

**EXHIBIT I - FORM OF UNIT FRANCHISE AGREEMENT**



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**ANAGO UNIT FRANCHISE AGREEMENT**

**Between**

**CORP NAME, Inc.  
A (State) Corporation**

**(We/Us/Our)**

**and**

\_\_\_\_\_  
**You/Your)**

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

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**GENERIC TEMPLATE - FA**

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## **ANAGO UNIT FRANCHISE AGREEMENT**

THIS ANAGO UNIT FRANCHISE AGREEMENT is signed on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between CORP NAME, Inc., ("we," "us" or "our") a (State) corporation, as a subfranchisor of Anago Franchising, Inc., and \_\_\_\_\_ ("you" or "your").

### **BACKGROUND**

A. Anago Cleaning Systems, Inc., a Florida corporation, developed and owns a special janitorial service system that services Clients under the trade name "Anago" and has licensed Anago Franchising, Inc., a Florida corporation (the "Franchisor") to sell Subfranchises commonly known as Master Franchises. We are a Subfranchisor of Anago Franchising, Inc. Anago Cleaning Systems, Inc., owns all the proprietary information used by Subfranchises and Unit Franchisees.

B. The Franchisor has entered into a Subfranchise Rights Agreement with us granting us the right to sell Anago Unit Franchises in the State of (State) the Counties of (counties).

C. The distinguishing characteristics of the System include: uniform standards and procedures for business operations; training in the operation, management and promotion of the Anago Unit Franchise; promotional programs; Client development and service techniques; and other technical assistance.

D. You recognize the benefits of receiving an Anago Unit Franchise from us and desire to enter into this Unit Franchise Agreement subject to the terms in this Agreement and to receive the benefits we provide to you under this Agreement.

E. We have reviewed your application and have decided to award an Anago Unit Franchise to you evidenced by this Agreement.

F. You understand that Anago Cleaning Systems, Inc., and Anago Franchising, Inc., are not a party to this Unit Franchise Agreement and have no obligation to you.

The parties agree as follows:

## **ARTICLE 1 - APPOINTMENT**

### **SECTION 1.1 GRANT OF UNIT FRANCHISE.**

We grant to you, subject to this Agreement, the right and you undertake the obligation, to operate 1 Anago Unit Franchise under the System. You may operate the Anago Unit Franchise from your home or from an office.

### **SECTION 1.2 NO PROTECTED TERRITORY.**

You are not obtaining any exclusive or protected territory. You may operate anywhere within the Counties of (counties) in the State of (State). You cannot operate or provide janitorial services outside the Counties of (counties) in the State of (State). We may open and operate Company Units and franchise the Anago Unit Franchise to other Unit Franchisees or engage in any other method of distribution in our complete discretion whenever, however and wherever we determine, including in close proximity to you.

## **ARTICLE 2 - OUR DUTIES**

We will provide you with the following assistance and services necessary for the operation of your Anago Unit Franchise, if you are not in default under this Agreement:

### **SECTION 2.1 ASSIGNMENT OF ACCOUNTS.**

All Accounts will be between us and the Client. All payments made by a Client under an Account will be sent directly to us. We will assign to you the right to perform services under an Account and you will receive the gross monthly revenues of the Account less the fees belonging to us stated in Section 3.1 and any other liability you may have to us. We guarantee all Accounts assigned by us to you by us for one year. You are not permitted to offer, exchange or transfer Accounts that have been assigned to your Unit Franchise.

(a) **Offering Period of Initial Business.** We will offer to you Accounts generating gross monthly billings under the Program you select in Subsection 3.1(a) within the time period described, after the conditions described below have been satisfied. These Accounts will not be offered nor will the Initial Offering Period begin until you have satisfied the following conditions:

- (i) You have successfully completed the Anago Training Program having obtained an 85% or better on the examinations.
- (ii) Our training officer has certified you as qualified to operate an Anago Unit Franchise.



(iii) You have signed a Training Acknowledgement form as stated in Exhibit 1.

(iv) You have obtained all necessary business licenses and permits and have forwarded copies to us.

(v) You have purchased or leased the major equipment described in Exhibit 5 and have furnished proof of purchase (for example, serial numbers and sales slips) to us.

(vi) You are under no obligation to accept or decline Initial Business offered, as our obligation is only to "offer" Initial Business to you within the Initial Offering Period. Should you decline an offer, then we have satisfied our obligation to offer that portion of Initial Business within the Initial Offering Period. Should you decline all Initial Business offered during the Initial Offering Period, then we have the right to terminate this Agreement. If we terminate this Agreement, we will keep all fees you paid to us and, if you financed a portion of the Unit Franchise Fee, the unpaid portion will be forgiven. If we do not exercise the right to terminate this Agreement and you have financed a portion of the Initial Unit Franchise Fee, the unpaid balance becomes immediately payable.

(vii) If we are unable to secure and offer you the full amount of Initial Business within the time frame allocated for the Initial Offering Period in the Program you purchase, an amount equal to 2.85 times the amount of Initial Business not offered to you will be refunded. Any refund will be first applied to any outstanding balance on your Promissory Note you owe us, with the remaining sum, if any, paid to you. A refund under this provision will fulfill our obligations to offer any remaining portion of the Initial Business.

(b) **Assignment of Additional Business.** Upon your completion of the obligations under Subsection 2.1(a), we may offer to you additional Accounts of varying amounts if you are not in default under this Agreement and we determine that you are capable of servicing additional Accounts. You are under no obligation to assume these additional Accounts. If we offer additional Accounts and you desire to assume these additional Accounts, you must comply with the following:

(i) You must demonstrate that you are in compliance with the covenants contained in Section 6 of the Policies and Procedures Manual.

(ii) You must sign an Account Assumption Agreement as stated in Exhibit 6.

(iii) You must have sufficient equipment, supplies and working capital to insure proper servicing of the Account.

(iv) You must pay, in addition to Royalties, Administration Fees and

Advertising Contributions, if any, any other payments such as group insurance and bonding, and C-Fees as stated in Subsection 3.1(e)(f).

(c) **Replacement of Initial Business.**

(i) If you lose or transfer an initial Account due to circumstances beyond your reasonable control (such as an Account going out of business or ceasing business for more than 7 days due to a natural disaster) within the first year, we will replace the remaining portion of this Account with a new Account or Accounts having the same or greater gross monthly billings for the remainder of the term of the initial Account and no additional C-Fee will be due on the Initial Business portion.

(ii) If you lose or transfer an initial Account for the following reasons:

- (A) Your poor service; or
- (B) The Client's dissatisfaction;

then, we will replace that portion of the outstanding balance of the Account with a new Account or Accounts having the same or greater gross monthly billings for the remainder of the term of the initial Account, provided, you attend and successfully complete retraining and have been certified by our training officer as qualified to resume normal Unit Franchise operations. There is no specific time period in which we are obligated to offer this replacement business.

(iii) If you lose or transfer an initial Account for the following reasons:

- (A) Theft or willful destruction of a Client's property;
- (B) Abandonment of service without notice to us;
- (C) Use or selling of illegal drugs;
- (D) Use of alcoholic beverages while performing services;
- (E) Continuing to service an Account after we have terminated the

Account; or

(F) Any other Event of Default has occurred; then, we have no obligation to replace the Account and may elect to terminate this Agreement and keep all fees you paid, with the right to demand immediate payment of all amounts owed to us.

**SECTION 2.2 ANAGO TRAINING PROGRAM.**

We will provide the Anago Training Program for you within 30 days of the Agreement Date. The Anago Training Program consists of 7 classroom sessions and 5 on-site sessions at one of our existing Account buildings. Each session is a maximum of 6 hours. The Anago Training Program covers the following items: orientation, general office cleaning, restroom cleaning, floor maintenance, customer relations and sales of Accounts. The training is provided by the use of video films, lectures and "hands on" training by our experienced staff. Your employees may attend certain sessions of the Anago Training Program as we designate. There is no additional fee for Initial Training.

**SECTION 2.3 LOAN OF THE MANUALS.**

We will loan to you 1 registered copy of each volume of the Manuals (with revisions as required). Our practice is to deliver the Manuals to you shortly before completing the Anago Training Program.

**SECTION 2.4 LISTS, FORMS AND SCHEDULES.**

We will provide to you:

(a) A list of required equipment, supplies, materials, inventory and other items necessary to open and operate your Anago Unit Franchise;

(b) An initial set of forms, including the standard brochure and various operational forms, standardized periodic reporting forms for reporting performance, evaluation, inspection and communication; and

(c) A schedule of items that must be purchased or leased from us.

**SECTION 2.5 EMPLOYEE INFORMATION AND ASSISTANCE.**

We will give you employee hiring information including pay scale guidelines and a standardized interviewing/selection system. You are solely responsible for the hiring, supervising, promoting and terminating of your employees and the establishment of their salaries.

**SECTION 2.6 EQUIPMENT AND SUPPLIES.**

We will provide to you office and marketing materials as stated in Exhibit 2, cleaning supplies as stated in Exhibit 3 and minor equipment as stated in Exhibit 4. The replenishment of these materials and supplies is at your expense.

**SECTION 2.7 ASSISTANCE IN INITIAL SET-UP AND FIRST TIME CLEANING.**

We will provide to you experienced operational support and accompany you and your employees during the initial set-up and first time cleaning of the very first Account.

## **SECTION 2.8 CONTINUED ASSISTANCE AND SUPPORT.**

Upon the opening of your Anago Unit Franchise, we will or may provide to you the following:

(a) **Invoicing and Accounting Services.** We will provide you with invoicing and accounting services to Accounts you service. You are not permitted to directly invoice your Clients. We will invoice your Clients monthly for the cost of services and supplies you render. We will accept payments from your Clients and maintain revenue records for you. Money due you will reflect deductions of Royalty Fees, Administration Fees, Advertising Contributions, C-Fees, Note Payments and all other amounts you owe to us or our Affiliates and out-of-pocket costs (including attorney's fees and court costs) we incur in enforcing payment of Accounts. On or before the 20th day of each month following the month of service, we will mail to you all monies collected as recorded in the "Due Owner" column of the Owners Report, less monies due us in accordance with this agreement. If amounts billed to customers are unpaid, you will incur the loss of nonpayment. We will take action to enforce payment at your sole discretion and expense.

(b) **Supply Sources.** We will continue to investigate supply sources for better pricing. Although you are not required to purchase any cleaning equipment or supplies from us, we may be able to obtain lower prices on supplies and will direct you to that supplier.

(c) **Field Visits.** We will perform periodic quality control visits to each building you clean. All operations will be inspected and recommendations will be made to you. Our representative will operate from the local Anago office and will be available during normal business hours to answer questions and to assist with Unit Franchise operations.

(d) **Assistance with Business Development.** We will continue to provide you with estimating expertise, custom proposals and references in order to assist development of your business.

(e) **Assistance with Clients' Services.** Our local office will accept service calls from your Clients and relay these service calls to you in a timely manner.

(f) **Telephone Hotline.** We will maintain a telephone "hotline" for informational assistance and emergencies.

(g) **Local Advertising.** We will provide advice on Local Advertising.

(h) **Promotional Literature.** We will make available to you promotional literature of the Anago System and all pertinent new developments in the janitorial service industry including procedures for improved efficiency to the extent actually known by us.

(i) **Periodic Assistance.** We may provide advisory assistance in the operation and promotion of the Anago Unit Franchise as we deem advisable. Advisory assistance may include additional training and assistance, communication of new developments, improvements in equipment and supplies, and new techniques in advertising, service and management relevant to the operation of your Anago Unit Franchise through audio or videotapes and service manuals.

(j) **Additional Training.** We may provide additional training programs, seminars or advanced management training for you and your employees at our principal training facility. Any additional training that is recommended by the Regional Office because you have received an unusually high number of complaints from Clients, gives us the option to suspend all further business offerings until we are satisfied that the deficiencies have been corrected.

