. Fresh Clinics is an express third-party beneficiary under each Med Spa MSA.

**3.1.2 Changes to this Med Spa MSA.** Fresh Clinics reserves the right, in its sole discretion, to change the terms of this Med Spa MSA at any time, effective no more than thirty (30) days after posting of the revised Med Spa MSA on the Site. Fresh Clinics encourages each Licensed Professional and Med Spa Customer to revisit this Med Spa MSA as so posted whenever he, she or it has a question and from time to time, as the form of Med Spa MSA may be updated frequently. (A link to the current Med Spa MSA is also included in the Contracts Summary.) The Licensed Professional's and Med Spa's respective continued uses of the Site or any FC Services after such posting or notification means that the Licensed Professional and Med Spa, as the case may be, accepts any and all such revisions. If a Licensed Professional or Med Spa does not agree to the revised form of Med Spa MSA, he, she or it must terminate this Med Spa MSA pursuant to the termination provisions below, and upon such termination immediately discontinue his, her or its use of the Site and all FC Services. Except solely as provided in this paragraph and the severability provision of this Med Spa MSA, this Med Spa 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.

**3.1.3 The FC-MS Agreement.** Fresh Clinics provides similar, complementary, and/or related services directly to Med Spa related to Authorized Treatments and the Med Spa's 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.

**3.1.4 The FC MSA.** Pursuant to a Fresh Clinics – Licensed Professional Management Services Agreement (“**FC MSA**”), Fresh Clinics provides to Licensed Professionals certain complementary management and administrative services of a general nature related to such Treatments and their Patients. Fresh Clinics and/or its Affiliate, FC Management, provides its respective services to Licensed Professionals (collectively, “**FC Services**”) primarily but not exclusively through its Services Platform. The TOS relate primarily to the Services Platform itself. The FC MSA sets forth certain terms and conditions for FC Services that may also relate to the Services Platform but may relate primarily to the Treatments performed on or related to Patients and/or other Consulting Services provided to Med Spas. The FC MSA is in the form of Addendum A to the TOS, and a separate FC MSA is entered into on an individual (bilateral) basis between each respective Licensed Professional and Fresh Clinics in accordance with the terms thereof.

**3.2 Primary Purpose.** The primary purpose of this Med Spa MSA, the FC MSA, the FC-MS Agreement, and the Agreement (as defined in the TOS) is to secure for the Licensed Professionals the Med Spa's respective Med Spa Services and 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 associated Med Spas the respective Licensed Professionals' Consulting Services and the applicable FC Services. Each Med Spa MSA sets forth the terms and conditions pursuant to which the applicable Licensed Professionals and Med Spas agree, as between them, for the respective Licensed Professionals to provide the Consulting Services to the Med Spa, and for the Med Spa to provide Med Spa Services to the Licensed Professionals, as to each Patient.

**3.3 Engagement of Med Spa to Provide Med Spa Services.** During the Term of each applicable Med Spa MSA for each specific Patient, the respective Licensed Professional hereby appoints and engages the respective Med Spa to provide the respective Med Spa Services related to such Patient, and agrees to provide the Consulting Services to the Med Spa.

**3.4 Management Authority of Med Spas.** Subject to [Section 3.5](#) and [Section 3.6](#), 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 the applicable FC Licensed Professional 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.

