

Ex. D



FRANCHISE AGREEMENT  
SINGLE UNIT

Date Delivered \_\_\_\_\_

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

**CONTENTS**

<b>1. INTRODUCTION .....</b>	<b>2</b>
<b>2. GRANT AND TERM OF FRANCHISE .....</b>	<b>2</b>
<b>3. TERRITORY .....</b>	<b>3</b>
<b>4. SITE OF FRANCHISED BUSINESS .....</b>	<b>3</b>
<b>5. INITIAL FEE .....</b>	<b>4</b>
<b>6. ROYALTY FEE .....</b>	<b>4</b>
<b>7. MARKETING AND ADVERTISING .....</b>	<b>4</b>
<b>8. TELEPHONE NUMBERS AND TELEPHONE BOOK ADVERTISING .....</b>	<b>5</b>
<b>9. TRAINING .....</b>	<b>5</b>
<b>10. OPERATING REQUIREMENTS .....</b>	<b>5</b>
<b>11. TRADEMARKS .....</b>	<b>7</b>
<b>12. OPERATING ASSISTANCE .....</b>	<b>7</b>
<b>13. RECORDS AND FINANCIAL REPORTS .....</b>	<b>8</b>
<b>14. REVIEWS .....</b>	<b>8</b>
<b>15. INSURANCE .....</b>	<b>8</b>
<b>16. DEFAULT AND TERMINATION .....</b>	<b>9</b>
<b>17. ASSIGNMENT .....</b>	<b>12</b>
<b>18. DEATH OR DISABILITY .....</b>	<b>12</b>
<b>19. COVENANT NOT TO COMPETE .....</b>	<b>12</b>
<b>20. REMEDIES AND INDEMNITIES .....</b>	<b>13</b>
<b>21. CONTRACT INTERPRETATION; MODIFICATION; NOTICE .....</b>	<b>14</b>
<b>22. ACKNOWLEDGMENTS .....</b>	<b>17</b>

**ATTACHMENTS**

- 1. TERRITORY**
- 2. MINIMUM GROSS REVENUE**
- 3. PERSONAL GUARANTY**
- 4. NONDISCLOSURE AND NONINTERFERENCE AGREEMENT**

## SINGLE UNIT FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is executed on \_\_\_\_\_, 200\_\_, between BUSINESS ADVISERS INCOPORATED, a Nevada corporation having its principal place of business at The Hughes Center, 3960 Howard Hughes Pkwy., Suite 500, Las Vegas, Nevada 89109 ("Franchisor," "Our," "We," "BAI," or "Us") and \_\_\_\_\_ ("Franchisee" or "You").

Whereas, as a result of the expenditure of time, skill, effort and money, BAI has developed a unique and proprietary system for providing business facilitation and support services to businesses in all stages, from inception to full implementation, in advertising, sales, marketing, customer service, leadership, team building, business planning, management, and organizational development, on a temporary basis (the "System");

Whereas, BAI continues to expend time, skill and money to investigate new or substitute procedures, systems, products, services, programs and activities and, if BAI deems it desirable, to develop and integrate them into the System;

Now therefore, the parties, in consideration of the promises, undertakings, and commitments of each party to the other set forth herein, hereby mutually agree as follows:

**Definitions:** Words and phrases used frequently in this Agreement will have the meaning indicated here:

**"Affiliate"** means any company in which We or Our officers or directors have a significant interest.

**"Agreement"** means this document, all of its attachments, exhibits, amendments, and modifications, whenever made.

**"Business Consultant"** means the franchisee who provides support services to business, at all stages of existence, from inception to full implementation, in advertising, sales marketing, customer service, leadership, team building, business planning, management, and organizational development, on a temporary basis.

**"Collateral Agreement"** means any agreement between You and BAI, or between You and Our Affiliates, relating to or arising out of the franchise relationship created by this Agreement.

**"Consulting Business"** means the method and System that We have developed in providing business consulting services to clients.

**"Effective Date"** means the date entered in the space so designated on the signature page of this Agreement when BAI signs the Agreement.

**"Franchised Business"** means the Consulting Business operated pursuant to this Agreement.

**"Gross Revenue"** means the total receipts, whether charged, paid, or uncollected, from all Your activities in the operation of the System, whether received in cash, in services, in kind, on credit or otherwise. Gross Revenue does not include any taxes You charge as required by law.

**"Manual Site"** means Our policy, training, and operations manuals, and materials, which contain the required and recommended policies and procedures for the operation of the Franchised Business that You shall strictly adhere to. The term also includes all supplemental bulletins, revisions, and all modifications that You will be required to implement and adhere to in the operation of your Consulting Business.

**"Marks"** means the words "Business Advisers," "BAI," or any design incorporating these words, and any other words or symbols currently used, or to be authorized by BAI for Your use in the future, in connection with the System.

“Offering Circular” means the Franchise Offering Circular of which this Agreement was attached as an Exhibit.

“Qualified Business” means any business included in the United States Census Bureau Statistics of U.S. Businesses.

“Territory” means the geographic area described as one Business Consultant approximately per every one-thousand (1000) businesses as stated by the United States Government Census.

## 1. INTRODUCTION

We have developed a method of operating a Consulting Business that operates under the System and Marks.

You have applied to Us for the right to operate as a Business Consultant, using Our name, Marks, and System. You will provide consulting services to business within your Territory in a variety of fields, including, but not limited to, advertising, sales, marketing, customer service, leadership, team building, business planning, management, and organizational development, on a temporary basis. We have approved Your application in reliance upon the representations made in Your application, including those about Your financial resources, educational background and experience, and the manner in which You propose to own and operate the Franchised Business.

The terms, conditions, and promises contained in this Agreement are necessary to maintain Our high standards of service to the public and Our clients and to maintain the high quality of those standards among all Consulting Businesses using the System and the Marks. You understand and acknowledge the importance of BAI's uniformly high standards of quality and service and the necessity of ensuring franchisees operate their Franchised Business in strict conformity with BAI's quality control standards and specifications. You further acknowledge that You have read this Agreement and Our Offering Circular and You have been given the opportunity to clarify any provision that You do not understand. Furthermore, You acknowledge that You have conducted an independent investigation about the franchise described in this agreement. You also acknowledge that You have had sufficient opportunity to contact and receive legal and accounting counsel as well before signing this Agreement.

You recognize that the Franchised Business involves business risks and that the success of the venture is largely dependent upon Your business and personal abilities. Our agents, employees, recruiters, and officers are not authorized to make any claims or statements as to the prospects or chances of success that You can expect or that other franchisees have had, and You acknowledge that Our agents, employees, and officers have not made such claims or statements, nor have they represented or estimated dollar figures as to other Business Consultants or to the income that you could hope to achieve.

## 2. GRANT AND TERM OF FRANCHISE

2.1 *Grant.* You are granted the right to use the name Business Adviser and use the Business Advisers, Incorporated System and Marks as a Business Adviser. You must operate only as “Business Adviser” the words standing alone, or such other Marks as we may prescribe from time to time. Subject to the terms and conditions of this Agreement, We grant You the non-exclusive right to operate a business-Consulting Business and a license to use the System and Marks in the operation of a Consulting Business solely within the Territory. Notwithstanding the territorial exclusivity granted herein, BAI reserves the right to manage and service company-owned client contracts, offer, grant, and support other Franchised Business, offer and sell Consulting services, under the Marks, through any mail order catalogs, infomercials, Internet websites, direct sales, or any other channel of distribution, both within the Designated Territory and elsewhere. BAI makes no representation or warranty to the Franchisee that there will be any right to participate in these business activities, whether as a franchisee or otherwise

2.2 *Term.* The term of this Agreement shall be for five (5) years, beginning on the Effective Date, unless sooner terminated according to its terms.

2.3 *Renewal.* On the expiration of this Agreement, You may execute a new franchise agreement with Us for an additional five (5)-year term, provided You are not in default of any provision of this Agreement or any Collateral Agreement, and subject to compliance with the conditions set forth in Article 2.4, and with the approval condition set forth in Article 2.5. You will not be charged an initial franchise fee if You enter into a renewal franchise agreement, but You will be required to pay a smaller renewal franchise fee of five thousand dollars (\$5,000.00). You will also be required to meet any minimum qualifications then-currently

required of new franchisees. If this requires Your attendance, in Our sole discretion, at another Initial Training session, You shall bear all such costs for such attendance.