(k) **Retraining.** If you receive unsatisfactory inspection reports from us and fail to promptly remedy the deficiencies, we may require you and designated employees to attend refresher training as soon as reasonably possible. You are solely responsible for all expenses associated with these programs including the then prevailing standard training fee we charge for these programs and all travel, meals and lodging costs of your attendees. If you fail the Anago Training Program, you must attend retraining classes in the areas the training officer feels are necessary for you to successfully complete the Anago Training Program. If you lose or are transferred from an Initial Business Account due to non-performance or Client dissatisfaction, and we deem it in your best interest for you to attend retraining classes, retraining in the areas of deficiency will be required.

(l) **Special Assistance.** If you request, we will furnish non-routine guidance and assistance to address your unusual or unique operating problems.

(m) **Research and Development.** We will continue to research and develop new products and services, introductions and techniques as we deem appropriate in our sole discretion.

#### **SECTION 2.9 LICENSE OF PROPRIETARY MARKS.**

Subject to this Agreement, we license to you the right to use the "Anago" trade name and the other Proprietary Property.

#### **SECTION 2.10 DUTIES ONLY TO YOU.**

All of our obligations under this Agreement are only to you. No other party is entitled to

rely on, enforce, or obtain relief for breach of the obligations either directly or by subrogation.

**SECTION 2.11 OUR RIGHT TO DELEGATE DUTIES.**

You agree to our right to delegate duties under this Agreement to a Designee. You must perform your duties with the Designee to the extent we request, as you must do with us.

**ARTICLE 3 - FEES AND PAYMENTS**

**SECTION 3.1 TYPES OF FEES.**

In consideration of our signing this Agreement, you must pay to us the following fees, in addition to any others required under this Agreement, all payable in United States currency at our principal office:

(a) **Initial Unit Franchise Fee.** You must pay to us an Initial Unit Franchise Fee payable upon signing this Agreement. The Initial Unit Franchise Fee is fully earned by us on receipt and, except as expressly provided otherwise in this Agreement, is non-refundable upon signing this Agreement. The Initial Unit Franchise Fee is uniform as to all Unit Franchisees currently purchasing a Unit Franchise selecting the same Program. The amount of the Initial Unit Franchise Fee and the Initial Business Portion are based on the Program selected of the 27 Programs available described in ITEM 5 of the FOC. You have selected Program number \_\_\_\_.

Should a part of the Initial Unit Franchise Fee be financed, the scheduled monthly payments for the amount financed will begin 120/150/180 days after the beginning of the Initial Offering Period or when you have been offered Initial Business totaling at least 50% of the Initial Business due you under this Agreement.

(b) **Royalty Fee.** You will pay a continuing monthly non-refundable Royalty Fee during the Term of 10% of monthly Gross Revenues. This will be paid to us by retaining this Royalty Fee from the payments the Client makes and remitting the balance to you.

(c) **Administration Fee.** You will also pay a continuing monthly non-refundable Administration Fee during the Term of 3% of monthly Gross Revenues to reimburse us for our costs of invoicing, receiving and disbursement of funds from your Clients. This will be paid to us by retaining this Administration Fee from the payments the Client makes and remitting the balance to you.

(d) **Advertising Contribution.** Currently, there is no Advertising Contribution being charged. However, when we require, you must also pay a continuing monthly Advertising Contribution to us during the Term of 2% of monthly Gross Revenues for local advertising. You will pay this to us by retaining the Advertising Fee from the payments the Client makes to us and

remitting the balance to you. We have the sole right to enforce this obligation and all our other Unit Franchisees' obligations that make Advertising Contributions. Neither you nor any other Unit Franchisee obligated to make Advertising Contributions, is a third party beneficiary of the funds or has any right to enforce any obligation to contribute the funds. We reserve the right to increase the Advertising Contributions you pay if: (i) the increase is reasonably necessary to provide greater advertising and promotional assistance to the System as we determine; (ii) all other Unit Franchise Units and Company Units are subject to the same relative percentage increase in the Advertising Contributions; and (iii) the Advertising Contributions do not exceed 2% of monthly Gross Revenues.

(e) **Insurance Program Fees.** If you elect to participate in our insurance program, if available, rather than purchase on our own the insurance required under ARTICLE 9, you agree to pay us a fee equal to 8% of monthly Gross Revenues, including supplies, equipment and Day Porters plus \$2.00 per month per client serviced.

(f) **C-Fees.** For the assignment and assumption of any additional Accounts we obtain under Subsection 2.1(b), you will pay to us a non-refundable fee ("C-Fee"). The C-Fee is equal to 2.85 times the gross monthly billings of the additional Account and is payable in full at the time of the assumption of the Account or may be financed by us at our sole discretion under the terms listed below in Subsections (i) through (xiii).

(i) For any additional Account we secure having gross monthly billings of less than \$2,000, the C-Fee is equal to 2.85 times the gross monthly billings payable: (A) 20% upon assumption of the Account; and (B) the balance payable in 11 equal monthly installments including interest at 12% per year.

(ii) For any additional Account we secure having gross monthly billings between \$2,000 and \$3,000, the C-Fee is equal to 2.85 times the gross monthly billings payable: (A) 20% upon assumption of the Account; and (B) the balance payable in 11 or 17 equal monthly installments including interest at 12% per year. Should, for any reason, the contract not be renewed after 12 months, and the financing was for 17 months, the remaining months owed is immediately due.

(iii) For any additional Account we secure having gross monthly billings above \$3,000, the C-Fee is equal to 2.85 times the gross monthly billings repayable as negotiated by the parties as stated in the Account Assumption Agreement. For example, if for any reason, the contract is not renewed after 12 months, and the financing was for 18 months, the remaining months owed would be immediately due.

(iv) If the C-Fee is paid in full at the time of assumption, the C-Fee will be reduced by 15%.

(v) If the C-Fee is paid in full within 90 days of assumption, no interest

charges will accrue.

(vi) The C-Fee of one-time cleans, initial cleans or extra work on additional Accounts we secure will be equal to 15% of the gross fee charged and will not be financed. There is no C-Fee on one-time cleans, initial cleans or extra work on additional Accounts you secure.

(vii) If you voluntarily relinquish an additional Account that you have assumed, after 10 days' written notice to us of your intent to relinquish, any C-Fee payment still due will be canceled if we are able to have another Unit Franchisee assume the Account and the Client does not cancel within 60 days after the transfer date; otherwise, the C-Fee remains due.

(viii) If you lose an additional Account for the reasons stated in either Subsections 2.1(c) or if you abandon your Anago Unit Franchise (for more than 2 days without at least 10 days' written notice and our consent) and the C-Fee was financed, the entire unpaid amount becomes due.

(ix) If the C-Fee amount owed cannot be precisely determined due to fluctuating monthly payments, then an average will be taken of the prior months on the additional Account before the time of loss or transfer. C-Fee payments are discontinued if the Client cancels the janitorial service contract through no fault of yours. No C-Fee credits are given if you desire to cease servicing the Client. Credits for C-Fee payments will be made if the Client cancels the janitorial service contract within 180 days from the date of commencement. C-Fees are non-refundable. There are no cash refunds. Any credit toward additional contract C-Fees is limited to 15% of paid C-Fee calculated for the contract and is at our sole discretion, provided you can verify that the contract was canceled through no fault of yours. The difference between the amount you have paid in C-Fees and the amount of credit applied will be deemed earned by us. If the contract is canceled as a direct result of you or your employees, no credit will be given.

(x) Should an additional Account request an increase in services and the monthly gross billings increase, no additional C-Fee will be charged.

(xi) There is no C-Fee assessed when you obtain an Account solely through your own marketing and sale efforts, without assistance from the Regional Office (excluding the preparation of the actual bid proposal).

(xii) Partial C-Fees may be assessed at 50% of normal schedule if you need a Regional Office representative to close the sale.

(xiii) All C-Fee credits must be requested in writing within 30 days after termination of an Account.



(xiv) Accounts that must be transferred from you to another franchisee will incur the full month's C-Fee.

(g) **Operations Fee.** If we must provide service to an Account you are currently servicing in order to comply with the Account's requirements or you are unable or unwilling to provide the services, you will be assessed an Operations Fee of \$50 plus any labor and materials cost.

(h) **Account Transfer Fees.** If a Client gives notice of pending cancellation or requests a transfer due to poor performance on your part, or poor Client relations, we will assign the Account to another Unit Franchisee or if we have received 3 or more complaints from a Client or our Operations Department within any 30-day period concerning your performance and we elect to transfer the Account, an Account Transfer Fee of \$100 will be assessed. If the transferred Account requires additional work to bring the cleanliness up to acceptable standards, you will be given an opportunity to provide labor and materials, at your expense and you will be assessed an Additional Account Transfer fee of \$50 or a total of \$150. If you cannot or elect not to provide labor and materials, we will provide the necessary labor and materials to the Client and deduct the expense from monies due you. If we receive 3 or more complaints during a 30-day period, we may, at our sole discretion, transfer the account and assess a transfer fee of \$100. If inspections by our operations department show a continued lack of proper service and/or poor quality of service, then we have the right to transfer the account without notice and assess a \$100 transfer fee. All other transfers will be assessed a \$50 transfer fee.

(i) **Complaint Fees.** If, regardless of discovery through a Client complaint or an operations department inspection, a lack of performance is found, we have 2 hours to contact you to report the complaint. If we are unable to make contact with you and our operations department must respond to the complaint, a Complaint Fee of \$50 will also be assessed to you. If a complaint is made known to you by our operations department and you fail to correct the deficiency to our or the Client's satisfaction on or before your next contractually scheduled visit, our operations department will correct the deficiency. You will be assessed all costs we incur to correct the complaint.

(j) **Advance Payment Fee.** If we advance collected funds, but the funds are not yet payable to you, you will pay a processing fee of \$25. If we loan you uncollected funds, you will pay a processing fee of \$25 plus interest at the rate of 18% per annum until fully paid.

### **SECTION 3.2 PAYMENT SCHEDULE.**

The Royalty Fee, Administration Fee, Advertising Contributions and C-Fee will be deducted by us by the 20th day of each month during the Term for the previous month. We will mail you a check of the net Gross Revenue within 5 days after making the deductions. You will be paid up to the last day of actual service to the Client if the Account is lost or transferred. All

other amounts due to us from you will be paid at this time. If no time is specified, these amounts are due upon receipt of an invoice from us. Any payment we do not actually receive on or before the due date is overdue.

## **ARTICLE 4 - YOUR DUTIES**

### **SECTION 4.1 OPERATIONAL REQUIREMENTS.**

You agree to operate the Anago Unit Franchise in conformity with all uniform methods, standards and specifications required in the Manuals or otherwise, to ensure that the highest degree of quality and service is uniformly maintained. You agree to:

- (a) Open and maintain a separate bank account for the Anago Unit Franchise;
- (b) Purchase or lease and operate a digital paging system and plain paper facsimile machine as specified in the Manuals;
- (c) Perform all janitorial services and honor all Accounts you assume;
- (d) Comply with the procedures and systems we require both now and in the future, including those on sales, good business practices, advertising and other obligations and restrictions;
- (e) Not service or solicit any business until you have satisfied the conditions in Subsection 2.1(a);
- (f) Maintain in sufficient supply (as we require in the Manuals or otherwise in writing) and use at all times, only inventory, equipment, materials, advertising methods and formats, and supplies that conform with our standards and specifications, if any, at all times sufficient to meet the anticipated volume of business, and to refrain from deviating from these requirements without our written consent;
- (g) Adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in all dealings with Clients, suppliers, employees, independent contractors, us and the public;
- (h) Sell or offer for sale only the products and services that meet our uniform standards of quality and quantity; have been approved for sale in the Manuals or otherwise in writing by us at retail to Clients; not sell any items for redistribution or resale; sell or offer for sale all approved products and services; refrain from any deviation from our standards and specifications for providing or selling the products and services without our written consent; and discontinue selling and offering for sale any products and services that we disapprove in writing

at any time;

(i) Honor all standard operations covenants stated in the Manuals; and

(j) If you or one of your employees believe that one of our employees or agents has engaged in any act of sexual or racial harassment or discrimination, you agree to report the incident to us within 48 hours, you and your employees waive any claims against us or our employees and agents.