3.5 **Authority of the Licensed Professionals.** Under the FC MSA, the FC-MS Agreement, this Med Spa MSA, and the Agreement, ***the FC Licensed Professionals shall have exclusive authority for (i) all decision-making relating to the delivery of professional medical care, including all Consulting Services; and (ii) the professional fees charged by the FC Licensed Professionals for their Consulting Services.*** (For the avoidance of doubt, the parties to this Med Spa MSA and the Agreement have agreed on such Consulting Fees for GFEs provided to Med Spa, as set forth in the Fees Schedule available through the Services Platform at: [MedSpa Fees Schedule](#).) The FC 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 each such Patient's Treatments and related medical care; 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 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 will interfere with the exercise of the applicable 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 Med Spas 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 Midlevel Practitioner would serve in the roles of Med Spa and Treatment Provider. The Midlevel Practitioner would also function as the Med Spa's own Licensed Professional, obviating the need for a Consulting Request (see [Section 5.1.1](#), below) 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 the Fees provisions of the FC MSA or this Med Spa MSA, and would not be charged for or entitled to Consulting Fees as an FC Licensed Professional, but would be a Licensed Professional for other purposes of this Med Spa MSA, including, without limitation, [Section 9.3.1](#) requiring the Med Spa's staff to have the required education, training, skill, experience, and qualifications to perform the Med Spa Services and [Section 9.2.5](#) and [Section 9.3.7](#) requiring the Midlevel Practitioner to have appropriate collaborative and prescriptive agreements with each applicable Licensed Physician, including any Med Spa-Arranged Physicians.

3.6 **Practice of Medicine.** Notwithstanding any provision to the contrary, this Med Spa MSA, the FC-MS Agreement, the FC 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 Med Spa, 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 Laws. 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 Patient/Physician or Patient/Midlevel Practitioner 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 trained and licensed 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 related 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 by applicable Law. As part of the FC Services, Fresh Med Spas uses PHI 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 Med Spa MSA and the Agreement agree that, except as expressly provided herein otherwise, the Licensed Professionals, Med Spas, and Fresh Clinics are neither employees, employers, partners, nor 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 FC MSA and/or this Med Spa 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 Med Spa, 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 Med Spa MSA, the FC MSA, the Agreement, 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**") and all applicable Laws, 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 Med Spa MSA for a specific Patient, the parties to the Med Spa MSA and the Agreement 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 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. MED SPA MANAGEMENT SERVICES

4.1 **Authority of Med Spa and Licensed Professional.** Subject to this Med Spa MSA, including Section 3.5 and Section 3.6, during the term of each applicable Med Spa MSA, the Licensed Professional engages the Med Spa to operate and manage certain day-to-day non-clinical aspects of the Licensed Professional and provide the Med Spa Services for the account of and on behalf of the Licensed Professional. The Med Spa accepts such engagement for and in consideration of the Med Spa Fees (defined below). All compensation to the Med Spa is solely in exchange for the Licensed Professional's use of the Med Spa's assets, systems, infrastructure, and Med Spa Services, all at a fair market value for such use and services. Notwithstanding anything to the contrary herein, the Licensed Professional shall retain and have exclusive authority and control over the medical aspects of the Patients and Treatments to the extent they constitute the practice of medicine, including matters relating to the professional judgment and services of the Licensed Professional, clinical protocols and methods, and other matters directly affecting Patient care.

4.2 **Provision of Med Spa Management Services to FC Licensed Professionals.** Subject to the foregoing, the Med Spa Services for FC Licensed Professionals shall include the Med Spa Services with the appropriate standards of care and related requirements, as described in the FC-MS Agreement and in this Med Spa MSA. In general, the Med Spa Services shall include, without limitation, the following:

4.2.1 Marketing to Clients and potential Clients of the Med Spa in its discretion; preliminarily vetting such Clients and potential Clients to determine in the first instance whether such Clients are qualified, physically and financially, and otherwise suitable, to be Patients of the FC Licensed Professionals for Treatments, as

well as suitable to be Clients of the respective Med Spa; and, in the discretion of the Med Spa, issuing a corresponding Consulting Request to the FC Licensed Professional using the Services Platform;

4.2.2 Billing, receiving, collecting and depositing of Fees charged to and paid by Patients in connection with Treatments directly into a designated Fresh Clinics Revenue Account for the Med Spa, which Fees may include applicable Consulting Fees charged by FC Physicians and other FC Licensed Professionals and other amounts sufficient for FC Licensed Professionals to pay to Med Spa its Med Spa Fees and to Fresh Clinics its FC Fees, as well as Prices for related Products (all as defined below), retaining Med Spa's Med Spa Fees, and remitting of applicable amounts to or through Fresh Clinics using the Services Platform on behalf of the FC Licensed Professionals pursuant to the FC MSA, the FC-MS Agreement and this Med Spa MSA;