**2.4 Execution and Form of New Agreement.** To execute a renewal franchise agreement, You must sign Our then-current form of franchise agreement and all other agreements that We customarily use for the granting of franchises at the time of Your renewal. Our then-current form of franchise agreement may provide for higher fees, fees not included in this Agreement, and other terms and conditions materially different from the terms of this Agreement. You must notify Us in writing of Your intent to renew at least one-hundred eighty (180) days before this Agreement expires, but no more than two-hundred seventy (270) days before its expiration. Provided You send Us this notice, We will send You the forms needed to execute the new franchise agreement approximately ninety (90) days before the expiration date of this Agreement. You must sign and return them to Us at least thirty (30) days before the expiration of this Agreement. Furthermore, You will be required to execute a general release, in a form satisfactory to BAI, releasing BAI from any and all claims You may have against BAI, its subsidiaries or related companies and their officers, directors, shareholders, partners, agents, and employees, in their corporate and individual capacities. You will further be required to reimburse Us for all reasonable costs incurred in connection with the renewal of this Agreement, including attorneys' fees.

**2.5 Non-Renewal.** Notwithstanding satisfaction of the provision of Articles 2.3, We may refuse to renew Your franchise in Our sole discretion for any reason, or no reason at all. You will be notified of such decision no later than thirty (30) days after Your application for renewal.

**2.5 Our Rights.** We may offer or license different services under the System or Marks, utilize new business methods under the System or Marks, and develop new Marks. You understand and agree that due to changes in competitive circumstances, presently unforeseen changes in the needs of customers, and/or presently unforeseen technological innovations, the System must not remain static, in order that it best serve the interests of BAI, Master Franchisees, Unit Franchisees and the System. Accordingly, You expressly understand and agree that BAI reserves the right, and may, from time to time change the components of the System, including but not limited to, altering the programs, services, methods, standards, forms, policies and procedures of that System; adding to, deleting from, or modifying those programs, products, and services which the Franchised Business is authorized to offer; and changing, improving, or modifying the System and the Marks. Subject to the other provisions of this Agreement, You expressly agree to promptly abide by any such modifications, changes, additions, deletions, and alterations at Master Franchisees sole cost and expense within sixty (60) days of notice of the change.

### **3. TERRITORY**

**3.1 Territory.** The non-exclusive license to use Our System and Marks is limited to solely within the Territory described in Attachment I. You are not permitted to operate the Franchised Business from a temporary or permanent site outside the Territory, unless You submit and receive prior written approval from BAI. You may not operate or advertise outside of Your Territory, unless You submit and receive prior written approval from BAI. However, if You are in full compliance with this Agreement and any Collateral Agreements, and You receive an inquiry from a potential customer who is located outside of Your Territory, but who is not located in another Business Consultant's Territory, You may act as Business Consultant to that customer, provided that You only act as a Business Consultant. If We subsequently sell a Territory in which You are operating, and it is outside Your Territory, You must immediately cease operating in that Territory upon notice from Us that the Territory has been sold. You must then provide Us with all information We request regarding the customers that You were servicing in this Territory. However, prior to any sale, You will be given the right of first refusal to purchase the Territory.

**3.2 Competition** You may not operate any competing business that provides services similar to BAI, during the term of this Agreement, regardless of the geographic location, whether inside or outside the Territory. You further agree that you will not directly or indirectly, Yourself, on behalf of, or in conjunction with any person, association, or corporation divert or attempt to divert any business or customer to the business coaching services of any competitor, by direct or indirect inducement or otherwise, or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System. Notwithstanding the territorial exclusivity granted herein, BAI reserves the right to manage and service company-owned client contracts, offer, grant, and support other Franchised Business, offer and sell Consulting services, under the Marks, through any mail order catalogs, infomercials, Internet websites, direct sales, or any other channel of distribution, both within the Designated Territory and elsewhere. BAI makes no representation or warranty to the Franchisee that there will be any right to participate in these business activities, whether as a franchisee or otherwise.

**3.3 Minimum Sales Requirements.** The minimum Gross Revenue You must achieve is described in Attachment II to this Agreement. If You fail to realize the minimum Gross Revenue described in Attachment II, and in addition to any other rights We

may have under this Agreement, We have the right to: a) terminate this Agreement; or b) franchise an additional Consulting Business to operate under the Marks in the Territory for the balance of the term of this Agreement and any renewal Agreement entered prior to Your failure to meet the minimum Gross Revenue.

#### **4. SITE OF FRANCHISED BUSINESS**

4.1 *Location.* The responsibility for locating and choosing a site from which You operate the Franchised Business is yours, subject to Our prior written approval. The site must be located within the Territory, and may be located in a residence provided the required business materials and tools can be made available and workable and the residence can be used as a home office. The first address of the Franchised Business is identified in Attachment I.

4.2 *Change of Location.* You may relocate the site of Your Franchised Business to a new address, however, You must first provide Us with written notice of the move at least thirty (30) days prior and receive Our prior written approval of the new site. Your new site must be located within Your Territory.

#### **5. INITIAL FEE**

The initial fee shall be \$75,000, which shall be immediately due upon execution of this Agreement. The initial franchise fee is non-refundable, and is earned by Us upon receipt.

#### **6. ROYALTY FEE**

Beginning on the Effective Date, You will pay Us, on the 6<sup>th</sup> day of each month (or such other date as We may designate), from the completion of Initial Training the following non-refundable royalty fee payments: Month 1, \$500.00, Month 2, \$500.00, Month 3, \$750.00, Month 4 - \$1000.00. If the 6<sup>th</sup> day of the month falls on a legal holiday, or weekend day, payments shall be made the next business day. If the 6<sup>th</sup> day after training completion falls within seven (7) calendar days of the Effective Date, the first payment shall be due on the next month's 6<sup>th</sup> day. The fees collected shall solely be used, in BAI's complete discretion, in pursuit of the betterment of the Marks.

Beginning on the fifth month after training completion, You will pay Us, on the 6<sup>th</sup> day of each month (or such other date as We may designate) a non-refundable royalty fee equal to twenty percent (20%) of Gross Revenues of the Franchised Business for the prior month, or \$1000.00, whichever is greater. If the 6<sup>th</sup> day of the month falls on a legal holiday, or weekend day, payments shall be due on the next business day. You shall authorize Your bank to allow Us to withdraw via electronic funds transfer (or such other manner as We may designate) on 6<sup>th</sup> day of each month all monies You owe Us for the prior month, including royalty fees.

In addition, if any sales, income, excise, use, or privilege tax is imposed or levied by any government or governmental agency on account of Your payments of royalties under this Agreement, You shall pay BAI a sum equal to the amount of such tax as additional continuing royalty (but this provision shall not apply to any federal or Nevada income taxes imposed upon Us).

#### **7. MARKETING AND ADVERTISING**

During the term of this Agreement, BAI may provide advertising. Such advertising may, but is not required to, include maintenance of the BAI website. BAI, in its sole discretion, determines when and if advertising is conducted, in what manner, and to what extent. BAI has sole discretion over the concepts, materials, and media used for advertising, as well as over the timing and amount of advertising. You acknowledge and understand that Our purpose in providing advertising is to maximize general public recognition and acceptance of the Marks for the benefit of the System as a whole and that We do not undertake any obligation in providing advertising to insure that any particular franchisee benefits directly or pro rata from the advertising.

You may only use advertising, identification and promotional materials and programs (including, but not limited to, printed and broadcast advertisements, direct mail materials, communications by computer network or computer "bulletin boards", stationery, business cards, press releases, signs, posters, displays, leaflets, newspaper advertisements and inserts, promotional mail outs, general mailings and promotional literature (collectively defined as "advertising") which BAI has either furnished or approved in writing in advance, as provided in this Agreement. You agree to pay for all advertising not furnished or provided by BAI.

