

EXHIBIT F - NBDS SOFTWARE LICENSE AGREEMENT



NBDS SOFTWARE LICENSE AGREEMENT

Between

**ANAGO FRANCHISING, INC.,
a Florida corporation**

(Franchisor)

and

(Subfranchisor)

Dated: _____, 20__

NBDS SOFTWARE LICENSE AGREEMENT

THIS NBDS SOFTWARE LICENSE AGREEMENT ("Agreement") is signed on _____, 20 __, between Anago Franchising, Inc., a Florida corporation (the "Franchisor"), and _____, (the "Subfranchisor").

(a) **General.** This Agreement is being entered into pursuant to Subsection 2.5(f) of that certain Anago Subfranchise Rights Agreement between the Franchisor and the Subfranchisor, dated of even date herewith (the "Subfranchise Agreement"). All capitalized terms used in this Agreement have the same definitions as set forth in ARTICLE 16 of the Subfranchise Rights Agreement, unless otherwise expressly defined in this Agreement.

(b) **Grant of License.** Subject to the terms of this Agreement, the Franchisor agrees to: (a) furnish Software (as defined herein) to the Subfranchisor; (b) furnish Related Materials (as later defined in this Agreement) to the Subfranchisor; (b) furnish Related Materials in support of the Software; (c) grant the Subfranchisor a nontransferable and nonexclusive license to use the Software and Related Materials which are described pursuant to any Schedule to this Agreement signed by both parties ("Schedule"); and (d) provide Software maintenance, all as described in this Agreement. The term "Software" means a licensed data processing program consisting of a series of instructions or statements in machine-readable form, any licensed database consisting of a systematized collection of data in machine-readable form, and any Related Materials. The term "Related Materials" means any printed material not consisting of Software programs, such as Software user instructions, and which is designated by the Franchisor as available under license to the Subfranchisor for the licensed Software to which such Related Materials relate. Software does not include source code.

(c) **Term of License.** The license granted in this Agreement for any Software will be in effect for the Term, unless sooner terminated in accordance with this Agreement.

(d) **Terms of Use.** The Software (including any changes to the Software made by or on behalf of the Franchisee) must reside on the Subfranchisor's server and may be used by the Subfranchisor only at the Premises or remote via remote access software (RAS) approved by the Franchisor. The Subfranchisor may use 1 copy of the Software on one server, which may be connected at any point in time to an unlimited number of workstations or computers operating on one or more networks. Backup of the data on the Subfranchisor's server is the Subfranchisor's responsibility. Backup of the data must take place on an approved backup medium as stated Section (k) below. Title and full ownership rights to the Software at all times remains with the Franchisor. The Subfranchisor may not enhance or modify the Software in any manner without the Franchisor's written consent. The rights granted under this Agreement authorize the Subfranchisor to utilize the Related Materials in printed form, in support of its use of the Software in machine-readable form.

(e) **Fees and Charges.** The Subfranchisor will pay a fee of \$1000 per year (the "Software Fee"), together with any additional sums due for additional technical support not relating to the operation of the Software. The Software Fee includes technical support directly relating to the Software, updates and fixes approved by the Franchisor, and installation of approved updates, general computer bulletins. All network and hardware support are billable at our computer

programmer's current rate per hour if the Subfranchisor uses his services. There is also a fee for the grant of a site license for the TELEMAGIC ® program. This program is supported buy TELEMAGIC ®

(f) **Taxes.** The Subfranchisor will declare and pay when due all assessments, charges and taxes, including sales, use, excise and property taxes, and penalties and interest with respect to this Agreement, imposed in connection with this Agreement, if any; excluding, however, any taxes based on or measured solely by the Franchisor's net income.

(g) **Technical Services, Updates and Enhancements.** During the Term, the Franchisor will, from time to time, as it deems necessary, supply technical bulletins and updated user guides, and supply the Subfranchisor with non-priced updates and enhancements. The Franchisee shall be responsible for the costs of postage, insurance and handling. In addition, if the Subfranchisor determines that any Software update or enhancement significantly improves the function or performance of any Software used by the Subfranchisor, and the Franchisee elects to or is required to obtain the update or enhancement, the Subfranchisor will be required to pay a reasonable fee specified by the Franchisor.

(h) **Warranties.** The Franchisor warrants that the Software will be free of defects in materials and perform the functions specified in writing by the Franchisor in applicable user manuals or as otherwise provided in writing by the Franchisor. The Franchisor does not warrant that the functions contained in the Software will meet all the Subfranchisor's requirement or will operate with hardware not approved by the Franchisor, or that the operations will be uninterrupted or error free or that all program defects, if any will be corrected. **EXCEPT AS PROVIDED IN THIS SECTION, THE FRANCHISOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND SERVICES FURNISHED UNDER THIS AGREEMENT, AND EXPRESSLY DISCLAIMS THE SAME.**

(i) **Termination.** The license granted under this Agreement for any Software terminates at the expiration or termination of this Agreement, or as otherwise provided in this Agreement. Upon expiration or termination of this Agreement, the Subfranchisor will immediately deliver to the Franchisor all Software. This requirement will apply to all copies in any form including translations, compilations or partial copies within modifications, derivative works, and updated works, whether partial or complete, and whether modified or merged into other programs or materials (collectively, "Modifications").

(j) **Hardware.** It is the obligation of the Subfranchisor to obtain the computer hardware required for the operation of the Software as described in Section (k). Total turnkey systems are available from our computer programmer's company. Our MIS department must approve all workstation's, printers, and network wiring.

(k) **Hardware Requirements.** The main computer (Server) and Network Hub may be leased from the Franchisor or an approved vendor loaded with the most current Software and Windows network operating system. Configuration, setup, and all network wiring and is the

responsibility of the Subfranchisor.