4.2.3 Scheduling Treatments, including follow-up consultations for Patients, communicating, and updating as needed through the Services Platform;

4.2.4 Providing clean, orderly, well-equipped and appropriate facilities, owned or leased by the Med Spas for performing Treatments at such locations and during such hours as each Med Spa may determine;

4.2.5 Maintaining on staff one or more qualified Treatment Providers to administer to Patients to perform Authorized Treatments that require supervision by FC Licensed Professionals under applicable Laws;

4.2.6 Providing the Treatments and related cosmetic medical services under the supervision of the applicable FC Licensed Professionals and complying strictly with their instructions and directions at all times;

4.2.7 Ensuring that Med Spa staff are well-qualified, properly trained, and perform all Med Spa Services in a professional, courteous, and skillful manner in accordance with high standard of care, skill, diligence and service in the industry;

4.2.8 Ordering, purchasing, inventorying, properly and securely storing, and having on hand at all times all necessary and reasonable Substances for which a Licensed Professional has provided an Authorization to Order or Procure, as well as all other supplies that are customary, appropriate, necessary or required to be available for each Treatment for each Patient;

4.2.9 Promptly notifying through the Services Platform the applicable FC Licensed Professional and Fresh Clinics of any complaint, claim or potential claim, and any relevant details, received by the Med Spa in respect of the Consulting Services, any Products, or any Treatment, and of any proposed response (except in case of a medical emergency, the Med Spa should first contact emergency services on 911, and then immediately notify the applicable FC Licensed Professional); and

4.2.10 Preparing, maintaining and updating as appropriate, all proper Patient medical and treatment records and providing such records to the applicable Licensed Professionals through the Services Platform, including but not limited to completing the applicable Med Spa's fields of information on the Patient's medical records form available on the Services Platform with respect to its role in the Physicians; consultations with their respective Patients. Fresh Clinics shall make available to the Licensed Professionals and Med Spas such EMR as may be required by applicable Law.

## 5. CONSULTING SERVICES

### 5.1 Engagement between Licensed Professionals and Med Spas.

5.1.1 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.

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

5.1.3 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 Med Spa, and shall include the information required by the Services Platform, such as but not limited to:

5.1.3.1 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;

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

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

5.1.3.4 such other information as may be required by the FC Licensed Professional or the Services Platform.

5.1.4 FC Licensed Professionals may accept a Consulting Request for the applicable Client through the Services Platform. 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.

5.1.5 As between the Med Spa and the applicable FC Licensed Professionals, the FC Licensed Professionals are responsible for ensuring that they have in place all required, appropriate, and other appropriate collaborative, prescriptive, management services and/or 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.

5.2 **Consultations.** Once an FC Physician and/or Midlevel Practitioner agree to a Med Spa’s Consulting Request for a specific Patient or Client, as the case may be, the accepting FC Licensed Professionals and Med Spa shall proceed generally as follows:

5.2.1 A Treatment Provider at the Med Spa shall brief the FC Licensed Professional with respect to the Patient or Client, as the case may be, and proposed Treatment;

5.2.2 The Patient/Client shall consult by videoconference through the Services Platform in accordance with all State and other applicable telemedicine Laws with the FC Licensed Professional reasonably promptly after the FC Licensed Professional is briefed by the Treatment Provider;

5.2.3 Where the FC Physician has delegated a GFE to an FC Licensed Professional, the applicable FC Licensed Professional shall conduct a GFE of the Patient/Client by video through the Services Platform under the general supervision of the FC Physician who will be available as may be needed;

5.2.4 The Med Spa agrees that it is in each FC Licensed Professional’s sole discretion and professional opinion as to whether to agree to a Consulting Request or issue an Authorization to Procure/Order, and at the applicable FC Physician’s sole discretion to issue an Authorization to Administer for the Patient/Client;

5.2.5 If the FC Licensed Professional agrees to provide an Authorization to Procure/Order for, and an Authorization to Administer, one or more Substances to the Patient/Client, the Treatment Provider shall strictly comply with such authorizations under the medical supervision of the FC Licensed Professional as may be allowed by applicable Law.