You agree to conduct all advertising that uses the Marks or refers in any way to the Franchised Business in a dignified manner, and only with BAI's prior written approval. You agree to conform all advertising to the standards, specifications and requirements specified in writing by BAI, in its Manual, website, or otherwise.

If You breach the provisions of this Article, BAI will notify You in writing of the facts that BAI believes have given rise to the breach. If You do not cure the breach within three days following delivery of this notice, then BAI may terminate or remove any unauthorized advertising at Your expense, and will also be entitled to terminate this Agreement unilaterally and immediately.

You are prohibited from forming any advertising cooperative with any other franchisees without the prior written approval of BAI, which can be withheld for any reason.

## **8. TELEPHONE NUMBERS AND TELEPHONE BOOK ADVERTISING**

You are required to maintain at least one business telephone number, separate from any home telephone number You may use, to be utilized only for activities relating to Your Consulting Business.

You are permitted, but not required, to list Your business in the White and Yellow Pages of Your Territory. A copy of any printed ad shall be submitted to and approved by BAI prior to its publication.

## **9. TRAINING**

**9.1 Initial Training.** You must complete to Our satisfaction, Our approximately fourteen (14)-day Initial Training program ("Initial Training"). Initial Training is conducted at Our home office or another training site We select. Initial Training will be conducted by Our employees or agents experienced in the business-consulting Business. We will loan you the computer hardware and software required to operate as a Business Consultant on the first day of training. This computer is for business use only, and You are not permitted to add or delete any software, nor share it with anyone other than Your support personnel. We will provide one day's hotel room rental per day of training at a location chosen in BAI's sole discretion. We will also provide breakfast and lunch at the training location on training days. You shall be responsible for any other costs and expenses incurred during Your Initial Training.

**9.2 Ongoing Training.** You shall attend ongoing training at Your own expense that We may offer in the form of regional training programs, study groups, franchisee meetings, and conventions, which BAI may offer in its sole discretion. Nothing in this Agreement shall be construed to require Us to provide ongoing training, regional training programs, study groups, franchisee meetings, or conventions.

**9.3 Attendance at Annual Convention.** You shall attend the Annual Convention at least once every two years, although We encourage Your attendance every year. BAI reserves the right to discontinue, either permanently or temporarily, the Annual Convention.

## **10. OPERATING REQUIREMENTS**

**10.1 Initial Site and Opening.** You must open the Franchised Business within seven (7) days of completing Initial Training. If You do not open within sixty (60) days of the Effective Date of this Agreement, We may terminate this Agreement. All royalty fee payments are due, beginning on the 6<sup>th</sup> day of the first month after completion of training, regardless of whether the Franchised Business is open.

**10.2 Supervision.** The Franchised Business shall be under Your direct, day-to-day supervision for the entire term of this Agreement. No employees are permitted, except for a receptionist and/or any secretarial/administrative assistance You may need. No other person is authorized to act as a Business Consultant under this Agreement, or to provide any service to Your customers.

**10.3 Hours of Operation.** You must keep the primary office location open during normal business hours or the hours and days listed in the Manual Site.

**10.4 Services Offered.** You must offer for sale only the services that We specify in this Agreement and in the Manual Site. You must utilize the computer hardware and software that We provide to manage and administer the Franchised Business. You must use the computer and general business forms that We provide or specify from time to time in Our Manual Site. This hardware and software may be updated without notice to you in Our sole discretion. You will pay any costs associated with the upgrades, and will have sixty (60) calendar days from the date You receive the upgraded software to install it on Your computer and implement any associated changes to Your operating procedure. BAI reserves the right to inspect or repossess the computer hardware and software provided to You at any time during the duration of the Agreement.

10.5 *Manual Site* During the term of this Agreement, We will grant You access, via the company intranet, to the Manual Site, any update operation bulletins, and other materials containing mandatory and suggested procedures, specifications, and rules that We prescribe from time to time. The Manual Site and the other materials are Our property and any printouts therefrom must be returned to Us whenever this Agreement expires or is terminated for any reason. If You fail to return the Manual Site and other materials, including computer materials, hardware, and software, You must pay Us \$5,000, in addition to any other remedy We may have.

We have the right to add to or modify the Manual Site from time to time, to improve standards, change Our operating procedures and software system, maintain the goodwill associated with the Marks, and to meet other competitive demands. You shall be responsible for any costs associated with complying with the updated materials. You will be informed, in writing, of any material changes to the Manual Site, with which You have sixty (60) days to comply.

The entire contents of the Manual Site, plus any updates in Our specifications, procedures, and rules constitute provisions of this Agreement just as if they were written on these pages. You are required to comply with the manual site, and all subsequent revisions and modifications thereto. You agree that any changes will not materially alter this Agreement, and no future consideration is required.

10.6 *Trade Secrets and Proprietary Information.* The contents of the Manual Site and all the operating procedures, standards, and rules We prescribe for the Franchised Business are confidential. You shall maintain, both during and after the term of this Agreement, absolute confidentiality of the Manual Site and all other confidential or proprietary information We disclose to You. You will give this information to Your support personnel only to the extent necessary for the operation of the Franchised Business in accordance with this Agreement. You will not use this information in any other business or in any way We have not authorized in writing.

The list of customers that You service during the term of this Agreement is Our proprietary information and property. At the expiration or termination of this Agreement for any reason, You will promptly turn over to Us Your entire list of customers and You will make no further use of that list for any purpose whatsoever. You shall not contact any of Your customers for business purposes after the expiration or termination of this Agreement without Our prior written approval, which may be withheld for any reason, or no reason at all.

10.7 *Procedures and Rules; Government Regulations.* You shall comply fully with all standards, operating procedures, and rules that We prescribed from time to time, including those contained in the Manual Site. You must secure and maintain in force and effect, all government-required licenses, permits, and certifications, and You must operate the Franchised Business in strict compliance with all applicable laws and regulations.

10.8 *Franchisee Identification.* You are granted the right to use the name Business Adviser and use the Business Advisers, Incorporated System as a Business Adviser. Your identity as a franchisee of Business Advisers Inc. must be clearly visible in all dealings with the public. This identification must appear on all customer contracts, checks, and negotiable instruments in a form and in a manner We prescribe from time to time.

10.9 *Public Figures.* You may not use a public figure to promote or advertise the Franchised Business without Our prior written consent.

10.10 *General Operations.* You shall conduct the Franchised Business in a manner that reflects favorably on You, Business Advisers Inc., and Our other franchisees. You shall protect the good name, goodwill, and reputation of the entire Business Advisers System, and avoid at all costs, all deceptive, misleading, and unethical practices in the operation of Your business.

10.11 *Exclusive Dealing.* During the term of this Agreement, You shall not directly or indirectly, for Your own or others' benefit, alone or in conjunction with any other person or entity, own, engage in, be employed by, advise, assist, lease or sublease to, invest in, franchise, lend money to, agree to sell or sell all, or substantially all, the assets of the Franchised Business to, or have any other interest in, whether financial or otherwise, any other business that competes with the business being franchised, except for other businesses operated under franchise agreements with Us.



10.12 *Late Payment Charge.* You shall pay Us a late fee equal to five percent (5%) of the amount due and owing on any amounts that are received by Us more than ten (10) days after the due date. No additional interest charges shall apply to past due payments. Nothing in this Article 10.12 shall be construed to limit Our remedies under Article 20.4-.6 of this Agreement.

10.13 *Application of Payments.* We have the right to apply payments from You in any way We choose, to any amounts You owe Us.

10.14 *Insufficient Funds Fee.* We have the right to charge a fee equal to Thirty Dollars (\$30.00) for each time You deliver a check to Us which does not clear Your bank account, or where We are not able to do an electronic funds transfer because of insufficient funds in Your account.

## 11. TRADEMARKS

11.1 *Trade Name and Service Marks.* We are the sole owner of the name "Business Advisers Inc." and all other Marks that We may license to You in this Agreement, including the BAI logo. Your non-exclusive right to use the Marks arises solely from this Agreement and You may only use the Marks according to the rules that We prescribe from time to time. You acknowledge and agree that all goodwill and other intangible benefits that arise from Your use of the Marks belong only to Us.