#### **SECTION 4.2 HIRING, TRAINING AND APPEARANCE OF EMPLOYEES.**

You will maintain a competent, conscientious staff and employ the minimum number of employees necessary to meet the anticipated volume of business and to achieve the goals of the System. You will take all steps necessary to ensure that your employees meet the employment criteria and keep a neat appearance and comply with any dress code we require, subject to the requirements of landlords. You are solely responsible for the terms of their employment and compensation and the proper training of the employees in the operation of the Anago Unit Franchise. You are solely responsible for all employment decisions and functions, including hiring, firing, establishing wage and hour requirements, disciplining, supervising and record keeping. You will not recruit or hire any employee of an Anago Unit Franchise operated by us or another Unit Franchisee without obtaining the employer's written permission.

#### **SECTION 4.3 MANAGEMENT OF THE ANAGO UNIT FRANCHISE.**

You must devote your best full-time efforts to the management and operation of the Anago Unit Franchise. You agree that the Anago Unit Franchise requires your day-to-day supervision at all times.

#### **SECTION 4.4 APPROVED SPECIFICATIONS AND SOURCES OF SUPPLY.**

(a) **Purchases from Us or Our Affiliates.** You must purchase from us the items stated in Exhibits 2, 3, 4, and 5 (at no extra cost) and your ongoing needs for cleaning supplies and other items that we require if implemented on a System-wide basis.

(b) **Authorized Specifications and Suppliers.** You must purchase or lease equipment, supplies, advertising materials, and other products and services used for the operation of the Anago Unit Franchise only from authorized manufacturers, contractors and other suppliers who demonstrate, to our continuing satisfaction: the ability to meet our standards and specifications for these items; possess adequate quality controls and capacity to supply your needs promptly and reliably; and have been approved in writing by us and not later disapproved. We may approve a single supplier for any brand and may approve a supplier only as to a certain brand or brands. In approving suppliers for the System, we may take into consideration factors like the price and quality of the products or services and the supplier's reliability. We may

concentrate purchases with 1 or more suppliers to obtain the lowest prices and/or the best advertising support and/or services for any group of Unit Franchise Units or Company Units within the System. Approval of a supplier may be conditioned on requirements on the frequency of delivery, standards of service, warranty policies including prompt attention to complaints, and concentration of purchases, as stated above, and may be temporary, pending our additional evaluation of the supplier.

(c) **Approval of New Specifications and Suppliers.** If you propose to purchase or lease any equipment, supplies, advertising materials, or other products or services from an unapproved supplier, you must submit to us a written request for approval, or request the supplier to do so. We will have the right to require, as a condition of our approval, that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, at our option, either to us or to an independent, certified laboratory we designate for testing. We are not liable for damage to any sample that results from the testing process. You will pay a charge not to exceed the reasonable cost of the inspection and the actual cost of the testing. We reserve the right, at our option, to re-inspect the facilities and products of any approved supplier and continue to sample the products at the supplier's expense and to revoke approval upon the supplier's failure to continue to meet our standards and specifications. We may also require as a condition to our approval, that the supplier present satisfactory evidence of insurance, for example, product liability insurance, protecting us and our Unit Franchisees against all claims from the use of the item within the System.

#### **SECTION 4.5 SALES OF PRODUCTS AND SERVICES TO YOUR AFFILIATES.**

All sales of products and services to your affiliates, if any, must be on terms regularly applicable to your nonaffiliated Clients, and in all cases must be arm's-length.

#### **SECTION 4.6 COMPLIANCE WITH LAWS, RULES AND REGULATIONS.**

You will comply with all federal, state, and local laws, rules and regulations, and will timely obtain, maintain and renew when required all permits, certificates, licenses or Unit Franchises necessary for the proper conduct of the Anago Unit Franchise under this Agreement, including qualification to do business, fictitious, trade or assumed name registration, occupational licenses, and OSHA requirements. You will provide copies of all inspection reports, warnings, certificates and ratings, issued by any governmental entity during the Term on the conduct of the Anago Unit Franchise that indicates your material non-compliance with any applicable law, rule or regulation, to us within 2 days of your receipt of these items.

#### **SECTION 4.7 TAX PAYMENTS; CONTESTED ASSESSMENTS.**

You will promptly pay when due all taxes required by any federal, state or local tax authority including unemployment taxes, withholding taxes, income taxes, tangible commercial personal property taxes, real estate taxes, intangible taxes and all other indebtedness you incur in

the conduct of the Anago Unit Franchise. You will pay to us an amount equal to any sales tax, goods and services taxes, gross receipts tax, or similar tax imposed on us for any payments to us required under this Agreement, unless the tax is measured by or involves the net income or our corporate status in a state. If we pay any tax for which you are responsible, you will promptly reimburse us the amount paid. If there is any bona fide dispute as to liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law. However, you will not permit a tax sale or seizure by levy or signing or similar writ or warrant, or attachment by a creditor, to occur against any assets used in the Anago Unit Franchise.

#### **SECTION 4.8 CLIENT SURVEYS; CLIENT LIST.**

You will present to Clients all evaluation forms we require and will participate and/or request your Clients to participate in all marketing surveys performed by or for us. You will maintain a current Client list containing each Client's name, address, telephone number and zip code (9 digits) and supply a copy of the list to us on a quarterly basis. You must participate in any process we develop to record all Client information. We own all Client lists of your Unit Franchise. This list is our Confidential Information and will not be disclosed by you to any third party.

#### **SECTION 4.9 INSPECTIONS.**

You will permit us and/or our representatives to enter your Premises or buildings where you are providing janitorial services at any time for purposes of conducting inspections. You will cooperate fully with us and/or our representatives in inspections by rendering assistance as they reasonably request and by permitting them, at their option, to observe how you are rendering the services, to confer with your employees and Clients and to remove samples of any products, supplies and materials in amounts reasonably necessary to return to our office for inspection and record-keeping. The inspections may be conducted without notice at any time. The inspections will be performed in a manner that minimizes interference with the operation of the Anago Unit Franchise. We may videotape the inspections. Upon notice from us, and without limiting our other rights under this Agreement, you will take all steps necessary to correct immediately any deficiencies detected during inspections, including immediately stopping use of any equipment, advertising, materials, products, supplies or other items that do not conform to our then-current requirements. If you fail or refuse to correct any deficiency, we have the right, without you claiming to the contrary, to enter your Premises or office without being guilty of trespass or any other tort, for the purposes of making or causing to be made all corrections as required, at your expense, payable by you upon demand.

#### **SECTION 4.10 NOTICES TO US.**

(a) You must notify our local office of any Client complaint within 2 hours of actual receipt of the complaint.

(b) You must also notify us in writing within 5 days of any of the following events:

(i) The start of, any action, suit, counter suit or other proceeding against you or any of your employees;

(ii) Your, or any of your employees', receipt of any notice of noncompliance with any law, rule or regulation; or

(iii) The issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality against you or any of your employees.

(c) You will provide us with any information we request, within 5 days of request, about the progress and outcome of events.

**SECTION 4.11 OPERATIONAL SUGGESTIONS.**

You are encouraged to submit suggestions in writing to us for improving elements of the System, including products, services, equipment, service format, advertising and any other relevant matters that we consider in adopting or modifying standards, specifications and procedures for the System. You agree that any suggestions you make are our exclusive property.

We have no obligation to use any suggestions and no obligation to provide compensation for any suggestion. You may not use any suggestions inconsistent with your obligations under this Agreement without our written consent.

**SECTION 4.12 LIQUIDATED DAMAGES FOR SALE OF PROHIBITED PRODUCTS OR SERVICES.**

You agree that the offer to sell or the sale of unauthorized or prohibited products and services will result in damages to us. You agree these damages will be measured as \$100 for each day of the prohibited offer or sale, payable to us upon demand. These damages are in addition to our other rights including our right strictly to enforce or terminate this Agreement as provided in this Agreement and obtain injunctive relief, except to the extent any other rights are excluded by law in light of this Section. The parties agree that a precise calculation of the full extent of the damages that we will incur from the offer or sale of unauthorized products and services is difficult to determine and we and you desire certainty in this matter and agree that the liquidated damages are reasonable and are not a penalty.

**SECTION 4.13 CESSATION OF SERVICE TO CLIENTS ONLY.**

You will surrender, as directed by the Regional Office, all keys, codes and pass cards to Clients' facilities, after the completion of the last scheduled day of service. You will remove only equipment and supplies belonging to you.

## **ARTICLE 5 - PROPRIETARY PROPERTY**

### **SECTION 5.1 YOUR USE OF THE PROPRIETARY PROPERTY.**

You may use the Proprietary Property only in accordance with standards and specifications we determine. You agree that:

(a) You will use the Proprietary Property only for the operation of the Anago Unit Franchise;

(b) You will use the Proprietary Marks as the sole service mark identifications for the Anago Unit Franchise and will display prominently the Proprietary Marks on and/or with all materials we designate and authorize, and in the manner we require;

(c) You will not use the Proprietary Property as security for any obligation or indebtedness;

(d) You will comply with our instructions in filing and maintaining any required fictitious, trade or assumed name registrations for the "Anago" trade name, and will sign all documents we or our counsel deems reasonably necessary to obtain protection for the Proprietary Property and our interest in the property, for example, John Jones d/b/a "Anago" or ABC, Inc. d/b/a "Anago;"

(e) If you do not operate out of your residence and occupy a business premises, you will maintain a suitable sign or graphics package at, or near the front of the Premises, on any pylon sign, building directory or other area identifying the Premises only as "Anago." The signage must conform in all respects to our requirements except to the extent prohibited by local governmental restrictions or landlord regulations; and

(f) You will exercise caution when using the Proprietary Property to ensure that the Proprietary Property is not jeopardized in any manner.

### **SECTION 5.2 INFRINGEMENT BY YOU.**

You agree that the use of the Proprietary Property outside the scope of this Agreement, without our written consent, is an infringement of our rights in the Proprietary Property. You agree that during the Term, and after the expiration or termination of this Agreement, you will not, directly or indirectly, commit an act of infringement or contest or aid in contesting the validity of, or our right to, the Proprietary Property, or take any other action in derogation of our rights.

### **SECTION 5.3 CLAIMS AGAINST THE PROPRIETARY PROPERTY.**

If there is any claim of infringement, unfair competition or other challenge to your right to use any Proprietary Property, or if you become aware of any use of, or claims to, any Proprietary Property by persons other than us or our Unit Franchisees, you will promptly (within 7 days) notify us in writing. You will not communicate with anyone except us and our counsel on any infringement, challenge or claim except under judicial process. We have sole discretion as to whether we take any action on any infringement, challenge or claim, and the sole right to control any litigation or other proceeding involving any infringement of, challenge or claim to any Proprietary Property. You must sign all documents, render all assistance, and do all acts that our attorneys deem necessary or advisable in order to protect and maintain our interest in any litigation or proceeding involving the Proprietary Property or otherwise to protect and maintain our interests in the Proprietary Property.

### **SECTION 5.4 YOUR INDEMNIFICATION.**

We indemnify you against and will reimburse you for all damages you are held liable for in any proceeding from your use of any Proprietary Property in accordance with this Agreement, but only if you: (a) have timely notified us of the claim or proceeding in accordance with this Section; (b) have otherwise complied with this Agreement; and (c) allow us sole control of the defense and settlement of the action in accordance with this Section.

### **SECTION 5.5 OUR RIGHT TO MODIFY THE PROPRIETARY MARKS.**

If we deem it advisable to modify or discontinue the use of any of the Proprietary Marks and/or use 1 or more additional or substitute names or marks, including due to the rejection of any pending registration or revocation of any existing registration of any of the Proprietary Marks, or due to the rights of senior users, you are obligated to do so at your sole expense within 30 days of our request. We are only liable to reimburse you for your reasonable direct printing and signage expenses in modifying or discontinuing the use of the Proprietary Marks and substituting different Proprietary Marks (these expenses will not include any expenditures you make to promote a modified or substitute Proprietary Mark).