5.2.6 The FC Licensed Professionals and Med Spa will use the Services Platform under applicable telemedicine Laws in the course of performing the Consulting Services.

5.2.7 In providing Consulting Service, the applicable FC Licensed Professionals will be exclusively responsible for exercising their medical judgment with each Patient and in supervising the Treatment Provider at the Med Spa.

5.3 **Provision of Consulting Services.** The Consulting Services shall include the Consulting Services with the appropriate standards of care and related requirements, as described in the FC MSA and in this Med Spa MSA. In general, these include, without limitation:

5.3.1 (i) providing the initial consultations described in [Section 5.2](#), (ii) generally supervising the applicable Treatment at the Med Spa, including but not limited to determining whether to direct the Treatment Provider to administer the Substance to the Patient, (iii) supervising the Treatment Provider and Med Spa in administering the authorized Substances to the Patient or otherwise providing the Treatment, and (iv) providing any follow-on consultations;

5.3.2 Providing on-call complication management services to advise the Med Spa upon request (as a separate Consulting Request), through which the Med Spa at and for which the Consulting Services were provided for a Patient, may request the virtual attendance of and advice from a Physician or other Licensed Professional in relation to complications arising from a Treatment performed on such Patient;

5.3.3 Providing on-site complication management services to advise the Med Spa upon request (also as a separate Consulting Request), through which the Med Spa at and for which the Consulting Services were provided for a Patient, may request the on-site attendance where required by applicable State Law of and advice from appropriate FC Licensed Professionals in relation to complications arising from a Treatment performed on such Patient;

5.3.4 After the appropriate FC Licensed Professional consults with the Patient, the FC Licensed Professional and the Med Spa shall complete all appropriate fields of information with respect to their respective Consulting Services and Med Spa Services during the consultation on the Patient's medical records form available on the Services Platform;

5.3.5 Review by FC Physicians of the training, education, experience and other qualifications of the Midlevel Professionals to determine suitability to delegate applicable authorizations, and to supervise the Treatments and administration of Substances; and

5.3.6 Reviewing the training and qualifications of the Treatment Provider to determine suitability to perform Treatments and administer Substances;

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

5.3.8 Reviewing the medical records of the Patient to ensure they are properly prepared and maintained.

## 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 fees based on the fees set by the FC Physicians for their Consulting Services to Med Spas and the fees of other Licensed Professionals (collectively, "**Consulting Fees**"), are set forth in the fees schedule available on the Services Platform at: [MedSpa Fees Schedule](#). Consulting Fees may be changed and reflected in the applicable fees schedule on the Services Platform upon 30 days' prior notice thereon. Med Spas shall be responsible for additional fees, including without limitation, fees for POS terminals as described in [Section 6.4](#), 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 Med Spa Fees Schedule. Subject to the terms of this Med Spa MSA, Med Spa may receive fees for its Med Spa Services (individually, "**Med Spa Fees**," and collectively with FC Fees and Consulting Fees, "**Fees**") as described in [Section 6.4](#).

6.2 **Taxes and the Like.** All Fees and Prices in the Fees and Pricing 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 Med Spa MSA, the FC MSA, the Services Platform 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 Licensed Professionals or the Med Spa, as applicable in accordance with applicable Law, and the respective Licensed Professionals or Med Spa hereby agrees to pay such Taxes.

6.3 **When Consulting Fee Earned.** Each Med Spa understands and agrees that Consulting Fees are earned whenever a Consulting Request is made and corresponding Consulting Services are provided, whether or not the Physician issues an Authorization to Administer for the respective Patient or the requested Treatment is performed for any reason.