You must operate only as "Business Advisers" the words standing alone, or such other Marks as We may prescribe from time to time in the Manual Site. You may not add any words before or after the Marks or use the Marks with words that reflect Your name, Your company name, Your geographic location, or any other information. You may not use the Marks as part of any Internet domain name or maintain any other website utilizing the Marks. You shall operate under, and prominently display, the names and Marks in the operation of Your Franchised Business, as We may prescribe from time to time. You shall use no commercial trade name, service mark, or other commercial symbol, including associated logos, which do not satisfy Our established criteria. In the event We deem it advisable, You shall file for and maintain a "certificate of trade name" in the state or other appropriate jurisdiction in which Your Territory is located.

From time to time, We may elect to discontinue the use of certain names and marks and to commence the use of new names and marks. You shall pay all expenses incurred in connection with discontinuing the use of existing names and marks on or within Your Franchised Business, and commencing the use of new names and marks therein.

You shall not use any of the names and Marks in combination with any other words, letters, prefixes, suffixes, logos, or designs, other than in the manner We authorize.

You agree that upon the termination or expiration of this Franchise Agreement for any reason whatsoever, You shall immediately discontinue the use of the names and Marks and thereafter shall no longer use, or have any right to use, the names and Marks whatsoever.

11.2 *Infringement.* You must notify Us immediately if You become aware of any infringement of, or challenge to, Our rights to the Marks. You will communicate on this subject only with Us and/or Our attorneys. We have the sole right to take any action We deem appropriate, and We have the exclusive right to control any litigation or administrative proceeding concerning the Marks. In all events, We shall have sole discretion to take such action as We deem appropriate, including the exclusive control of any litigation or any trademark office or other necessary proceeding arising out of any such infringement, challenge or claim relating to any of the names and Marks, including but not limited to the right to compromise, settle, or otherwise resolve the claim, and determine whether to appeal a final determination of the claim. You will execute all instruments and documents, render assistance, and do all things that, in Our opinion, are necessary and advisable to protect and maintain Our interests in the Marks.

## 12. OPERATING ASSISTANCE

12.1 *Advice and Guidance During the Term of this Agreement.* During the term of this Franchise Agreement, We may provide You with reasonable operating assistance, as We determine in Our sole discretion to be necessary for the operation of the Franchised Business. We may charge You for operating assistance made necessary by Your failure to comply with this Agreement, or operating assistance You request that is greater than the assistance We normally provide. We may furnish to you such field support services as We alone consider advisable. The timing of all advice, consultation, and operating assistance provided for in this Agreement will be subject to the available of Our personnel.

12.2 *Service and Products.* We may, in Our sole discretion, research, advise, and provide You with information about vendors who offer products and services useful to Your operation of the Franchised Business. If You would like to purchase more of the items initially provided by BAI, including business cards, letterhead, and envelopes, You must do so only from BAI-approved vendors. All other items or information provided under this Article 12.2 are optional, and may be used in the franchisee's discretion.

12.3 *Supplies and Forms.* We will design and develop the computer-generated reports and other printed forms We require to be used in the Franchised Business. You will further be required to utilize during the term of this Agreement, the computer and software provided to You on the first day of Your Initial Training.

### 13. RECORDS AND FINANCIAL REPORTS

13.1 *Forms and Records.* You are required to use the forms and reports specified in the Manual Site and or BAI corporate policy. You shall establish and maintain the bookkeeping, accounting, financial statements and record-keeping systems required by Us and set out in the Manual Site for a period of seven (7) years.

13.2 *Financial Reports.* You will send Us the financial statements and reports of Gross Revenue in the form We specify in the Manual Site. Additionally, upon Our request, You must send Us no later than thirty (30) days after each fiscal year end, the verified statements identified in the Manual Site that truthfully reflect the financial condition of the Franchise Business.

### 14. REVIEWS

14.1 *Right to Review.* We have the right, but not the obligation, during normal business hours and without prior notice, to inspect the records of the Franchised Business, and to possess or inspect the laptop computer loaned to You by BAI. These reviews may, at Our sole discretion, allow Us to take records and or materials away from Your location, including the laptop computer loaned to you by BAI, for Our further inspection and audit. These reviews will be made at Our expense unless they are made necessary by Your failure to comply with this Agreement. In that event, We have the right to charge You for the costs of reviews, including Our employees' or agents' travel expenses, room, board, and compensation.

14.2 *Resolution of Discrepancies.* If Our review uncovers an underpayment by You to Us, You will pay Us the difference within seven (7) days. If the underpayment amounts to more than three percent (3%) of the amount actually due, You will also pay Us, within seven (7) days, all Our costs of conducting the review, including Our employees' or agents' travel expenses, room, board, and compensation, even if You are otherwise in compliance with this Agreement. If We determine the underpayment was intentional, We reserve the right to terminate this Agreement immediately and without any opportunity to cure.

### 15. INSURANCE

15.1 *Insurance.* At all times during the term of the Agreement, You shall maintain in force, at Your sole expense, general comprehensive public liability insurance against claims for bodily and personal injury, death and property damage caused by, or incurred in connection with, the operation of, or conduct of business by You; motor vehicle liability insurance and worker's compensation insurance. Your policy must have endorsements to add back coverage for losses due to care-custody or control, and for losses due to work not properly performed. The insurance coverage shall be maintained under one or more policies of insurance containing the amounts and types of coverage from time to time prescribed by Us and insurance by insurance companies rated A or higher by Alfred M. Best & Company, Inc. or such other insurance rating company as We designate. All such public liability and motor vehicle liability insurance policies shall name Us as an additional insured, and provide that We receive thirty (30) days prior written notice of any determination, expiration, or cancellation of any such policy. The amount and specific types of coverage shall be set forth in Our Manual Site and may be changed by Us from time to time. The policies must be an occurrence policy, and not a claims-made policy.

15.2 *Proof of Insurance.* You must provide Us with a certificate of insurance showing maintenance of all required insurance coverage's prior to opening the Franchised Business, and annually thereafter. All insurance policies required by this Agreement must name Us as an additional insured and be endorsed to give Us thirty (30) days prior written notice of any cancellation, termination, or change.

## 16 DEFAULT AND TERMINATION

16.1 *Termination by Us.* We may terminate this Agreement only for good cause. Unless otherwise provided by law, good cause means the failure to comply with any lawful provision of this Agreement and includes, but not limited to, the specific defaults listed below.

- a. This Agreement will terminate immediately upon delivery of notice to you and without any opportunity to cure, unless otherwise provided if:
  1. You transfer, or attempt to transfer, Your interest in this Agreement, or Your Territory, without Our prior written approval;
  2. You sell, or attempt to sell, the assets of the Franchised Business without complying with this Agreement, and You fail to comply with the provisions of Article 17.2 of this Agreement;
  3. You discontinue normal business operation of the Franchise Business, without Our prior written consent, for more than three consecutive business days;
  4. You have, in any combination in a twelve (12)-month period, three (3) or more checks returned to Us for insufficient funds, or Your bank account does not have sufficient funds to cover an electronic funds transfer on three (3) or more occasions;
  5. You become insolvent, make an assignment for the benefit of creditors, or are unable to pay debts as they come due;
  6. You make any material misrepresentation on the franchise application;
  7. You fail to open the Franchised Business within thirty (30) days after completing the Initial Training;
  8. You fail to open the Franchised Business with sixty (60) days of the Effective Date;
  9. You plead guilty to, or enters a plea of *nolo contendere* (no contest) to any:
    1. felony or crime of dishonesty;
    2. criminal offense related to the Franchised Business, other than minor traffic violations; or
    3. crime or commits any act within or without the Franchised Business that could, in Our sole discretion, tend to reflect poorly upon the goodwill of Our name or any of Our Marks or upon the Franchised Business.
  10. You fail to maintain the insurance coverage required by, or in accordance with the specifications listed in this Agreement, or the Manual Site, or fail to provide evidence of this insurance within five (5) business day of Our request;
  11. You violate the exclusive dealing covenant found in this Agreement;
  12. You fail on three (3) or more occasions during any twelve (12)-month period to comply with any provision of this Agreement, including Your obligation to pay when due the royalties, or other payments, regardless of whether the failure was corrected after notice to You;
  13. You voluntarily or involuntarily abandon the franchise relationship;
  14. You fail to cure a default under this Agreement which materially impairs the goodwill associated with the names and Marks after receiving written notice to cure at least twenty-four (24) hours in advance of the notice of termination;