### **SECTION 5.6 OWNERSHIP; INUREMENT SOLELY TO US.**

You agree that: (a) you have no ownership or other rights in the Proprietary Property, except as expressly granted in this Agreement; and (b) we are the authorized sub-licensor of the Proprietary Property. You agree that all good will associated with the Anago Unit Franchise inures directly and exclusively to the Franchisor's benefit and is the Franchisor's exclusive property except through profit received from the operation or possible permitted sale of the Anago Unit Franchise during the Term. If you secure in any jurisdiction any rights to any of the Proprietary Marks (or any other Proprietary Property) not expressly granted under this Agreement, you will immediately notify us and immediately assign to Anago Franchising, Inc. all



of your right, title and interest to the Proprietary Marks (or any other Proprietary Property) not expressly granted under this Agreement.

## **ARTICLE 6 - THE MANUALS AND OTHER CONFIDENTIAL INFORMATION**

### **SECTION 6.1 IN GENERAL.**

To protect our reputation and good will and to maintain uniform standards of operation under the Proprietary Marks, you will conduct your Anago Unit Franchise in accordance with the Manuals. The Manuals are deemed an integral part of this Agreement with the same effect as if fully stated in this Agreement.

### **SECTION 6.2 CONFIDENTIAL USE.**

(a) You will treat and maintain the Confidential Information as our confidential and trade secrets. The Manuals will be kept in a secure area. You will strictly limit access to the Confidential Information to your employees, to the extent they have a "need to know" in order to perform their jobs. You will report the theft, loss or destruction of the Manuals immediately to us. Upon the theft, loss or destruction of the Manuals, we will loan to you a replacement copy at a fee of \$125 for each Manual. A partial loss or failure to update any Manual is considered a complete loss.

(b) You agree that, during and after the Term, you, your owners and employees will:

(i) not use the Confidential Information in any other business or capacity, including any derivative or spin-off of the Anago concept;

(ii) maintain the absolute secrecy and confidentiality of the Confidential Information during and after the Term;

(iii) not make unauthorized copies of any portion of the Confidential Information disclosed or recorded in written or other tangible form; and

(iv) adopt and implement all procedures we require to prevent unauthorized use or disclosure of, or access to, the Confidential Information.

(c) You must require all persons whom you permit to have access to the Manuals or any other Confidential Information to sign our form of confidentiality agreement.

### **SECTION 6.3 PERIODIC REVISIONS.**

We may change the contents of the Manuals. You will comply with each new or changed provision beginning on the 30th day (or any longer time we specify) after written notice from us. Revisions to the Manuals will be based on what we in our sole discretion, deem is in the best interests of the System, us and our Unit Franchisees, including to promote quality, enhance good will, increase efficiency, decrease administrative burdens, or improve profitability. You agree that because complete and detailed uniformity under many varying conditions may not be possible or practical, we reserve the right, in our sole discretion and as we deem in the best interests of all concerned in any specific instance, to vary standards for any Unit Franchisee due to the peculiarities of the particular site or circumstances, density of population, business potential, population of trade area, existing business practices or any condition that we deem important to the successful operation of a Unit Franchise. You are not entitled to require us to grant to you a similar variation under this Agreement. You will ensure that your copy of the Manuals contains all updates you receive from us. In any dispute as to the contents of the Manuals, the terms contained in our master copy of each of the Manuals we maintain at our home office is controlling.

#### **SECTION 6.4 PRIOR INFORMATION.**

You agree that all Confidential Information received before the Agreement Date was unknown to you except through our disclosure and that the marketing practices and operating procedures we develop and Unit Franchise to you for the operation of the Anago Unit Franchise are important for the success of the System. To the extent you receive any Confidential Information after the Agreement Date, and you do not object in writing to us within 30 days after you receive the Confidential Information that any of the information comprising the Confidential Information should not be considered Confidential Information, then you irrevocably waive your right to make any objection. You agree that this representation is a material inducement for us to enter into this Agreement, and any breach is an Event of Default.

#### **ARTICLE 7 - ADVERTISING**

You must submit to us for approval, all materials to be used for Local Advertising, unless they have been approved before or they consist only of materials we provided. All materials on which the Proprietary Marks are used must include the applicable designation service mark <sup>SM</sup>, trademark <sup>TM</sup>, registered ® or copyright ©, or any other designation we specify. If you have not received the written or oral disapproval of materials submitted within 10 days from the date we received the materials, the materials are deemed approved. We may require you to withdraw and/or discontinue the use of any promotional materials or advertising, even if previously approved, if in our judgment, the materials or advertising may injure or be harmful to the System. We must make this requirement in writing, and you have 5 days after receipt of notice to withdraw and discontinue use of the materials or advertising, unless otherwise agreed in writing. The submission of advertising to us for approval does not affect your right to determine the prices at which you sell your products or services.

## **ARTICLE 8 - ACCOUNTING AND RECORDS**

### **SECTION 8.1 RECORDS.**

You will maintain accurate Records for the operations of the Anago Unit Franchise. Records must be segregated from all others (business and personal) not concerning the Unit Franchise. You will preserve the records for at least 6 years from the dates of their preparation (including after the termination or expiration of this Agreement).

### **SECTION 8.2 REPORTS AND STATEMENTS; CONFIDENTIALITY.**

(a) **Monthly Reports.** You will submit to us by the 20th day of each month during the Term, in the form we require, accurate Records reflecting the information we require. If you must collect and remit sales taxes, you must also supply to us copies of your sales tax returns.

(b) **Annual Financial Statements.** We may request you prepare and submit an annual balance sheet and income statement, within 90 days of the end of the fiscal year prepared in accordance with Generally Accepted Accounting Principles. Each annual statement must be accompanied by an unqualified review opinion from an independent certified public accountant acceptable to us, and must be signed by you or by your treasurer or chief financial officer attesting that the financial statements are correct and fairly present your financial position at and for the times indicated. You will also supply to us, if requested, copies of your federal and state income tax returns at the time these returns are filed with the appropriate tax authorities. The financial statements and/or other periodic reports described above must be prepared to segregate the income and related expenses of the Anago Unit Franchise from those of any other business that you conduct.

(c) **Confidentiality.** All information will remain confidential, except that you give permission to us to release any information to your landlord, lenders or prospective landlords and lenders, and to include information in any document under federal or state Unit Franchise laws about you or the Anago Unit Franchise.

### **SECTION 8.3 AUDIT BY US.**

We and our representatives have the right at all reasonable times to examine and copy, at our expense, your Records. We have the right, at any time, to have an independent audit made of your Records.

### **SECTION 8.4 YOUR NAME, HOME ADDRESS AND TELEPHONE NUMBER.**

You agree that, under federal and state Unit Franchise registration and disclosure laws and other applicable laws, we may be required to disclose your name, home address and

telephone number and you agree to the disclosure of your name, home address and telephone number. You must notify us of any change in your name, home address and telephone number within 10 days of the change. You release us and our officers, directors, stockholders, agents and legal successors and assigns from all causes of action, suits, debts, covenants, agreements, damages, judgments, claims and demands, in law or in equity, that you ever had, now have, or that you later may have from our disclosure of your name, home address and telephone number.

## **ARTICLE 9 - INSURANCE**

### **SECTION 9.1 TYPES AND AMOUNTS OF COVERAGE.**

You must obtain and maintain insurance, at your expense, as we require, in addition to all other insurance that may be required by applicable law, your landlord, lender or otherwise. All policies must be written by an insurance company reasonably satisfactory to us with a Best rating of "A" or better, and must include at a minimum:

(a) Commercial general liability insurance and completed operations coverage in the amount of \$5,000,000 per person/per occurrence for bodily injury and property damage combined with a general aggregate of \$5,000,000, and naming us as an additional named insured in each policy;

(b) Workers' compensation coverage and unemployment insurance and all other insurance required by statute or rule of the state where the Anago Unit Franchise is located;

(c) Automobile liability insurance. You agree to require that vehicles used by your employees in the Anago Unit Franchise as well as yourself have coverage, with a combination of primary and excess limits of at least \$100,000/\$300,000;

(d) Surety bond of \$25,000; and

(e) All other insurance, and in the amounts, we reasonably require for our and your protection.

We may periodically adjust the amounts of coverage required under the insurance policies and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances, if the changes are required throughout the System including any Company Units.

### **SECTION 9.2 EVIDENCE OF INSURANCE.**

Within 10 days after the Agreement Date, you must furnish to us a certificate of insurance issued by an approved insurance company showing compliance with these requirements and a paid receipt showing the certificate number. The certificate of insurance must include a statement by the insurer that the policies will not be canceled, subject to non-renewal or materially altered without at least 30 days' written notice to us. Copies of all insurance policies and proof of payment will be submitted promptly to us upon our request to you. You will send to us current certificates of insurance and copies of all insurance policies on an annual basis.

**SECTION 9.3 OUR RIGHT TO PARTICIPATE IN CLAIMS PROCEDURE.**

We, or our insurer, have the right to participate in discussions with your insurance company or any claimant (with your insurance company) regarding any claim. You agree to adopt our reasonable recommendations to your insurance carrier regarding the settlement of any claims.

**SECTION 9.4 WAIVER OF SUBROGATION.**

Insofar as and to the extent that this Section may be effective without invalidating it or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the state where the Anago Unit Franchise is located (even though an extra premium may result), the parties agree that, for any loss that is covered by insurance then being carried by them, their respective insurance companies have no right of subrogation against the other.

**SECTION 9.5 EFFECT OF OUR INSURANCE.**

Your obligation to maintain the policies in the amounts required is not limited in any way by reason of any insurance we maintain, nor will our performance of your obligations relieve you of liability under the indemnity provisions in this Agreement.

**SECTION 9.6 YOUR FAILURE TO MAINTAIN INSURANCE.**

If you fail to maintain the insurance required by this Agreement, we have the right and authority (without any obligation to do so) immediately to procure the insurance and to charge you for the cost of the insurance, plus interest at the maximum rate permitted by law, which charges, together with a reasonable fee for our expenses in so acting, you agree to pay immediately upon notice.

**SECTION 9.7 GROUP INSURANCE.**

If we make available to you insurance coverage through group or master policies we arrange including property and casualty, workers' compensation, liability and health, life and/or disability insurance, you may participate, at your expense, in this group insurance program. We

may charge a reasonable fee for administering any group insurance program.

## **ARTICLE 10 - TRANSFER OF INTEREST**

### **SECTION 10.1 TRANSFER BY US.**

We have the absolute right to transfer, assign or delegate any of our rights or obligations under this Agreement to any person without your consent. If our transferee assumes our obligations under this Agreement and sends to you written notice of the assignment and assumption, you agree within 7 days of a request to sign a release of us except for any liabilities from which we may not be released under any applicable law. We can also transfer our stock, engage in public and private securities offerings, merge, consolidate, acquire other businesses including Competitive Businesses, sell all or substantially all of our assets, borrow money (secured or unsecured), deal in our assets or otherwise operate our business without your consent.

### **SECTION 10.2 YOUR TRANSFER.**

(a) **Personal Rights.** The rights and duties stated in this Agreement are personal to you. We have granted the Unit Franchise in reliance on your business and personal skill, reputation, aptitude and financial capacity. Accordingly, you agree that, unless otherwise expressly permitted by this Agreement, you will not sell, assign, transfer, convey or give voluntarily, involuntarily, directly or indirectly, by operation of law or otherwise (collectively "transfer") any direct or indirect interest in this Agreement or in the Unit Franchise without our written consent (that may be granted or withheld by us in our sole discretion). However, our written consent is not required for: (i) a transfer of less than a 5% interest in a publicly held corporation; or (ii) a transfer of all or any part of your interest to one of your other original shareholders or partners. A transfer of 25% or more of the voting or ownership interests in your corporation, partnership or limited liability company, individually or in the aggregate, directly or indirectly, is, for all purposes of this Agreement, considered your transfer of an interest in this Agreement. Any purported transfer by you, by operation of law or otherwise in violation of this Agreement, is void and is an Event of Default.