6.4 **Patient Payments and Processing.** Each Med Spa shall cooperate with Fresh Clinics (on behalf of applicable FC Licensed Professionals) in arranging for one or more Point Of Sale (“**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 any applicable POS-related FC Fees and for keeping secure and maintaining the POS terminals in good working order. Med Spa will receive all Patient Payments in the Revenue Account in the name of Fresh Clinics, which may do business as the Med Spa for such purpose only. In so depositing Patient Payments, 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) 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 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 Med Spa 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. All such Patient Payments will be deposited automatically in a payment platform, bank, or other appropriate account established for and in the name of the applicable FC 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 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 is authorized to and will deduct from the Patient Payments applicable amounts as described above and as set forth in the applicable Fees and Price Schedules for the Consulting Fees, Med Spa Fees, FC Fees and Prices, and prepare appropriate invoices on a monthly basis. 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 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 Med Spa MSA, the FC MSA and/or the TOS.

6.4.1 The Parties to each Med Spa MSA agree, as between themselves and for the express benefit of Fresh Clinics, not to assess, collect, or pay 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 Med Spa Services or provide any Products or perform any 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 applicable 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 Services Platform been used.

6.4.2 The Parties to each Med Spa MSA agree provide to Fresh Clinics promptly (on a daily basis or otherwise as soon as possible) such information and execute such documents as may be necessary or appropriate for Fresh Clinics to prepare, process and collect bills for their respective Consulting Services, Med Spa Services and FC 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 Party for any such services to be processed in accordance with this Section 6. This provision shall expressly survive the expiration or termination of this Med Spa MSA for any reason.

6.5 **Recourse.** All Consulting Fees and FC Fees are due regardless of, and not contingent upon, the collection by Med Spas of Patient Payments for their corresponding Treatments. 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 to any FC Licensed Professional or Med Spa against any amounts such FC Licensed Professional or Med Spa may owe, now or in the future, to Fresh Clinics, 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 Med Spa. 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 FC 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 FC Licensed Professionals and Med Spas;

7.1.3 FC 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 FC Licensed Professionals and Med Spas shall each independently enter into a bilateral BAA with Fresh Clinics and FC Management, each in the form set forth in Addendum D to the TOS;

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

7.1.6 FC Licensed Professionals and Med Spas each request FC Management to perform de-identification of Protected Health Information ("**PHI**," as defined in the BAA) for quality assurance and other activities to improve their health care operations;

7.1.7 FC Licensed Professionals and Med Spas 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 Med Spa MSA or related agreements, Licensed Professionals and Med Spas 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 and regulation, 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 Med Spa 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 Med Spa MSA and the Agreement in compliance therewith. In the event any court or administrative agency of competent jurisdiction determines that this Med Spa MSA or the Agreement violates any such Law, the Parties agree to take such actions as necessary to amend this Med Spa MSA or 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 or Fresh Clinics (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 Consulting 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 7](#); 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 and Fresh Clinics in writing of any misuse or misappropriation of Confidential Information that comes to the Recipient’s or Recipients’ attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give the Disclosing Party and Fresh Clinics prompt written notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party and Fresh Clinics 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 Laws 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 7](#) 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 Agreement does not transfer ownership of Confidential Information or grant a license thereto. Each Disclosing Party, as such, 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.

## 9. REPRESENTATIONS AND WARRANTIES

**9.1 Mutual Representations and Warranties.** The Licensed Professionals and Med Spas, each for themselves (including, for Med Spas, their respective Treatment Providers), represent and warrant to one another and to Fresh Clinics that they:

9.1.1 are authorized to enter into this Med Spa MSA and the Agreement, and to perform their respective obligations hereunder and thereunder, and such performance does not and will not conflict with any other agreement or instrument to which they are a party or by which they are bound, or otherwise create an actual or potential conflict of interest for any other party hereto or thereto;

9.1.2 has never been the subject of, suffered an action by (including denial, suspension or termination), or had 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;

9.1.3 has never been, 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 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;

9.1.4 has read and will comply with their respective professional medical licensing, certification, continuing education and training requirements; and

9.1.5 will notify one another and Fresh Clinics immediately in writing if any actions, limitations, proceedings or conditions described in Sections 9.1.2 or 9.1.3 are initiated or exist against you or occur, as applicable, during the term of this Med Spa MSA.