15. You file a voluntary petition in bankruptcy or any pleading seeking any reorganization arrangement, composition, adjustment, liquidation, dissolution, or similar relief under any law, admits or fail to contest the material allegations of any such pleading filed against him, or You are adjudicated bankrupt or insolvent;
16. You submit to Us two (2) or more sales reports, financial statements, or other information or supporting records, in any period of twelve (12) consecutive months, which understate by more than two percent (2%) the Gross Receipts of the Franchised Business or materially distort any other material information;
17. You intentionally underreport your sales;
18. You fail to submit when due sales reports or financial statements more than in a three (3)-month period;
19. You fall more than one-hundred-twenty (120) days past due to Your creditors, employees, or suppliers;
20. You have Your business permits, if any, suspended or revoked;
21. You fail to attend Our Annual Convention at least once every two (2) years;
22. You are in default under any other Collateral Agreement with Us or any of Our Affiliates;
23. You make any unauthorized use, disclosure, or duplication of any portion of the Confidential Manual Site contents or duplicate, disclose, or make any unauthorized use of any trade secret or Confidential Information We provide to You;
24. You materially misuse or make unauthorized use of any of the Marks of commits any other act that can reasonably be expected to materially impair the goodwill associated with any Marks;
25. You fail to meet the minimum Gross Revenue, described in Attachment II, for three (3) consecutive months; or
26. Your current liabilities for the Consulting Business exceed Your current assets.

b. We further have the right to terminate this Agreement upon expiration of the cure period as set forth below if:

1. You fail to pay Us royalties, or other monies due, within three (3) days after written notice is delivered to You; or
2. You fail to maintain and operate the Consulting Business in accordance with the standards and specifications We establish for services to be provided to Clients by a Business Adviser, or knowingly render any service that does not conform to Our specifications, or fail to offer services or products We designate, or offer services We have not approved. You have five (5) business days after notification to cure this default; or
3. You are in default under any other provision of this Agreement, including the minimum Gross Revenue, or any mandatory specification, standard, or operating procedure required in the Manual Site, and do not correct this failure within thirty (30) days after written notice of default.
4. You use any of the Marks in a manner not permitted by this Agreement; or You fail to comply with any other lawful provision of this Agreement or specification, standard, operating procedure or Manual Site provision, and You do not correct this failure within ten (10) days after written notice is delivered to You.

Your opportunity to cure a default under this Agreement or any Collateral Agreement shall not in any way constitute a waiver of performance of Your obligations under this Agreement, or a waiver or any other provision of this Agreement.

c. To the extent that the provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation, or non-renewal other than in accordance with applicable law, these provisions will, to the extent they are not in accordance with applicable law, not be effective, and You and We will comply with applicable law in each of these matters.

d. In addition to Our right to terminate this Agreement, and not in lieu of any other rights against You, BAI, if You have not cured a default under this Agreement within thirty (30) days after receipt of written notice to cure, may, at its option, exercise complete authority in the operation of the Consulting Business until We determine that Your default has been cured and that there is compliance with the requirements of this Agreement. You agree that Our representative may take over, control, and operate the Consulting Business. If this is required, You will pay BAI a service fee as stated in the Manual Site that will be at least \$250 per day, plus all travel expenses, room and board, and other expenses reasonably incurred by the representative while the representative is required to enforce compliance with this Agreement. You agree that if We temporarily operate the Consulting Business for You, You shall indemnify BAI and all its representatives who may act under this Agreement, for all acts and omissions that BAI may perform or fail to perform in regard to Your interests or the interests of third parties during this period.

16.2 *Obligations After Termination or Expiration.* Upon termination or expiration of this Agreement, You shall:

a. Immediately pay all fees and charges due and owing to BAI. If termination results from Your default, these sums will include all damages, costs and expenses, including reasonable attorneys' fees, incurred by BAI as a result of the default;

b. Return, or destroy at Our instruction, all copies of the Manual Site and all computer equipment, hardware, and software BAI provided You, either at the commencement of the franchise or during the term of the Franchise Agreement;

c. Cancel all assumed name registrations or other registrations relating to, or incorporating the Marks;

d. Return to Us, or destroy according to Our direction, all literature, signs, unused customer contract forms, promotional materials and other materials containing the Marks or otherwise identifying You with Business Advisers Inc.;

e. Immediately stop all use of any of the marks or any colorable imitation of them in any business. You shall pay BAI all damages, costs and expenses, including reasonable attorneys' fees, incurred by BAI after the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provision of this Agreement;

f. Comply with the post term covenant not to compete, found in Article 19;

g. Notify Your telephone company and all listing agencies of the termination of Your right to use any telephone numbers used or advertised with the marks, and transfer those numbers to Us or Our designee; if You do not voluntarily transfer these numbers and listings, the telephone company and all listing agencies may accept this Agreement as evidence of Your authorization to do so, and of Our exclusive rights in the telephone numbers and directory listing, and of Our authority to direct their transfer on Your behalf; and

h. Provide BAI with any information We request regarding Your contracts with clients, including client contact lists;

i. Immediately cease all contact with Your actual and potential clients; and

i. Immediately cease identifying yourself of the Franchised Business as associated in any way with Business Advisers Inc. or formerly associated with Business Advisers Inc.

16.3 *Pre-Termination Options of Franchisor.* Prior to the termination of this Agreement, if You fail to pay any amounts owed to BAI or fail to comply with any term of this Agreement, then in addition to any right We may have to terminate this Agreement or to bring a claim for damages, We shall have the option to:

a. Remove Your listing of the Franchise from all advertising BAI published or approved;

b. Prohibit You from attending any meetings or seminars held or sponsored by Us, or taking place on Our premises;

- c. Terminate Your access to any company intranet or related system BAI provides to You; and/or
- d. Suspend all services BAI provides to You under this Agreement or otherwise.

Our actions, as outlined in this Article 16.3, may continue until You have brought Your accounts with Us or any of Our Affiliates current, cured any default, complied with Our requirements, and have received BAI's acknowledgment of same in writing. Nothing in this Article shall not suspend or release You from any obligation that You would otherwise owe BAI under the terms of the Agreement or otherwise.

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

## 17. ASSIGNMENT

*17.1 Assignment by Us.* BAI will have the right to assign this Agreement, and all of its rights and privileges under this Agreement, to any person, firm, corporation, or other entity.

*17.2 Assignment by You.* This Agreement and the rights it grants are personal to You. You may not assign or transfer Your rights or obligations under this Agreement without Our prior written consent. Such consent is in Our sole discretion to grant. You agree that We have granted the Franchise to You in reliance upon Your individual character, skill, aptitude, attitude, business ability, and financial capability. Accordingly, no transfer may be made unless You have obtained Our prior written consent, which may be withheld for any reason, or no reason at all.

## 18. DEATH OR DISABILITY

This Agreement shall terminate immediately upon Your death and all rights and duties hereunder, including post-termination obligations shall be waived. Any clients with whom You hold a contract at the time of Your death shall become BAI's clients, and will be serviced in any manner BAI, in its sole discretion, chooses.

The Manual Site will contain a procedure for terminating this Agreement in the event of Your disability. If You have not followed the process in the Manual Site, this Agreement terminates automatically without notice thirty (30) days after Your permanent disability. Permanent disability occurs when You are unable to continue operating the Franchised Business for a period of thirty (30) consecutive days with BAI's prior written consent.