(b) **Transfer to Your Corporation.** This Agreement may be assigned to a corporation where you own all of the issued and outstanding capital stock if:

(i) You actively manage the corporation and continue to devote your best efforts and full and exclusive time to the day-to-day operation and development of the Anago Unit Franchise;

(ii) The corporation is newly organized and its activities are confined exclusively to acting as the Unit Franchisee under this Agreement;

(iii) The corporation cannot use the name "Anago" in any derivative or form in

the corporate name;

(iv) An authorized officer of the corporation signs a document in a form we approve, agreeing to become a party bound by all the provisions of this Agreement;

(v) We approve a personal guaranty and agreement not to sell, assign, pledge, mortgage or otherwise transfer or encumber the stock of the Corporation;

(vi) All stock certificates representing shares bear a legend that they are subject to this Agreement; and

(vii) You pay to us a \$250 transfer fee.

(c) **No Sub franchising Rights.** You have no right to grant a subfranchise.

(d) **No Encumbrance.** You agree that your rights under this Agreement and any voting or ownership interest of more than 25% in a corporate, partnership or limited liability company Unit Franchisee (or in any owner of the Unit Franchisee) may not be pledged, mortgaged, hypothecated, given as security for an obligation or encumbered. Any attempted encumbrance is void and is an Event of Default.

(e) **Permitted Transfer.** We may consent to a transfer of any interest in this Agreement if the following requirements are satisfied or waived by us in our sole discretion:

(i) You are not in default of any provision of this Agreement or any other agreement between you and us or our Business Affiliates;

(ii) You sign a general release of all claims against us, our Business Affiliates, and their respective officers, directors, shareholders, representatives, agents and not be released from under any applicable state law;

(iii) The transferee is not in the same business as us, either as a franchisor, licensor or as a licensee or Unit Franchisee of any chain or system that is similar in nature or in competition with us, except that the transferee may be our existing Unit Franchisee;

(iv) The transferee assumes this Agreement;

(v) The transferee pays a transfer fee of the greater of: (1) \$2,000, or (2) 10% of the sales price, in lieu of the Initial Unit Franchise Fee (the "Transfer Fee"). If the transferee is a spouse or child of the transferor, no transfer fee will be charged but a reasonable administrative fee (currently \$250) will be charged;

(vi) The transferee interviews at our principal office without expense to us and

demonstrates to our satisfaction that the transferee has the business and personal skills, reputation and financial capacity we require;

(vii) The transferee satisfactorily completes our application and training procedures for new Unit Franchisees;

(viii) The transferee demonstrates to our sole satisfaction that he or she has properly assumed and will be able to comply with all of his or her obligations to the Anago Unit Franchise. You will remain liable for all obligations to us under this Agreement before the effective date of the transfer and will sign all instruments we reasonably request to evidence these liabilities;

(ix) At the transferee's expense, the transferee completes the Anago Training Program then in effect for new Unit Franchisees upon all terms we reasonably require; and

(x) We are satisfied that the proposed terms of sale or other factors involved in the transfer do not materially reduce the potential ability of the transferee effectively to assume and carry out his or her obligations.

We have no duty to consider these factors and approval of a proposed transfer is not an expression of opinion of the appropriateness or fairness of the terms of the transfer or the transferee's likelihood of success. No disapproval of the transferee for failure to satisfy the transfer conditions described in this Subsection, or of any other condition to transfer stated in this Agreement causes us any liability to the transferee.

Our consent to a transfer is not a waiver of any claims we may have against you, nor is it a waiver of our right to demand the transferee's exact compliance with this Agreement. No transfer (even if approved by us) relieves you of liability for your conduct before the transfer, including conduct in breach of this Agreement.

### **SECTION 10.3 TRANSFER UPON DEATH OR DISABILITY.**

(a) If any Unit Franchise Owner becomes disabled from any cause and is unable to perform his or her obligations under this Agreement for a continuous period in excess of 3 consecutive months, or on the death of the Unit Franchise Owner, you (or your legal representative) will within 30 days after the 3 months of disability or death, provide and maintain a replacement satisfactory to us to perform the obligations. If a replacement is not provided or maintained as required, we may hire and maintain a replacement for you. You will compensate the replacement for your services at the rate we establish in the reasonable exercise of our discretion. For all purposes of this Agreement, any period of disability that is interrupted by a return to active work and proper performance of duties under this Agreement for 14 days or less is deemed continuous.



(b) If: (i) any individual who holds a 25% or greater voting or ownership interest in a corporate, partnership or limited liability company Unit Franchisee (or in any owner of the Unit Franchisee); or (ii) any individual who is the Unit Franchisee, dies during the Term, the interests of that individual in a corporate, partnership or limited liability company Unit Franchisee (or in any owner of the Unit Franchisee) or in this Agreement are required to be transferred within 6 months of the death to an approved transferee in accordance with the terms of this ARTICLE.

## **ARTICLE 11 - DEFAULT AND TERMINATION**

### **SECTION 11.1 TERMINATION BY YOU.**

If we materially breach this Agreement, you must give us written notice describing the nature of the breach and we have 60 days to cure the breach or a longer period of time if the nature of the breach cannot be reasonably cured within 60 days and we are diligently proceeding to cure the breach. If we do not cure the breach, you may terminate this Agreement. You may also terminate this Agreement upon the mutual written agreement with us. Any termination of this Agreement by you other than as stated above, is a wrongful termination by you.

### **SECTION 11.2 TERMINATION BY US - WITHOUT NOTICE.**

(a) Subject to applicable law, this Agreement automatically terminates without notice or opportunity to cure on the date of the occurrence of any of the following Events of Default: if you damage the Anago System through violation of federal, state or local environmental laws; if you become insolvent or make a general assignment for the benefit of creditors; you file a petition in bankruptcy or a petition is filed against or consented to by you and the petition is not dismissed within 45 days; you are adjudicated as bankrupt; a bill in equity or other proceeding for the appointment of a receiver or other custodian for your business or assets is filed or consented to by you; a receiver or other custodian (permanent or temporary) of your business or assets is appointed by any court of competent jurisdiction; proceedings for a composition with creditors under federal or any state law is begun by or against you; a final judgment in excess of \$5,000 remains unsatisfied or of record for 30 days or longer (unless a *supersedes* bond is filed); execution is levied against your operation or property, or suit to foreclose any lien or mortgage against the Premises or your assets is begun against you and not dismissed within 45 days; or a substantial portion of your real or personal property used in the Anago Unit Franchise is sold after levy by any sheriff, marshal or constable.

(b) You will notify us within 3 days of the occurrence of any of the events described in Subsection 11.2(a).

### **SECTION 11.3 TERMINATION BY US - AFTER NOTICE.**

You are in default and we may, at our option, terminate all rights granted to you under this Agreement, without affording you any opportunity to cure the default, effective immediately upon notice to you, upon the occurrence of any of the following Events of Default:

- (a) If you cease to perform contracted service to your Accounts for more than 3 consecutive days without our consent;
- (b) If a serious or imminent threat or danger to public health or safety results from the construction, maintenance or operation of the Anago Unit Franchise and the threat or danger remains uncorrected for 5 days after your receipt of written notice from us or a governmental authority. If a cure cannot be reasonably completed in this time, then all reasonable steps to cure must begin within this time, but a cure must be completed promptly within 30 days after receipt of written notice;
- (c) If you fail or refuse to comply with any mandatory specification, standard or operating procedure we require in this Agreement, in the Manuals or otherwise in writing, on the cleanliness or sanitation of the Anago Unit Franchise or violate any health, safety, or sanitation law, ordinance, or regulation and do not correct the failure or refusal within 3 days after written notice from us or a governmental authority. If a cure cannot be reasonably completed in this time, then all reasonable steps to cure must begin within this time, but a cure must be completed within 30 days after receipt of written notice;
- (d) If you, or your officer, director, owner or managerial employee is convicted of a felony, a crime of moral turpitude or any other crime or offense that we reasonably believe is likely to have a material adverse effect on the System, the Proprietary Property, the good will associated with the Proprietary Property, or our interest in any of the Proprietary Property, unless you immediately and legally terminate the individual as an officer, director, owner and employee;
- (e) If you deny us the right to inspect the Anago Unit Franchise or to audit the records of the Anago Unit Franchise;
- (f) If you engage in conduct that is deleterious to or reflects unfavorably on you or the System in that the conduct exhibits a reckless disregard for the physical or mental well being of employees, Clients, our representatives or the public at large, including battery, assault, sexual harassment or discrimination, racial harassment or discrimination, alcohol or drug abuse or other forms of threatening, outrageous or unacceptable behavior as determined in our sole discretion;
- (g) If you, contrary to this Agreement, purport to encumber or transfer any rights or obligations under this Agreement (including transfers of any interest in you), without our written consent;
- (h) If any breach occurs under Sections 6.2 or 13.1 concerning confidentiality and non-competition covenants;

(i) If you knowingly maintain false Records, or knowingly submit any false Records to us;

(j) If you misuse or make any unauthorized use of the Proprietary Property or otherwise materially impair the good will associated with the Proprietary Property or our rights in the Proprietary Property;

(k) If you receive from us 3 or more Notices of Default for the same or similar defaults during any 12 consecutive months, even if all defaults were cured;

(l) If you lose or voluntarily cease service to all Anago contracts you have agreed to service, and subsequently fail to complete retraining with 90 days of notice to attend retraining;

(m) If you stop service to contracts assigned to you and decline all subsequent offers of contracts by Anago for a period of 360 days after the last date of service to an Anago client; or

(n) If Anago is unable to contact you because you have vacated and failed to inform the local Anago office pursuant to Section 8.4 of this Agreement.

#### **SECTION 11.4 TERMINATION BY US - AFTER NOTICE AND RIGHT TO CURE.**

Except as otherwise provided above, you have 30 days after delivery from us of a written Notice of Default specifying the nature of the default to remedy any default other than as stated above, and provide evidence of cure satisfactory to us. If any default is not cured within that time, or any longer time as applicable law requires, an Event of Default has occurred and all your rights under this Agreement terminate without additional notice to you effective immediately upon the expiration of the 30 days or any longer time as applicable law requires. In addition to the Events of Default specified in Sections 11.2 and 11.3, an Event of Default occurs if you fail to comply with any of the requirements imposed by this Agreement, as it may be revised or supplemented by the Manuals, or to carry out this Agreement in good faith. You have the burden of proving you properly and timely cured any default, to the extent a cure is permitted under this Agreement.

### **ARTICLE 12 - YOUR OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon the termination or expiration of this Agreement, the Sections of this ARTICLE apply to the rights and obligations of the parties.

#### **SECTION 12.1 CEASE OPERATIONS.**

You will immediately cease to operate the Anago Unit Franchise. You will not, directly

or indirectly, use any of the Proprietary Property nor represent yourself as a present or former Unit Franchisee of us or in any other way affiliate yourself with the System. You will immediately cease using all stationery, signage and other materials containing the Proprietary Marks.

**SECTION 12.2 PAYMENT OF OUTSTANDING AMOUNTS.**

We may retain all fees paid under this Agreement except for refunds expressly required in this Agreement. In addition, within 10 days after the effective date of the termination or expiration, or any later dates as we determine that amounts are due to us, you must pay to us all amounts owed to us, our affiliates and your other creditors that are then unpaid.

**SECTION 12.3 DISCONTINUANCE USE OF NAME.**

You will cancel any fictitious, trade or assumed name registration that contains our trademark, trade name or service mark or colorable imitation of our trademark, trade name or service mark. You will furnish us with evidence of compliance with this obligation to cancel the registration within 30 days after termination or expiration of this Agreement. If you fail to cancel, you appoint us as your attorney-in-fact to do so for you.