**9.2 Licensed Professionals Representations, Warranties and Covenants.** Each FC Licensed Professional represents, warrants and covenants, for himself or herself, to Med Spa and to Fresh Clinics that the FC Licensed Professional:

9.2.1 has the required education, training, skill, experience, and qualifications to perform the Consulting Services;

9.2.2 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;

9.2.3 shall comply with all applicable Laws, professional and industry standards of care, ethics codes and guidelines, including where applicable but not limited to the American Medical Association and American Medical Board Code of Ethics;

9.2.4 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;

9.2.5 any Med Spa Treatment Providers also acting in a dual role as a Midlevel Practitioner (NP or PA) 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;

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

9.2.7 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;

9.2.8 has never been convicted of or pled no contest to: (i) a felony, crime of moral turpitude, or similar crime 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;

9.2.9 does 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; and

9.2.10 will notify Fresh Clinics immediately in writing if any actions, limitations, proceedings or conditions described in Sections 9.2.5 - 9.2.7 are initiated or exist against you or occur, as applicable, during the Term.

**9.3 Med Spa Representations, Warranties and Covenants.** Each Med Spa represents and warrants, for itself that it and/or the Treatment Providers that it employs to perform Treatments and administer Substances, to Licensed Professional and to Fresh Clinics that Med Spa and its Treatment Providers, as the case may be:

9.3.1 has the required education, training, skill, experience, and qualifications to perform the Med Spa Services;

9.3.2 shall perform the Med Spa Services in a professional, courteous, and competent manner in accordance with best industry standards for similar services, including for the Med Spa’s Treatment Providers, as applicable, the standards of the nursing profession, applicable regulatory boards and associations, and canons of professional ethics, and the Med Spa and such Treatment Providers shall devote sufficient resources to ensure that the Med Spa Services, including Treatments, are performed in a timely, safe and reliable manner;

9.3.3 shall maintain at all applicable times all licenses, permits, and registrations required to perform the Med Spa Services, and maintain accreditation in good standing in all appropriate professional societies and organizations, including without limitation, each of the Med Spa’s Treatment Providers will maintain an

unrestricted license to practice nursing or, if such license is not required, meet all applicable requirements and qualifications in and for the State;

9.3.4 acknowledge and agree that with respect to the performance of Treatments the Med Spa and its applicable Treatment Providers will be under the supervision and will follow the directions of the applicable Licensed Professionals, including, without limitation, complying strictly with any Authorizations to Administer;

9.3.5 shall not use any Fresh Clinics Services in connection with any medical procedures other than Authorized Treatments;

9.3.6 shall promptly and properly prepare or cause to be prepared all appropriate or required EMR, along with any supporting documentation as required by the supervising Licensed professional or 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-Med Spa Agreement, and each Med Spa acknowledges and agrees that, without limitation, payment of the applicable Med Spa Fees may be withheld until such timely completion and submission of all applicable EMR Reports;

9.3.7 any Med Spa Treatment Providers also acting in a dual role as a Midlevel Practitioner (NP or PA) 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;

9.3.8 shall order, store, secure, maintain proper records, and use Substances only as permitted by applicable Law, and in accordance with this Med Spa MSA and the Policies and FC Standards;

9.3.9 understand and will comply with their respective federal (OSHA) and applicable state workplace health and safety standards and requirement; and has read and will comply with all rules, procedures, standards, protocols, Spa Manuals, Training Materials, and Documentation communicated to Med Spa by Fresh Clinics and/or the supervising Physician(s), including those related to Treatments, record-keeping, privacy, safety, security, non-discrimination and anti-harassment, and confidentiality; all applicable Laws relating to the Med Spa Services;

9.3.10 the Med Spa's Treatment Providers are current on all applicable CPE requirements, including, but not limited to, any minimum CPE requirements imposed by applicable Laws or specialty boards, and will, during the term of this Med Spa MSA, remain current on such CPE requirements;

9.3.11 have never been convicted of or pled no contest to: (i) a felony, crime of moral turpitude, or similar crime 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;

9.3.12 the Med Spa's Treatment Providers do 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; and

9.3.13 will notify Fresh Clinics immediately in writing of each material breach of any representation, warranty or covenant in any of Sections 9.3.1 - 9.3.12.