## 19. COVENANT NOT TO COMPETE

*19.1 In Term Covenant.* You agree that, pursuant to this Agreement, You will receive valuable training and Confidential Information, including information regarding the BAI promotional, operational, sales, and marketing System. Accordingly, during the Term of this Agreement, You will not, directly or indirectly, for Yourself or for any other person or entity, alone or through or on behalf of others, own, engage in, be employed by, advise, assist, lease or sublease to, invest in, franchise, lend money to, sell or lease the assets of the Franchised Business to, or have any financial interest in, any business-Consulting Business, or any business which provides advertising, sales, marketing, customer service, leadership, team building, business planning, management, and organizational development services to businesses, other than as a franchisee of ours under this Agreement (or another franchise agreement with BAI).

*19.2 Post Term Covenants.* For a period of twenty-four (24) months after the expiration or termination of this Agreement for any reason, or the date on which You cease to operate the Franchised Business or use the Marks, whichever is earlier, You will not directly or indirectly, for Yourself or for any other person or entity, alone or through or on behalf of others, own, engage in, be employed by, advise, assist, lease or sublease to, invest in, franchise, lend money to, sell or lease the assets of the Franchised Business to, or have any financial or other interest in, any business-Consulting Business, including without limitation those that provide assistance in advertising, sales, marketing, customer service, leadership, team building, business planning, management, and organizational development to businesses within Your Territory, plus the area formed by extending the boundaries of the Territory fifty (50) miles in all directions, plus the area formed by extending the boundaries of any other BAI franchisee's Territory by ten (10) miles.

You will not, if You continue to operate or later begin to operate any other business, use any reproduction, counterfeit, copy or colorable imitation of the Marks, the System or the Consulting Business 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 the System and the Marks

and will not utilize any designation of origin, description, or representation that falsely suggests or represents an association or connection with BAI.

## 20. REMEDIES AND INDEMNITIES

20.1 *Mediation.* Prior to any litigation being initiated by either party, Mediation must and will be the first step in any or all disputes involving this agreement. Except with respect to matters for which We believe in Our sole discretion it is necessary to seek equitable relief or to recover fees You owe to BAI (as fees are defined above), the Parties agree to enter into mediation of all disputes involving this Agreement or any other aspect of the relationship between them, for a minimum of four hours, prior to the initiation of any legal action or claim against the other. The party receiving notice of the mediation shall choose a mediator from Jams Alternative Dispute Resolution, or some other neutral entity, as designated in Our sole discretion. If the party serving notice does not agree with the selection of the mediator, the party serving notice may then select a mediator from Jams Alternative Dispute Resolution, or some other neutral entity, as designated in Our sole discretion. If the party receiving notice does not agree with this selection, then the two previously-chosen mediators shall choose a third mediator within ten (10) days. The mediation shall be held within thirty (30) days following receipt by the mediation organization of notification that its services shall be retained. If the parties cannot agree on a date for mediation, then the mediation organization shall select a date it believes is reasonable for the parties, given all of the alleged conflicts in dates. The person actually mediating the dispute shall be required to have at least five (5) years of experience as either a franchisee or franchisor (or as an officer of such an entity), or in franchise law.

The parties shall equally share the cost of the mediator. The mediation shall take place in Las Vegas, Nevada. Except with respect to matters for which BAI believes it is necessary to seek equitable relief or to recover monies You owe, if either party initiates litigation without complying with their obligation to mediate in accordance with this Article (unless the other party has failed to respond on a timely basis or has indicated it will not engage in mediation in accordance with the provisions of Article 20.1), then upon petition of any party named as a defendant in such litigation, the court shall dismiss the litigation without prejudice, and award attorneys' fees and costs to the party seeking dismissal in an amount equal to such party's attorneys' fees and costs incurred in seeking dismissal. If the court refuses for any reason to dismiss the litigation, then regardless of the outcome of such litigation, or of any award given by the court in such litigation, the party initiating litigation shall be responsible for all attorneys' fees and costs incurred throughout the litigation by the other party as damages for failing to comply with the provisions of Article 20.1.

20.2 *Arbitration.* Prior to any litigation being initiated by either party, and after Mediation outlined in Article 20.1 above has been unsuccessfully attempted, Arbitration must and will be the second step in any or all disputes involving this agreements. Except as provided herein, any controversy or claim arising out of relating to this Agreement or its breach, including any claim that this Agreement or any part is invalid, illegal, or otherwise voidable or void, will be submitted to arbitration before, and accordance with the commercial arbitration rules of Jams Alternative Dispute Resolution. Arbitration will be conducted in the State of Nevada on an individual, and not a class-wide basis.

The obligation to arbitrate will not be binding upon Us with respect to: claims relating to the Marks or copyrights; claims relating to a covenant not to compete; or for money damages of less than Ten Thousand dollars (\$10,000).

Judgment upon an arbitration award may be entered in any court having competent jurisdiction and will be binding, final, and non-appealable. You and We hereby waive to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against each other.

If You or BAI is forced to seek an order from a court of law or equity to compel the other to proceed in arbitration, the party compelled will pay the party who obtained the order for all costs, including attorneys' fees, incurred in obtaining the order in addition to any, and not in lieu of other remedies available of law or in equity.

This arbitration provision is self-executing and will remain in full force and effect after expiration or termination of this Agreement. Except for issues relating to arbitrability or the enforcement of this Agreement to arbitrate, which will be governed by the Federal Arbitration Act, all controversies arising under or with respect to this Agreement shall be construed under the laws of the State of Nevada.

The provisions of this Article 20.2 will be construed as independent of any other covenant or provision of this Agreement; provided that, if a court of competent jurisdiction determines that these provisions are unlawful in any way, the court may modify or interpret them to the minimum extent necessary to have them comply with law.

20.3 *Jurisdiction and Venue in Legal Actions.* If We institute any legal or equitable action against You arising Our of or relating to this Agreement or the franchise relationship created by this Agreement, We may proceed in any state or federal court of general jurisdiction located in the state of Nevada. You irrevocably submit to the jurisdiction or venue of Nevada courts.

20.4 *Costs of Enforcement.* If We institute any legal action or arbitration against You under this Agreement, to secure or protect Our rights hereunder, or to enforce the terms of this Agreement or any other agreements or obligations that are part of Our franchise relationship, We will be entitled to recover from You the actual attorneys' fees We incur, together with court costs and expenses of suit, such as investigation, audit, professional, and witness fees.

If You bring any action against Us and fail to obtain the relief You seek, or if in that action, We bring a counterclaim that is granted and ordered in whole or in part in Our favor, You will pay Us the actual attorneys' fees, court costs, and all other expenses of suit We incur in defending Your claim or prosecuting Our counterclaim.

We will also be entitled to recover from You the costs of collection or enforcement of any judgment rendered in Our favor against You.

20.5 *Damages for Service Mark Infringement.* If You violate Our federal, state, or common law trademark or service mark rights, Our right to injunctive relief will not preclude Our recovery of money damages from You as provided by federal, state, or common law.

20.6 *Indemnification of Business Advisers Inc.* If We or any of Our Affiliates, successors, assigns, directors, officers, employees, and agents are subjected to any claim, demand, or penalty or become a party to any suit or other judicial or administrative proceedings or any investigation, or enter into any settlement by reason of:

- a. A claimed act or omission by You, Your clients, employees, agents, assignees, owners, directors, investors, or officers;
- or
- b. Any act or omission with respect to the Franchised Business or that of Our Affiliates, parent company, officers, directors, or agents,

You will indemnify, defend and hold Us, Our Affiliates, directors, officers, employees and agents harmless against all judgments, settlements, penalties and expenses, including attorneys' fees, court costs, and other expenses of litigation, incurred or imposed in connection with the resulting investigation or defense. Your obligation extends equally to any proceeding brought by or against Us for collection of money judgment arising out of the above-recited actions; and, Your obligation continues after termination or expiration of this Agreement.

You must give Us notice of any such action, suit, proceeding, claim, or demand, inquiry or investigation as soon as possible. We may voluntarily, but We are not obligated to, assume the defense or settlement of the proceeding or claim. We have the sole discretion to choose Our own attorneys and to consent to judgment or to agree to settlement.

## **21. CONTRACT INTERPRETATION; MODIFICATION; NOTICE**

21.1 *Governing Law.* Except to the extent governed by the United States Trademark Act of 1946, as amended, or the United States Arbitration Act, as amended, this Agreement and the parties' relationship hereunder shall be governed by the laws of the State of Nevada.