**SECTION 12.4 UNFAIR COMPETITION.**

You agree, if you continue to operate or later begin to operate any other business, not to use any reproduction or colorable imitation of the Proprietary Marks, methods of operation or undertake any other conduct either in any other business or the promotion of any other business, that is likely to cause confusion, mistake or deception, or that is likely to dilute our rights in and to the Proprietary Marks. In addition, you agree not to utilize any designation of origin or description or representation that falsely suggests or represents an association or connection with Anago, us or any of our affiliates. This Section does not relieve, directly or indirectly, your obligations under ARTICLE 13.

**SECTION 12.5 RETURN OF MATERIALS**

You will immediately deliver to us all tangible Proprietary Property in your possession or control, and all copies and any other forms of reproductions of these materials. You agree that all these materials are our exclusive property.

**SECTION 12.6 RETURN OF EQUIPMENT.**

You will return any loaned equipment or you may retain equipment by paying all unpaid lease payments through the end of the lease.

**SECTION 12.7 LIQUIDATED DAMAGES FOR PREMATURE TERMINATION.**

If termination is the result of your default, you will pay to us a lump sum payment (as liquidated damages for causing the premature termination of this Agreement and not as a penalty) equal to the total of all Royalty Fees and Advertising Contributions for: (i) the 36 calendar months of operation of the Anago Unit Franchise before your default; (ii) the period of time the Anago Unit Franchise has been in operation before the notice, if less than 36 calendar months, projected on a 36-calendar month basis; or (iii) any shorter period as equals the unexpired Term at the time of termination. The parties agree that a precise calculation of the full extent of the damages that we will incur on termination of this Agreement as a result of your default is difficult and the parties desire certainty in this matter in the extreme, and agree that the lump sum payment provided under this Section is reasonable in light of the damages for premature termination that we will incur. This payment is not exclusive of any other remedies that we have.

## **ARTICLE 13 - YOUR INDEPENDENT COVENANTS**

### **SECTION 13.1 DIVERSION OF BUSINESS; COMPETITION AND INTERFERENCE WITH US.**

You agree that we would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among the Unit Franchisees within the System if Unit Franchisees were permitted to hold interests in any Competitive Business.

(a) **In-Term Non-Compete.** You covenant that during the Term, except as we otherwise approve in writing, you will not:

(i) directly or indirectly, solicit or otherwise attempt to induce, by combining or conspiring with, or attempting to do so, or in any other manner influence any Business Affiliate to terminate or modify his, her or its business relationship with us or to compete against us;

(ii) directly or indirectly, as owner, officer, director, employee, agent, lender, broker, consultant, Unit Franchisee or in any other capacity be connected with the ownership, management, operation, control or conduct of a Competitive Business; or

(iii) interfere with, disturb, disrupt, decrease or otherwise jeopardize our business or the business of any of our Unit Franchisees.

(b) **Post-Term Non Compete.** You also covenant that for 24 months after the termination or expiration of this Agreement, except as we otherwise approve in writing, you will

not:

(i) directly or indirectly, solicit or otherwise attempt to induce, by combining or conspiring with, or attempting to do so, or in any other manner influence any Business Affiliate to terminate or modify his, her or its business relationship with us or to compete against us;

(ii) directly or indirectly, as owner, officer, director, employee, agent, lender, broker, consultant, Unit Franchisee or in any other capacity be connected with the ownership, management, operation, control or conduct of a Competitive Business; or

(iii) interfere with, disturb, disrupt, decrease or otherwise jeopardize our business or the business of any of our Unit Franchisees.

If you violate this Subsection and compete with us, we have the right to require that all sales made by the Competitive Business be reported to us. You will also pay to us, on demand, a weekly fee of \$1,000 without being deemed to revive or modify this Agreement. These payments are liquidated damages to compensate us for our damages from your violation of the covenant not to compete and are not a penalty.

(c) You agree that the length of the term and geographical restrictions contained in this Section are fair and reasonable and not the result of overreaching, duress or coercion of any kind. You agree that your full, uninhibited and faithful observance of each of the covenants in this Section will not cause any undue hardship, financial or otherwise, and that enforcement of each of the covenants in this Section will not impair your ability to obtain employment commensurate with your abilities and on terms fully acceptable to you or otherwise to obtain income required for the comfortable support of yourself and your family, and the satisfaction of your creditors. You agree that your special knowledge of the business of an Anago Unit Franchise (and anyone acquiring this knowledge through you) would cause us and our Unit Franchisees serious injury and loss if you (or anyone acquiring this knowledge through you) were to use this knowledge to the benefit of a competitor or were to compete with us or any of our Unit Franchisees.

(d) If any court finally holds that the time or territory or any other provision in this Section is an unreasonable restriction upon you, you agree that the provisions of this Agreement are not rendered void, but apply as to time and territory or to any other extent as the court may judicially determine or indicate is a reasonable restriction under the circumstances involved.

(e) If you employ any person who at that time is, or during the last 24 months has been, employed by us or by any of our other Unit Franchisees, without the previous employer's consent, then you will pay to the previous employer an amount equal to 200% of that employee's annual salary (including the value of any bonus, stock option or similar additional compensation) while employed by us or any other Unit Franchisee. The payment required by this Subsection is

in compensation for the training and development provided to the employee and for the loss of the employee's experience and support, and not as a penalty. If the employee was employed by another Unit Franchisee, then the other Unit Franchisee is a third-party beneficiary of the terms of this Subsection, with the independent right to enforce these terms. The terms of this Subsection are in addition to any of our other rights in this Agreement.

#### **SECTION 13.2 INDEPENDENT COVENANTS.**

The parties agree that the covenants in this ARTICLE are independent of any other provision of this Agreement. You agree that the existence of any claim you may have against us or any of our affiliates, regardless of whether under this Agreement, is not a defense to our enforcement of these covenants.

### **ARTICLE 14 - INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

#### **SECTION 14.1 INDEPENDENT STATUS.**

The parties agree that this Agreement does not create a fiduciary relationship between them. You are an independent contractor and unless expressly provided to the contrary, nothing in this Agreement is intended to designate either party an agent, legal representative, subsidiary, joint venture, partner, employee, affiliate or servant of the other party for any purpose. The parties agree that nothing in this Agreement authorizes you to make any agreement, warranty or representation for us, nor to incur any debt or other obligation in our name. Any misrepresentations of the Anago System contract specifications by you will void any contract entered into with the Client.

You will take all affirmative action we request to indicate that you are an independent contractor, including placing and maintaining a plaque in a conspicuous place within the Premises and a notice on all stationery, business cards, sales literature, contracts and similar documents that states that the Anago Unit Franchise is independently owned and operated by you. The content of any plaque and notice is subject to our written approval.

#### **SECTION 14.2 INDEMNIFICATION.**

You are responsible for all losses or damages from contractual liabilities to third persons from the possession, ownership and operation of the Anago Unit Franchise and for all claims and demands for damages to property or for injury, illness or death of persons directly or indirectly resulting from your actions. You indemnify us from all costs, losses and damages (including reasonable attorneys' fees and costs, even if incident to appellate, post-judgment or bankruptcy proceedings) from claims brought by third parties involving your ownership or operation of the Anago Unit Franchise unless caused by our gross negligence or intentional misconduct. This indemnity obligation continues in full effect even after the expiration or termination of this

Agreement. We will notify you of any claims and you will be given the opportunity to assume the defense of the matter. If you fail to assume the defense, we may defend the action in the manner we deem appropriate and you will pay to us all costs, including attorneys' fees, we incur in effecting the defense, in addition to any sum that we pay by reason of any settlement or judgment against us. Our right to indemnity under this Agreement arises and is valid regardless of any joint or concurrent liability that may be imposed on us by statute, ordinance, regulation or other law.

## **ARTICLE 15 - REPRESENTATIONS AND WARRANTIES**

### **SECTION 15.1 NO RELIANCE.**

Except as expressly provided to the contrary in this Agreement, we make no representations, warranties or guarantees that you may rely on, and assume no obligation to you, by providing any waiver, approval, consent or suggestion to you under this Agreement, or by reason of any neglect, delay or denial of any request unless the conduct would otherwise be a breach of our express obligation under this Agreement.

### **SECTION 15.2 OUR REPRESENTATIONS.**

We make the following representations to you, which are correct upon the signing of this Agreement:

(a) **Organization.** We are a corporation duly organized, validly existing and in good standing under the laws of the state of (State).

(b) **Authorization.** We have the corporate power to sign, deliver, and carry out the terms of this Agreement. We have taken all necessary action for proper authorization. This Agreement has been duly authorized, signed and delivered by us and is our valid, legal and binding agreement and obligation in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization and other laws and equitable principles affecting creditors' rights generally.

(c) **No Violation.** Our performance of our obligations under this Agreement will not result in: (i) the breach of any term of any contract or agreement that we are a party to or bound by, or be an event that, with notice, lapse of time or both, would result in a breach or event of default; nor (ii) result in our violation of any statute, rule, regulation, ordinance, code, judgment, order, injunction or decree.

### **SECTION 15.3 YOUR REPRESENTATIONS.**

You make the following representations to us, which are true and correct upon signing this Agreement and throughout the Term:



(a) **Organization.** If you are a corporation, limited liability company or a general or limited partnership, you are duly organized, validly existing and in good standing under the laws of your state of organization.

(b) **Authorization.** You have the power to sign, deliver, and carry out this Agreement. You have taken all necessary action for proper authorization. This Agreement has been duly authorized, signed and delivered by you and is your valid, legal and binding agreement and obligation in accordance with this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization and other laws and equitable principles affecting creditors' rights generally.

(c) **No Violation.** Your performance of your obligations under this Agreement will not result in: (i) the breach of any term of, or be a default under, any term of any contract, agreement or other commitment that you are a party to or are bound by, or be an event that, with notice, lapse of time or both, would result in a breach or event of default; nor (ii) result in your violation of any statute, rule, regulation, ordinance, code, judgment, order, injunction or decree.

(d) **No Speculative Intent.** You are not obtaining this Unit Franchise for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer any part of this Agreement or the Anago Unit Franchise.

(e) **True Copies.** Copies of all documents you must furnish to us will be correct copies of the documents, including all amendments or modifications and will contain no misleading or incorrect statement or material omissions.

#### **SECTION 15.4 RECEIPT OF FOC.**

You agree that you received from us a FOC for the state where the Anago Unit Franchise will be located and your state of residence, with all exhibits and supplements to the FOC, on or before the first personal meeting with our representatives and at least 10 Business Days before: (a) signing this Agreement and any other agreement imposing a binding obligation on you; and (b) any payment by you of any consideration for the sale or proposed sale, of a Unit Franchise.

#### **SECTION 15.5 RECEIPT OF COMPLETED UNIT FRANCHISE AGREEMENT.**

You agree that you received from us a completed copy of this Agreement and all related agreements, containing all material terms, (except for the date, signatures and any minor matters not material to the agreements), with all blanks filled in, at least 5 Business Days before signing this Agreement.

#### **SECTION 15.6 ACKNOWLEDGMENT OF RISK.**

You agree to the following:

(a) YOUR SUCCESS IN OWNING AND OPERATING THE ANAGO UNIT FRANCHISE IS SPECULATIVE AND DEPENDS ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, YOUR INDEPENDENT BUSINESS ABILITY. NO REPRESENTATIONS OR PROMISES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY US OR ANY OF OUR OFFICERS, DIRECTORS, EMPLOYEES, BROKERS OR REPRESENTATIVES, TO INDUCE YOU TO ENTER INTO THIS AGREEMENT EXCEPT AS INCLUDED IN THIS AGREEMENT. NO OFFICER, DIRECTOR, EMPLOYEE, BROKER OR REPRESENTATIVE IS AUTHORIZED TO DO OTHERWISE.

(b) YOU AGREE THAT IN ALL OF YOUR DEALINGS WITH US, OUR OFFICERS, DIRECTORS, EMPLOYEES, BROKERS (IF ANY) AND OTHER REPRESENTATIVES ACT ONLY IN A REPRESENTATIVE CAPACITY AND NOT IN AN INDIVIDUAL CAPACITY. YOU AGREE THAT THIS AGREEMENT AND ALL BUSINESS DEALINGS BETWEEN YOU AND ANY INDIVIDUALS AS A RESULT OF THIS AGREEMENT, ARE ONLY BETWEEN YOU AND US.