(l) **Confidentiality.** Without limiting any other confidentiality requirements of the Subfranchisor under the Subfranchise Rights Agreement, the Subfranchisor agrees not to provide or otherwise make available any portion of the Software, including documentation and machine readable code, in any form to any person other than the Subfranchisor or the Subfranchisor's employees without prior written consent from the Franchisor. The Subfranchisor will not reverse assemble or reverse compile the Software in whole or in part. The Subfranchisor may not copy the Software in any manner without the Franchisor's prior written consent. The Software is agreed to be proprietary information and trade secrets of the Franchisor and its affiliates, whether any portion is or may be validly copyrighted or patented, The Software will be treated by the Subfranchisor as proprietary information and trade secrets. The Franchisor is to enforce independently all its, and its affiliates, respective rights under this Agreement against the Subfranchisor. In order to protect the Franchisor's trade secrets and copyright notices with respect to the Software, the Subfranchisor agrees to reproduce or incorporate Franchisor's trade secret and copyright notices, if any, in any copies, modifications or partial copies of such Software.

(m) **Assignment.** Without the prior written consent of the Franchisor and only in connection with a permitted transfer or sale of the Subfranchise Rights Agreement, the Subfranchisor will not: (a) assign, transfer, or grant a security interest in this Agreement, the Software or any part of the Software or any interest in the Software; (b) sublicense or lend the Software or any part of the Software, or any interest in the Software; (c) permit the Software or any part of the Software to be used by anyone other than the Subfranchisor or the Subfranchisor's employees; or (d) change the location of the Software. The Franchisor may assign or otherwise transfer all or a portion of their respective interests in the Software or this Agreement. The Subfranchisor: (i) consents to such assignments and/or transfers; (ii) agrees to execute and deliver promptly such further acknowledgements, agreements and other instruments as may be reasonably requested by the Subfranchisor's assignee or transferee (the "Transferee") to effect such assignments and/or transfers; and (iii) agrees to comply fully with the terms of any such assignment and/or transfer. Upon an assignment or other transfer, the Franchisor will notify the Subfranchisor of the assignment or transfer and thereafter all references to the Franchisor will include the Transferee; provided, however, that the Transferee will not be obligated to perform the obligations of the Franchisor under this agreement unless the Transferee expressly agrees to do so in writing.

(n) **Limitation of Liability.** The Franchisor's entire liability and the Subfranchisor's exclusive remedy are as follows:

A. In all situations involving performance or nonperformance of the Software or services furnished under this Agreement, provided the Subfranchisor has paid all amounts due pursuant to the applicable Schedule, the Subfranchisor's remedies are:

(i) the correction by the Franchisor of the Defects (as defined later in this Agreement), or

(ii) if, after repeated efforts, the Franchisor is unable to correct the Defects, the Subfranchisor shall be entitled to recover actual damages from the Franchisor to the limits

set forth in this Section; and

B. For any other claim concerning performance or nonperformance by the Franchisor pursuant to, or in any other way related to, the subject matter of this Agreement, the Subfranchisor is entitled to recover actual damages to the limits set forth in this Section.

C. The Franchisor's liability for damages to the Subfranchisor for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, is limited to the amount of the charge set forth on any Schedule to this Agreement which is paid for use of the Software, or for the services provided by or on behalf of the Franchisor, that caused the damages or that is the subject matter of, or is directly related to the cause of action. **IN NO EVENT WILL THE FRANCHISOR BE LIABLE FOR ANY DAMAGES CAUSED BY THE SUBFRANCHISOR'S FAILURE TO PERFORM THE SUBFRANCHISOR'S RESPONSIBILITIES, OR FOR ANY LOST PROFITS, LOST SAVINGS OR OTHER CONSEQUENTIAL DAMAGES, EVEN IF THE FRANCHISOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE SUBFRANCHISOR BY ANY OTHER PARTY.**

D. The Franchisor's liability for any payments under this Section is contingent upon delivery by the Subfranchisee to the Franchisor of a disk containing a copy of the defective Software from which the Franchisor is able to reproduce the reported defect. If the reported defect is verified by the Franchisor (the "Defect"), at the request of the Franchisor, the Subfranchisor will immediately return the defective Software and all Modifications, if any, to the Franchisor. If any reported Defect is found to be caused by the Franchisee's negligence, error, mistake or modification, by the Subfranchisor-supplied data, equipment or operator failure, or by any other cause not inherent to the Software furnished by the Franchisor, the Franchisor reserves the right to charge the Subfranchisor for time and materials, if any, incurred by or on behalf of the Franchisor in connection with responding to the reported Defect.

(o) **Default.** Any default under the Subfranchise Rights Agreement, or other agreement between the Franchisor and the Subfranchisor is deemed a default under this Agreement.

(p) **Remedies.** Upon any default under this Agreement, the Franchisor may, by written notice to the Subfranchisor, terminate this Agreement. The remedy provided to the Franchisor in this Section is not exclusive, but is cumulative and in addition to any other remedy referred to in this Agreement or otherwise available to either party.

(q) **Schedules.** The Schedules are considered incorporated by reference and deemed a part of this Agreement. No Schedule is effective until properly signed by the parties to this Agreement.

(r) **Incorporation Into Subfranchise Rights Agreement.** Pursuant to Subsection 2.5(f) of the Subfranchise Rights Agreement, this Agreement is deemed incorporated into and made a part of the Subfranchise Rights Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year first above written.

FRANCHISOR:

Anago Franchising, Inc.

By: _____
Terry Mollica, President

SUBFRANCHISOR:

Software License Agreement