YOU HEREBY WAIVE ALL RIGHTS TO STATUTORY PROTECTION FROM STATES OTHER THAN NEVADA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



21.2 *Construction.* All references in this Agreement to the singular apply to the plural where appropriate, and all references to the masculine include the feminine. If any part of this Agreement is declared invalid, that declaration will not affect the validity of the balance of the Agreement. If applicable law or rules requires a longer notice period than that stated in this Agreement, the statutory or regulatory notice requirements will be substituted. The headings of the several Articles above are for convenience only and do not define, limit, or construe the contents thereof. The parties agree that if any provision of this Agreement is capable of two constructions, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render the provision valid and enforceable, the provision shall have the meaning that renders it valid and enforceable. The language of all provisions of this Agreement shall be construed simply according to its fair meaning and not strictly against the franchisor or franchisee. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent possible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any provision of this Agreement is adjudicated to be invalid or unenforceable, such adjudication is to apply only with respect to the operation of such provision and the particular jurisdiction in which such adjudication is made. All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if completely invalid and unenforceable provisions were not contained herein and partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. The parties shall substitute a valid and enforceable provision for any specification, standard, operating procedure, rule or other application of the franchisee or the franchisor that is determined to be invalid or unenforceable and is not waived by the other party.

21.3 *Waiver.* No waiver by Us of any breach or series of breaches of this Agreement will constitute a waiver of any additional breach or waiver of the performance of any of Your obligations under this Agreement. Our acceptance of any payment from You, or Our failure, refusal, or neglect to exercise any right to insist upon Your full compliance with obligations under this Agreement or with any specification, standard, or operating procedure or rule, will not constitute a waiver of any provision of this Agreement. No exercise or enforcement by the franchisor or the franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by the franchisor or the franchisee of any right or remedy hereunder which You or BAI is entitled by law to enforce. No modification of this Agreement shall be valid unless such modification is in writing and signed by You and BAI. Because complete and detailed uniformity under many varying conditions may not be possible or practical, We specifically reserve the right and privilege, at Our sole discretion, and as We may deem applicable in any specific instance, to vary standards for any franchisee based upon the peculiarities of a particular site or circumstance, density or population, business potential, population of trade area, existing business practices, practices, or any other condition which We deem to be of important to the successful operation of any such franchisee's business. You agree You shall not complain on account of any variation from standard specifications and practices granted to other franchisees and shall not be entitled to require Us to grant You a like or similar variation hereunder.

21.4 *Waiver of Collateral Estoppel.* The parties agree they should each be able to settle, mediate, litigate, arbitrate, or compromise disputes in which they are involved with third parties, without having the disposition of such disputes affect the contract or relationship between the Parties. BAI and You therefore each agree that a decision of a court of law in litigation to which one of them is not a party shall not in any manner prevent the person that was a party to such action from making similar arguments, or taking similar positions, in any action between You and BAI. The parties, therefore, waive the right to assert the principles of collateral estoppel in any action between the parties to this Agreement so that one party is prevented from raising against the other party to this Agreement the loss by that party of a similar claim or defense in another action.

21.5 *Waiver of Bond Requirements.* You agree that if You violates this Agreement and BAI seeks injunctive relief, You waive any requirement that BAI post a bond in connection with the granting of such relief. You further agree that if the court will not waive the requirement for a bond, the required bond shall be in a nominal amount, as determined by the court, but not to exceed Five Thousand Dollars (\$5,000).

21.6 *Waiver of Punitive Damages.* The Parties hereby waive to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other, and against any Affiliates, owners, employees or agents of the other, and agree that in the event of a dispute between or among any of them, each shall be limited to the recovery of actual damages sustained by it and any equitable relief to which it might be entitled.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**21.7 WAIVER OF JURY TRIAL.** TO THE EXTENT EITHER PARTY INITIATES LITIGATION INVOLVING THIS AGREEMENT OR ANY ASPECT OF THE RELATIONSHIP BETWEEN THE PARTIES (EVEN IF OTHER PARTIES OR OTHER CLAIMS ARE INCLUDED IN SUCH LITIGATION), ALL THE PARTIES WAIVE THEIR RIGHT TO A TRIAL BY JURY. THIS WAIVER SHALL APPLY TO ALL CAUSES OF ACTION THAT ARE OR MIGHT BE INCLUDED IN SUCH ACTION, INCLUDING BUT NOT LIMITED TO CLAIMS RELATED TO THE ENFORCEMENT OR INTERPRETATION OF THIS AGREEMENT, ALLEGATIONS OF STATE OR FEDERAL STATUTORY VIOLATIONS, FRAUD, MISREPRESENTATION, OR SIMILAR CAUSES OF ACTION, AND IN CONNECTION WITH ANY LEGAL ACTION INITIATED FOR THE RECOVERY OF DAMAGES BETWEEN YOU AND BAI (INCLUDING ANY OWNERS OF OURS OR YOURS AND INCLUDING ACTIONS INVOLVING AFFILIATES, EMPLOYEES, OR AGENT OF OURS OR YOURS).

**21.8 Notices.** All written notices permitted or required by the terms of this Agreement or the Manual Site will be deemed delivered when actually received or delivered to by hand, by facsimile, by e-mail, or three (3) days after being placed in the U.S. mail, or one (1) day after being left with an overnight delivery service. Notices shall be address to Us at Our then current principal place of business address, or to You are Your home address or the most current address of which We have been notified in writing.

**21.9 Scope and Modification of this Agreement.** This Agreement constitutes the entire agreement between You and BAI and supersedes all earlier and contemporaneous, oral, or written agreements or understanding between You and Us about the subject matter of this Agreement. No modification or change to this Agreement will have any effect unless it is in writing and signed by You and Our authorized agent or employee.

**21.10 Independent Contractors.** You understand and agree that You are and will be an independent contractor of BAI under this Agreement, and no amount training, assistance, or supervision, which We may give or offer to You, will defeat this status. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency. The parties to this Agreement do not intend by the terms of this Agreement to create a fiduciary or trust relationship. In no event shall We be considered or construed to be acting in a fiduciary or trust capacity on Your behalf of or for Your benefit. You expressly waive any right that now exists or that may arise at any time in the future that You might have to claim that We act or acted in a fiduciary or trust capacity on Your behalf or for Your benefit.

No employee of yours will be deemed to be an employee of BAI. Neither You, or any of Your employees whose compensation for services is paid by You may, in any way, directly or indirectly, expressly or by implication, be construed to be an employee of BAI for any purpose, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. BAI will not have the power to hire or fire Your employees.

You may not, without Our prior written approval, have any power to obligate Us for any expenses, liabilities or other obligations, other than as specifically provided for in this Agreement. Except as expressly provided in this Agreement, We may not control or have access to Your funds or the expenditure of Your funds, or in any other way exercise dominion or control over Your Consulting Business. Except as otherwise expressly authorized by this agreement, neither party will make any express or implied agreements, warranties, guarantees or representations or incur any debt in the name of or on behalf of the other party, or represent that the relationship between You and BAI is other than that of franchisor and franchisee. We do not assume any liability, and will not be deemed liable, for any agreements, representations, or warranties made by You that are not expressly authorized under this Agreement. We will not be obligated for any damages to any person or property that directly or indirectly arise from or relate to the operation of the Franchised Business.

**YOU AGREE TO CONSPICUOUSLY IDENTIFY YOURSELF AND YOUR CONSULTING BUSINESS – IN ALL DEALINGS WITH ITS CUSTOMERS, SUPPLIERS, PUBLIC OFFICIALS AND OTHERS – AS AN INDEPENDENT FRANCHISEE OF BAI. YOU AGREE TO PLACE THIS NOTICE OF INDEPENDENT OWNERSHIP ON ALL FORMS, BUSINESS CARDS, STATIONERY, ADVERTISING, SIGNS AND OTHER MATERIALS IN THE FASHION THAT BAI MAY SPECIFY AND REQUIRE FROM TIME TO TIME, IN ITS MANUAL SITE OR OTHERWISE.**

**21.11 Survival of Obligations.** The obligations in this Agreement, which by their terms require performance after the expiration or termination of this Agreement, will be enforceable despite the expiration or termination of this Agreement for any reason whatsoever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

21.12 *Successors*. Subject to the restrictions on assignment recited above, this Agreement is binding upon and inures to the benefit of, the permitted successors, assignees, heirs and personal representative on the date so indicated on the signature page.