## **10. LIMITATIONS OF LIABILITY– PLEASE READ THIS SECTION CAREFULLY.**

**10.1 EXCLUSION OF CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANY FC LICENSED PROFESSIONAL, CLINIC, TREATMENT PROVIDER, FRESH CLINICS OR FRESH CLINICS AFFILIATE 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.

## 11. MUTUAL INDEMNIFICATION.

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

11.2 **Indemnification by Med Spas.** The Med Spa that is a Party to this Med Spa MSA (“**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the FC Licensed Professional and their respective directors, managers, officers, employees, agents, contractors and representatives (each an “**Indemnified Party**”) from and against any and all third-party Claims for bodily injury or property damage arising out of the Med Spa Services, except to the extent caused by the Consulting Services.

11.3 **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.

## 12. INSURANCE.

12.1 **Insurance to be Maintained.** At all times during the term of this Med Spa MSA, each Party hereto shall maintain or cause to be maintained the following insurance:

12.1.1 Workers’ compensation insurance as required by applicable law;

12.1.2 Commercial general liability insurance with combined single limits of at least One Million U.S. Dollars (\$1,000,000) per occurrence and Two Million U.S. Dollars (\$2,000,000) in the aggregate;

12.1.3 Automobile liability insurance with limits of liability of at least One Million U.S. Dollars (\$1,000,000) per accident and in the aggregate annually for bodily injury (including death), and at least One Hundred Thousand Dollars (\$100,000) per accident and in the aggregate annually for property damage.

12.1.4 Medical malpractice insurance on an occurrence-basis (or equivalent) with coverage limits of at least One Million U.S. Dollars (\$1,000,000) per occurrence and Two Million U.S. Dollars (\$2,000,000) in the aggregate annually, which policy shall cover all Services rendered by the respective Party. If a Party maintains such insurance on a claims-made basis (as opposed to an occurrence based policy), such Party shall purchase insurance “tail” coverage for claims made against such Party after the termination for any reason of the Consulting Services or Med Spa Services, as the case may be.

12.2 **Insurance Requirements.** In each case other than workers’ compensation insurance, the foregoing insurance shall be with insurers with relatively high Best’s ratings, with the other Party and Fresh Clinics each listed as an additional insured under each such policy. The named insured Party shall forward to the other Party and Fresh Clinics applicable certificates of insurance verifying such insurance as soon as possible after the Effective Date, and upon such other Party’s written request, such certificates will indicate or be amended to indicate that such

insurance policies may not be canceled or reduced before the expiration of a 30-day notification period and that such other Party will be immediately notified in writing of any such notice of termination or reduction.

## 13. TERM AND TERMINATION.

13.1 **Term.** The term of this Med Spa MSA (“**Term**”) shall commence as set forth in Sections 3.1.1 and 4.1, and shall continue until terminated as set forth in this Med Spa MSA.

13.2 **Termination.** Either Party may terminate this Med Spa MSA at any time with or without cause by giving the other Party and Fresh Clinics thirty (30) days’ written notice pursuant to Section 15.3, below.

13.3 **Termination by Fresh Clinics for Cause.** This Med Spa MSA shall terminate automatically upon the termination for any reason of the FC-MS Agreement or FC MSA to which a Party to this Med Spa MSA is a party. Additionally, a Party may terminate this Med Spa MSA, and Fresh Clinics may terminate this Med Spa MSA or suspend its FC Services under the FC MSA and/or its Services under the FC-MS Agreement, *immediately* upon written notice in the event:

13.3.1 the FC Licensed Professional breaches any material term of this Med Spa MSA;

13.3.2 the Med Spa breaches any material term of his Med Spa MSA;

1.1.1 the other Party hereto violates or is charged with violating any applicable Law or the rights of any third party;

1.1.2 Med Spa fails to timely remit a payment when due;

1.1.3 a Party hereto 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

13.3.3 a Party hereto: (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) 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) Licensed Professional admits his or her inability to pay his or her debts when due; or (v) Licensed Professional cease normal business operations.