(c) WE MAKE NO WARRANTY AS TO YOUR ABILITY TO OPERATE THE ANAGO UNIT FRANCHISE IN THE JURISDICTION WHERE THE ANAGO UNIT FRANCHISE IS TO BE OPERATED. IT IS YOUR OBLIGATION TO SEEK OR OBTAIN ADVICE OF COUNSEL SPECIFICALLY ON THIS ISSUE. IF LEGISLATION ENACTED BY, OR REGULATION OF, ANY GOVERNMENTAL BODY PREVENTS YOU FROM OPERATING THE ANAGO UNIT FRANCHISE, WE ARE NOT LIABLE FOR DAMAGES NOR REQUIRED TO INDEMNIFY YOU OR TO RETURN ANY MONIES RECEIVED FROM YOU.

## ARTICLE 16 - TERM

### SECTION 16.1 TERM.

The Term of this Agreement is 10 years from the Agreement Date, unless sooner terminated under ARTICLE 11. The conditions under which you have the opportunity of obtaining a Successor Anago Unit Franchise Agreement at the expiration of this Agreement are stated in Section 16.2.

### SECTION 16.2 OPTION TO OBTAIN SUCCESSOR ANAGO UNIT FRANCHISE AGREEMENT.

(a) You are granted unlimited options to obtain a Successor Anago Unit Franchise Agreement for terms of 10 years each provided the following conditions are met at the time the option is exercised and immediately before the beginning of the Succeeding Term, unless another

time is specified below:

(i) you must give us written notice of your intention to exercise the option by submitting your application at least 9 months but not more than 12 months before the end of the Term;

(ii) you cannot be in default of any provision of this Agreement or any other agreement between you and us or our affiliates;

(iii) you, within 30 days before the end of the Term, must sign and deliver to us a Successor Anago Unit Franchise Agreement, that may materially differ from this Agreement;

(iv) you must comply with all other requirements we impose under the Successor Anago Unit Franchise Agreement upon its signing, except that there is no new Initial Unit Franchise Fee or renewal fee; and

(v) you must sign a general release of all claims against us and our affiliates, and their respective officers, directors, shareholders, agents and employees except for liabilities that we may not require a release from under applicable state law.

(b) If you have not met all of the conditions stated in Subsection 16.2(a), we may elect not to enter into a Successor Anago Unit Franchise Agreement. At your written request, within 5 days of notice from us that you have elected not to enter into a Successor Anago Unit Franchise Agreement, for a 180 days following this notice (this notice will extend the Term, as necessary, to the end of the 180 days, unless we have grounds to otherwise terminate the Term), we will permit you to sell your business to a purchaser subject to our right of first refusal. This transfer must be in compliance with the provisions of Subsection 10.2(e) and all the other applicable provisions of this Agreement.

## **ARTICLE 17 - DEFINITIONS**

### **SECTION 17.1 DEFINITIONS.**

As used in this Agreement, the Exhibits attached to this Agreement and all other documents signed incidental to this Agreement and any exhibits to those documents, the following terms have the following meanings:

**"Account"** means a janitorial service contract.

**"Administration Fee"** means the fee described in Subsection 3.1(c).

**"Advertising Contributions"** means the payments described in Subsection 3.1(d).

"**Affiliate**" means a company related to us, for example, a parent corporation, brother/sister corporation or subsidiary corporation.

"**Agreement**" means this Anago Unit Franchise Agreement, as it may be amended, supplemented or otherwise modified by an agreement in writing signed by you and us under Section 18.2.

"**Agreement Date**" means the date of signing this Agreement.

"**Anago Unit Franchise**" means the janitorial services business you are authorized to establish and operate under this Agreement.

"**Anago Training Program**" means the training described in Section 2.2.

"**Business Associate**" means any of our employees, officers, directors, agents, consultants, representatives, contractors, suppliers, distributors, Unit Franchisees or other business contacts.

"**Business Day**" means a day other than Saturday, Sunday or a U.S. national holiday.

"**C-Fee**" means the fee stated in Subsection 3.1(f).

"**Client**" means the person who signs a janitorial services contract and receives janitorial services.

"**Company Unit**" means an Anago janitorial services business operated under the System that we own.

"**Competitive Business**" means a business that is engaged, wholly or partially, directly or indirectly, in the janitorial services business or selling Unit Franchises of janitorial services businesses.

"**Complaint Fee**" means the fee described in Subsection 3.1(i).

"**Confidential Information**" means all information, knowledge, know-how and technologies that we designate as confidential, proprietary or trade secrets. Confidential Information includes the Manuals.

"**Day Porter**" means a person you provide to a Client for clean-up services during the day, provided you have a contract for normal janitorial services.

"**Designee**" means 1 or more of our representatives who are independent contractors and

are appointed by us to perform certain of our duties under this Agreement as described in ARTICLE 2.

**"Enforcement Costs"** means the costs described in Section 18.9.

**"Event of Default"** means a breach of this Agreement including those situations described in Sections 6.4, 10.2(a), 10.2(d), ARTICLE 11, 15.2(c) and 15.3(c), assuming any requirement for the giving of notice, the lapse of time, or both, or any other condition is satisfied.

**"Extra Work"** means work a Client requests over and above the normal monthly contract such as special carpet cleaning, hard service floor restoration, etc.

**"FOC"** means our current Franchise Offering Circular and all its exhibits and supplements.

**"Generally Accepted Accounting Principles"** means those standards, conventions and rules accountants follow in recording and summarizing transactions, and in the preparation of financial statements. Generally accepted accounting principals derive, in order of importance, from: (i) issuances from an authoritative body designated by the American Institute of Certified Public Accountants ("AICPA") Council; other AICPA issuances including AICPA Industry Guides; (iii) industry practice; and (iv) accounting literature in the form of books and articles.

**"Gross Monthly Billings"** means the gross amount of monthly service contracts only.

**"Gross Revenues"** means the entire amount of all of your revenues from the ownership or operation of the Anago Unit Franchise including revenues from regular janitorial services, revenues from janitorial services performed outside the monthly contract specifications revenues from janitorial services performed on a one-time basis, and revenues from Extra Work including the proceeds of any business interruption insurance, whether the revenues are evidenced by cash, credit, checks, gift certificates, scrip, coupons and premiums (unless exempted by us), services, property or other means of exchange, excepting only the amount of any sales taxes that are collected and paid to the taxing authority. Cash refunded and credit given to Clients (except credit for missing cleaning days) and receivables uncollectable from Clients will be deducted in computing Gross Revenues to the extent that the cash, credit or receivables represent amounts previously included in Gross Revenues where Royalty Fees and other amounts were paid. Gross Revenues are deemed received by you at the time the goods, products, merchandise or services from which they derive are delivered or rendered or at the time the relevant sale takes place, whichever occurs first. Gross Revenues consisting of property or services (for example, "bartering" or "trade outs") are valued at the prices applicable, at the time the Gross Revenues are received, to the products or services exchanged for the Gross Revenues.

**"Initial Business"** means the amount of monthly gross billings from Accounts we offer to you based on the Program selected.

**"Initial Unit Franchise Fee"** means the fee described in Subsection 3.1(a).

**"Initial Offering Period"** means the period described in Subsection 2.1(a).

**"Local Advertising"** means advertising and promotion you undertake in media directed primarily in your local market area including television, radio, newspapers, magazines, billboards, posters, handbills, direct mail, yellow pages, sports program booklet advertising, church bulletins, collateral promotional and novelty items (for example, matchbooks, pens and pencils, bumper stickers, calendars) that prominently display our Proprietary Marks, advertising on public vehicles including cabs and buses, the cost of producing materials necessary to participate in these media and agency commissions on the production of the advertising and amounts paid to an approved regional advertising cooperative or to a merchant's association for advertising of which you are a member. Local Advertising does not include payments for permanent on-premises signs, lighting, purchasing or maintaining vehicles even though the vehicles display our Proprietary Marks (except the cost of the materials displayed are included), contributions, sponsorships (unless our Proprietary Marks are prominently displayed by the group or activity receiving the contribution or sponsorship), premium or similar offers including discounts, price reductions, special offers, free offers and sweepstake offers (except that the media costs associated with promoting the premium offers are included), employee incentive programs and other similar payments that we determine in our sole discretion should not be included in determining whether you met your obligation for Local Advertising.

**"Manuals"** means all manuals produced by, or for the benefit of, us and loaned to you and any revisions prepared for the internal use of the Anago Unit Franchise.

**"Note Payments"** means all payments made against any outstanding note signed by you to us.

**"Notice of Default"** means the notices described in Section 11.4.

**"Operations Fee"** means the fee described in Subsection 3.1(g).

**"Premises"** means the entire real property, either owned or leased by you where the Anago Unit Franchise is located.

**"Program"** means one of the 8 Programs described in ITEM 5 of the FOC.

**"Proprietary Marks"** means the service mark and logo "Anago" and all other trademarks, service marks, trade names, logos and commercial symbols we authorize as part of the System.

**"Proprietary Property"** means our Proprietary Marks, Confidential Information and

copyrighted information or our affiliates that you are entitled to use under this Agreement.

**"Records"** means books, financial information, reports, files, correspondence, etc. for the Anago Unit Franchise.

**"Regional Office"** means the local master subfranchisor from which you purchased your Unit Franchise.

**"Royalty Fee"** means the fee described in Subsection 3.1(b).

**"Succeeding Term"** means the term of the Successor Anago Unit Franchise Agreement.

**"Successor Anago Unit Franchise Agreement"** means the form of Unit Franchise agreement for new Anago Unit Franchisees at the time you elect to enter into an agreement in accordance with Section 16.2.

**"System"** means our business system for operating an Anago janitorial services business. The System includes specific standards and procedures and Proprietary Property, that may be changed.

**"Term"** means the term of the Agreement described in Section 16.1.

**"Unit"** means either a Company Unit or a Unit Franchise Unit.

**"Unit Franchise"** means the rights granted to you under this Agreement.

**"Unit Franchise Owner"** means: (i) if you are an individual, you; (ii) if you are a corporation, the individual who owns a majority of the voting and ownership interests in the corporation; (iii) if you are a partnership, the individual who is, or owns a majority of the voting and ownership interests in an entity that is a general partner of the partnership; and (iv) if you are a limited liability company, the individual who owns the majority of the membership interests in the company.

**"Unit Franchise Unit"** means an Anago Unit Franchise owned and operated under the System by a Unit Franchisee.

**"We/Us/Our"** means CORP NAME, Inc., the subfranchisor.

**"You/Your"** means all persons signing the signature page of this Agreement as Unit Franchisee, jointly and individually.

## **SECTION 17.2 OTHER DEFINITIONAL PROVISIONS.**

(a) All of the terms defined in this Agreement have these defined meanings when used in other documents issued under or delivered under this Agreement unless the context otherwise requires or unless specifically otherwise defined in the other document; and

(b) The term "person" includes any corporation, limited liability company, partnership, estate, trust, association, branch, bureau, subdivision, venture, associated group, individual, government, institution, instrumentality and other entity, enterprise, association or endeavor of every kind.

## **ARTICLE 18 - GENERAL PROVISIONS**

### **SECTION 18.1 RELEASE OF CLAIMS.**

By signing this Agreement, you, and each of your successors under this Agreement, forever release us and our affiliates, our Designees, Unit Franchise sales brokers, if any, or other agents, and their respective officers, directors, representatives, employees and agents, from all claims of any kind, in law or in equity, that may exist as of the Agreement Date under this Agreement or any other agreement between the parties, or involving our conduct and the conduct of our affiliates, our Designees, Unit Franchise sales brokers, if any, or other agents, and their respective officers, directors, representatives, employees and agents on or before the Agreement Date, including all claims, whether presently known or unknown suspected or unsuspected, under the Unit Franchise, business opportunity, securities, antitrust or other laws of the United States, any state or locality.