### 13.4 **Effect of Termination.**

13.4.1 Upon termination of this Med Spa MSA, each Party shall cease using the Services Platform to provide its respective Services with respect to the specific Patient and Treatment for which this Med Spa MSA was created. The termination of this Med Spa MSA shall not terminate or otherwise affect any other Med Spa MSAs between the Parties hereto, including for the same Patient but for a different Treatment.

13.4.2 If either Party terminates its FC MSA or FC-C Agreement with Fresh Clinics, as applicable, such termination will automatically cause any Med Spa MSAs between such terminating Party and the other Party hereto to be terminated, but such termination shall not affect the non-terminating Party’s other Med Spa MSAs with other Licensed Professionals or other Med Spas, as the case may be.

13.5 **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 - 11, and Sections 13.4 - 15 shall survive termination of this Med Spa MSA.

## 14. BINDING ARBITRATION – PLEASE READ THIS SECTION CAREFULLY

**14.1 Progressive Dispute Resolution.** Except as provided in Section 14.10, 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 14.

**14.2 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.

**14.3 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.

**14.4 Agreement to Arbitrate Disputes.** Except as provided in Section 13.10, any Dispute that has not been resolved through the Dispute resolution procedures required under Sections 14.2 and 14.3 shall be determined by binding arbitration by a single arbitrator selected in accordance with Section 14.6 (“**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 THESE TERMS, THE PARTIES AGREE THAT THEY ARE EACH WAIVING THEIR RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**14.5 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 Med Spa MSA, which shall govern over the Rules and the Federal Arbitration Act.

**14.6 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.

**14.7 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, grant motions dispositive of all or part of any claim, to award monetary damages, and to 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 the Agreement. 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 we prevail on any claim that is part of the Dispute, we shall be entitled to

receive our reasonable attorneys' fees, expert witness fees and out-of-pocket costs, in addition to any other relief to which we may be entitled.

**14.8 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.

**14.9 Claims Only in Individual Capacity.** EACH PARTY AGREES THAT A PARTY MAY BRING CLAIMS/DISPUTES AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless both Parties agree otherwise, the arbitrator may not consolidate more than one person's claims with the Party's claims except for Fresh Clinics if it is also a party to the Dispute, 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.

**14.10 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.

## 15. GENERAL PROVISIONS.

**15.1 Governing Law and Jurisdiction.** This Med Spa 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. Each Party 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 14](#), Binding Arbitration. The Parties waive any and all objections to the exercise of jurisdiction over them by such courts and to venue in such courts.

**15.2 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 unless in writing and signed by an Executive Officer of Fresh Clinics.

**15.3 Notice.** Any notice, request, consent, claim, demand, waiver, or other communication under this Med Spa 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 15.3](#)): The Parties may send notices and other communications hereunder to one another at their respective principal places of business, or may send notices through the Services Platform. 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 Party 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. 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.

**15.4 Interpretation.** Headings are for convenience only and are not to be used in the interpretation of this Med Spa MSA. No term of the Agreement 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.

**15.5 Force Majeure.** A Party shall not be responsible for any delay or failure to perform its obligations under this Med Spa 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.

**15.6 Assignment.** Except as expressly provided in this Med Spa MSA, and any associated rights or obligations, may not be assigned or otherwise transferred by a Party without the other Party's and Fresh Clinics' prior written consent. Any purported assignment without such consent is void *ab initio*. Fresh Clinics may assign its rights as a third-party beneficiary under this Med Spa MSA without restriction. This Med Spa MSA is binding upon any permitted assignee.

**15.7 Severability.** In the event any provision of this Med Spa MSA is determined 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 Med Spa MSA, but only in such jurisdiction(s). The legality, validity or enforceability of the remainder of this Med Spa MSA will remain in full force and effect in all other jurisdictions.

**15.8 Entire Agreement.** This Med Spa 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 Med Spa regarding the Consulting and Med Spa Services provided by the Parties and the relationship between them, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the subject thereof.

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