### **SECTION 18.2 AMENDMENTS.**

Except as stated in this Agreement, the provisions of this Agreement cannot be amended, supplemented, waived or changed orally, except by a written document signed by the party against whom enforcement of any amendment, supplement, waiver or modification is sought and making specific reference to this Agreement. Only our President has the authority to sign an amendment for us. This Section is expressly limited by the terms of Sections 18.3 and 18.7.

### **SECTION 18.3 MODIFICATION OF THE SYSTEM.**

YOU AGREE THAT AFTER THE AGREEMENT DATE WE MAY MODIFY THE SYSTEM. YOU AGREE TO ACCEPT AND BE BOUND BY ANY MODIFICATIONS IN THE SYSTEM AS IF THEY WERE PART OF THIS AGREEMENT AT THE TIME OF SIGNING THIS AGREEMENT. YOU WILL MAKE ALL EXPENDITURES AND MODIFICATIONS OF THE SYSTEM WE REQUIRE.



**SECTION 18.4 BINDING EFFECT.**

The terms of this Agreement are binding upon, benefit and are enforceable by the parties and their respective personal representatives, legal representatives, heirs, successors and permitted assigns.

**SECTION 18.5 NOTICES.**

All notices, requests, consents and other communications required or permitted under this Agreement must be in writing (including telex, telecopy and telegraphic communication) and must be (as elected by the person giving the notice) hand delivered by messenger or courier service, telecopy, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to us:  
CORP NAME, Inc.  
Address  
City, (State) zip

With a copy to:  
(attorneys name)  
(attorneys address)  
(attorneys city, state zip)

If to You:

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

or to any other address any party designates by notice complying with the terms of this Section. Each notice is deemed delivered: (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmed answer back if by telex, tele-fax or other telegraphic method; and (c) on the date the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable if mailed.

**SECTION 18.6 HEADINGS.**

The headings and subheadings in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement and do not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

**SECTION 18.7 SEVERABILITY.**

(a) If any provision of this Agreement or any other agreement entered into under this Agreement is contrary to, prohibited by or invalid under applicable law or regulation, that provision only is inapplicable and omitted to the extent so contrary, prohibited or invalid, but the

remainder of this Agreement is not invalidated and is given full effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one that would render the provision invalid or otherwise voidable or unenforceable and another that would render the provision valid and enforceable, that provision has the meaning that renders it valid and enforceable.

(b) If any applicable law of any jurisdiction requires a greater notice of the termination of or non-renewal of this Agreement (if permitted) than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law of any jurisdiction, any provision of this Agreement or any of our requirements is invalid or unenforceable, the notice and/or other action required by that law will be substituted for the comparable provisions of this Agreement. We have the right, in our sole discretion, to modify any invalid or unenforceable requirement to the extent required to be valid and enforceable. Any modification to this Agreement is effective only in that jurisdiction, unless we elect to give the modification greater applicability, and this Agreement is enforced as originally made and entered into in all other jurisdictions.

#### **SECTION 18.8 WAIVERS.**

The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, will not affect the right of that party to require performance of that provision or to exercise any right under this Agreement. Any waiver by any party of any breach of any provision of this Agreement is not a waiver of any continuing or later breach of that provision, a waiver of the provision itself, or a waiver of any right under this Agreement. No notice to or demand on any party in any case, of itself, entitles that party to any other notice or demand in similar or other circumstances.

#### **SECTION 18.9 ENFORCEMENT COSTS.**

If any legal action or other proceeding is begun for the enforcement of this Agreement, or for an alleged dispute, breach, default or misrepresentation under any provision of this Agreement, the prevailing party is entitled to recover reasonable pre-institution and post-institution attorneys' fees, court costs and all expenses even if not taxable as court costs (including all fees and expenses incident to appellate, bankruptcy and post-judgment proceedings), incurred in the action or proceeding, in addition to any other relief that the party is entitled. Attorneys' fees include paralegal fees, administrative costs, investigative costs, costs of expert witnesses, court reporter fees, sales and use taxes, if any, and all other charges billed by the attorneys to the prevailing party. If we engage legal counsel for your failure to pay when due any monies owed under this Agreement or submit when due any reports, information or supporting records, or for any failure otherwise to comply with this Agreement, you must reimburse us on demand for all of the above-listed expenses we incur.

#### **SECTION 18.10 JURISDICTION AND VENUE.**

In the event of any controversy or claim arising out of or relating to this Agreement, or any breach thereof, including, without limitation, any claim that this Agreement, or any part of it, is invalid, illegal or otherwise voidable or void, either party may submit the matter to final and binding arbitration before, and in accordance with, the Commercial Rules of the American Arbitration Association. Judgment upon the award may be entered in any court having jurisdiction thereof or, at its option, a party may apply to any court of competent jurisdiction for appropriate relief. If a demand is made for arbitration, this arbitration provision shall be deemed self-executing, and if either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against that party notwithstanding the failure to appear. The arbitration shall be conducted by the American Arbitration Association at its offices in your state.

**SECTION 18.11 REMEDIES CUMULATIVE.**

Except as otherwise stated in this Agreement, no remedy in this Agreement for any party is intended to be exclusive of any other remedy. Each remedy is cumulative and is in addition to every other remedy given under this Agreement, now or later existing, at law, in equity, by statute or otherwise. No single or partial exercise by any party of any remedy under this Agreement precludes any other exercise of any other remedy.

**SECTION 18.12 EFFECTIVENESS; COUNTERPARTS.**

This Agreement is not effective or binding and enforceable against us until it is accepted by us at our home office and signed by one of our authorized representatives. You are advised not to incur any expenses for opening the Anago Unit Franchise until you have received a final signed copy of this Agreement from our home office. This Agreement may be signed in counterparts, each is deemed an original, but all together are the same instrument. Confirmation of signing by telex, telecopy, or telefax of a facsimile signature page is binding upon any party to the confirmation.

**SECTION 18.13 CONSENTS, APPROVALS AND SATISFACTION.**

Whenever our consent or approval is required under this Agreement, consent or approval will not be unreasonably withheld or delayed unless specifically stated in this Agreement to the contrary. All consents or approvals required of us are not binding upon us unless the consent or approval is in writing and signed by one of our authorized representatives. Our consent or approval, whenever required, may be withheld if you are in default under this Agreement. Where our satisfaction is required under this Agreement, unless the Agreement expressly states otherwise, the satisfaction is determined in our sole discretion.

**SECTION 18.14 GOVERNING LAW.**

Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act,

15 U.S.C. §§ 1051 *et seq.* or the United States Arbitration Act, 9 U.S.C. §§ 1 *et seq.*), this Agreement and any other agreement between the parties and all transactions contemplated by this Agreement and any other agreement between the parties are governed by the laws of the State of (State) without regard to principles of conflicts of laws.

**SECTION 18.15 INTERPRETATION.**

Each of the parties agrees that they have been or have had the opportunity to have been represented by their own counsel throughout the negotiations and at the signing of this Agreement and all of the other documents signed incidental to this Agreement. None of the parties can, while this Agreement is effective or after its termination, assert that any provisions of this Agreement or any of the other documents should be construed against the drafter of this Agreement or any of the other documents.

**SECTION 18.16 ENTIRE AGREEMENT.**

This Agreement, its Exhibits and all other written agreements involving this Agreement and expressly referenced in this Agreement, represent the entire understanding and agreement between the parties on the subject matter of this Agreement and supersedes all other negotiations, understandings and representations, if any, made between the parties. No representations, inducements, promises or agreements, oral or otherwise, if any, not embodied in this Agreement, its Exhibits and all other written agreements concerning this Agreement and expressly referenced in this Agreement are of any effect.

**SECTION 18.17 SURVIVAL.**

All of the parties' obligations that expressly or by their nature survive the expiration or termination of this Agreement continue in full force after the expiration or termination of this Agreement until they are satisfied or by their nature expire.

**SECTION 18.18 FORCE MAJEURE.**

Neither party is liable for loss or damage or in breach of this Agreement if the failure to perform the obligations results solely from the following causes beyond his, her or its reasonable control, specifically: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material, or energy; (b) compliance with any applicable law; or (c) war, strikes, natural disaster or acts of God. Any delay resulting from any of these causes extends performance accordingly or excuses performance as reasonable, except that these causes do not excuse payments of amounts owed to us for any reason.

**SECTION 18.19 LIABILITY OF MULTIPLE UNIT FRANCHISEES.**

If you consist of more than 1 person, all persons are jointly and individually liable for

your obligations under this Agreement.

**SECTION 18.20 THIRD PARTIES.**

Except as provided in this Agreement to the contrary for our affiliates or Unit Franchisees, nothing in this Agreement, whether express or implied, is intended to confer any rights under this Agreement on any persons (including other Anago Unit Franchisees) other than the parties and their respective personal representatives, other legal representatives, heirs, successors and permitted assigns. Except as provided in this Agreement to the contrary for any of our Designees, nothing in this Agreement is intended to relieve or discharge the obligation of any third persons to any party to this Agreement, nor will any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

**SECTION 18.21 EQUITABLE RELIEF.**

You agree that the Anago Unit Franchise is intended to be 1 of a large number of businesses identified by the Proprietary Marks in selling to the public the products and services associated with the Proprietary Marks, and therefore the failure on the part of a single Unit Franchisee to comply with the terms of his or her Unit Franchise agreement is likely to cause irreparable damage to us and damages at law would be an inadequate remedy. You agree that upon your breach or threatened breach of any of the terms of the Agreement, we are entitled to an injunction restraining the breach and/or to a decree of specific performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and costs incurred in obtaining equitable relief. This equitable remedy is in addition to all rights that we have by virtue of any of your breaches of this Agreement. We are entitled to seek this relief without the posting of any bond or security and, if a bond is nevertheless required by a court of competent jurisdiction, the parties agree that the sum of \$1,000 is a sufficient bond.

**SECTION 18.22 RIGHT OF PARTIES.**

If you default in performing any of your obligations under this Agreement, we have the right (but not the obligation) to perform your obligations and be reimbursed by you for the actual costs of so performing, together with accrued interest permitted under this Agreement on overdue amounts. Interest accrues beginning on the 10th day after our demand for reimbursement.

**SECTION 18.23 LIMITATIONS OF CLAIMS.**

ALL CLAIMS, EXCEPT FOR MONIES DUE TO US UNDER THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES ARE BARRED UNLESS AN ACTION OR LEGAL OR ARBITRATION PROCEEDING IS FILED AND TIMELY SERVED UPON THE OPPOSING PARTY WITHIN 18 MONTHS FROM THE DATE YOU OR WE KNEW OR SHOULD HAVE KNOWN OF THE FACTS CREATING THE CLAIM, EXCEPT TO THE EXTENT ANY APPLICABLE LAW OR STATUTE PROVIDES FOR A SHORTER PERIOD

OF TIME TO BRING A CLAIM, OR AS OTHERWISE REQUIRED BY LAW.

**SECTION 18.24 WAIVER OF PUNITIVE DAMAGES CLAIMS.**

THE PARTIES WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO ALL PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT UPON A DISPUTE BETWEEN THEM, EACH IS LIMITED TO THE RECOVERY OF ACTUAL DAMAGES HE, SHE OR IT SUSTAINS.

**SECTION 18.25 WAIVER OF JURY TRIAL.**

THE PARTIES WAIVE THE RIGHT TO A TRIAL BY JURY OF ALL CLAIMS MADE BETWEEN THEM WHETHER EXISTING NOW, OR IN THE FUTURE, INCLUDING ALL CLAIMS, DEFENSES, COUNTERCLAIMS, CROSS CLAIMS, THIRD PARTY CLAIMS AND INTERVENOR'S CLAIMS INVOLVING THE SALE, NEGOTIATION, SIGNING OR PERFORMANCE OF THE TRANSACTIONS INVOLVING THIS AGREEMENT.

**IN WITNESS WHEREOF**, the parties have duly signed this Agreement.

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

**YOU:**

**US:**

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

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)