## 22. ACKNOWLEDGMENTS

You acknowledge that You have conducted an independent investigation and financial assessment of the business contemplated by this Agreement and the market in which the business is located and recognizes that it involves business risks making the success of the venture largely dependent upon Your business and personal abilities, as well as other variables. BAI expressly disclaims the making of, and You acknowledge that You have not receive or relied upon, any representations, warranties or guarantees, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement. You have no knowledge of any representations by BAI, or Our officers, directors, shareholders, employees, agents, or servants, about the business contemplated by this Agreement, that are contrary to the terms of this Agreement of the documents incorporated herein, and further represents to BAI, as an inducement to its entry into this Agreement, that it has made no misrepresentations in obtaining this Agreement. You acknowledge You have received, read and understood this Agreement, the attachments hereto, and the Manual Site; We have fully and adequately explained the provisions of each to its satisfaction; and We have afforded You ample time and opportunity to consult with advisors of Your own choosing about the potential benefits and risks of entering into this Agreement. You have received Our Uniform Offering Circular at the earlier of the first personal meeting or ten (10) business days (or fourteen (14) calendar days, if You are in Illinois) prior to the execution of any agreements or payment of any consideration. You have also received the final franchise agreements at least five (5) business days prior to the execution of any such agreements or the payment of any consideration to BAI. You are aware of the fact that some of Our future franchise owners may operate under different forms of agreements, and consequently, that Our obligations and rights in respect to its various franchise owners may differ materially in certain circumstances. You agree that the covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on You, since You have other considerable skills, experience, and education which afford You the opportunity to derive income from other endeavors. You affirm that all information set forth in all applications, financial statements and submissions to BAI is true, complete and accurate in all respects, and You expressly acknowledge that BAI is relying on the truthfulness, completeness and accuracy of this information.

The submission of this Agreement does not constitute an offer. This Agreement will become effective only upon the execution of this Agreement by BAI and You. The date of execution by BAI will be considered the date of execution of this Agreement.

THIS AGREEMENT WILL NOT BE BINDING ON BAI UNLESS AND UNTIL IT HAS BEEN ACCEPTED AND SIGNED BY AN AUTHORIZED OFFICER OF BAI.

YOU ACKNOWLEDGE THAT NO REPRESENTATIONS OR PROMISES WERE MADE TO IT OTHER THAN THOSE SET FORTH IN BAI'S UNIFORM FRANCHISE OFFERING CIRCULAR, AND THAT IF ANY OTHER REPRESENTATIONS OR PROMISES WERE MADE TO YOU, YOU ARE NOT RELYING ON THEM.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

FRANCHISEE HAS READ ALL OF THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS OF THE FOREGOING AGREEMENT.

Dated: \_\_\_\_\_

FRANCHISEE:

Attest:

Witness/Date

\_\_\_\_\_  
Signature

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

Dated: \_\_\_\_\_

FRANCHISOR:

BUSINESS ADVISERS INCORPORATED

Attest:

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

By:

ATTACHMENT 1 – TERRITORY

**ATTACHMENT 2 – MINIMUM GROSS REVENUE**

**ATTACHMENT 3 – PERSONAL GUARANTY**

The undersigned, being holder of an interest in the franchise, and in order to induce BAI to enter this Agreement, hereby joins in and agrees to be personally bound by all the terms and provisions of this Agreement to the same extent and in the same manner as You are bound and hereby agree to be wholly liable for the performance of all Your financial obligations hereunder, which financial obligations are limited to the guaranty of payment of the Royalty Fee due or becoming due, the guaranty of payment for any additional products purchased from BAI, or any subsidiary or affiliate of BAI. Nothing herein shall be deemed to abrogate or impair any separate instrument of guarantee or subordination which the undersigned may have executed or made contemporaneously herewith or which may be executed or made hereafter.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

## ATTACHMENT 4 – NONDISCLOSURE AND NONINTERFERENCE AGREEMENT

THIS NONDISCLOSURE AND NONINTERFERENCE AGREEMENT (“Agreement”) is signed by \_\_\_\_\_ (“You”) as of \_\_\_\_\_, 200\_.

You agree to be bound by the following representations, warranties and covenants, to be effective, unless expressly stated herein to the contrary, during and at all times after your employment by Business Advisers Inc. (the “Franchisor”):

1. You may have received or been given access to, or will receive or be given access to, certain confidential information the Franchisor owns or uses not generally available to the public (collectively, the “Confidential Information”). The Confidential Information included operating, marketing, promotions, advertising, human resources and training manuals; memoranda, video and audio tapes, slide presentations and other materials; recipes; programs, studies, software, inventory control, memoranda, agreements, correspondence, records, plans and reports used or created by the Franchisor; know-how; customer lists; identities of suppliers; recruiting techniques; and operational, accounting and quality control procedures.

2. You agree that at all times since your original date of employment by, or ownership in, the Franchise, you have kept, and will continue to keep, all of the Confidential Information from being made known or disclosed to any person or entity, except for the Franchisor’s exclusive use and benefit. You will not reproduce, or permit the reproduction, directly or indirectly, of any of the Confidential Information except as the Franchisor requires, or permit the removal of, nor will you remove, any of the Confidential Information from the Franchise’s Premises.

3. The Confidential Information is the Franchisor’s exclusive property. Upon the Franchisor’s request and upon termination of you employment by, or ownership in, the Franchise, you will turn over to the Franchisor all documents or other materials in your possession or under your control that may contain or be derived from Confidential Information, together with all documents, notes, or other work product that is connected with or derived from your services to, or affiliation with, the Franchise. You have proprietary interest in any of the work product developed or used by you and obtained from your employment by, or ownership of, the Franchise. You will, as the Franchisor requests, do all acts that may be necessary to establish or document the Franchisor’s ownership of any work product.

4. You will promptly provide notice to the Franchisor if you know of or suspect the disclosure of any Confidential Information by any person or entity, which disclosure would not be permitted if the disclosing person or entity were bound by the terms of this Agreement. This notice will be signed by you and will reasonably describe the unpermitted disclosure.

5. You will not, at any time before the second anniversary of the complete termination of your relationship with the Franchisor (whether as an employee or an owner; or both is you are an employee and owner), without the Franchisor’s written consent:

(a) act as owner, officer, director, employee, agent, lender, broker, consultant or representative of any form of business, or be otherwise involved with the ownership, management, operation or control of a business, in competition with the respective businesses that the Franchisor is engaged in on the date of this Agreement within a 50-mile radius of the Franchisor or any of the Franchisor’s other franchisees (the “Protected Businesses”); nor

(b) act in any manner to interfere with, disturb, disrupt, decrease or otherwise jeopardize any of the Protected Businesses or do or permit to be done anything that may tend to take away or diminish the trade, business or good will of any of the Protected Businesses, or give to any person the benefit or advantage of the Franchisor’s methods of operation, marketing, advertising, publicity, training, business, customers or accounts, computer, inventory control or any other information relating or useful to Franchisee’s or the Franchisor’s respective businesses.

6. During the term of employment by, or ownership of, the Franchise, you will communicate promptly to the Franchisor all inventions, discoveries, improvements, designs and all other information created or obtained during the time you were an employee or owner of the Franchise, including all Confidential Information specifically prepared or invented by you, with or without assistance, and regardless of whether during normal business hours of the Franchise (collectively, “Inventions”), and you will assign all of the rights, title and interest to all Inventions to the Franchisor without any obligation on the part of the Franchisor to make any compensation, royalty or payment to you. All of the Inventions and information remain the Franchisor’s sole property.



7. The terms in this Agreement are severable, and the invalidity of any term does not affect the validity or enforceability of any other. The existence of any claim or cause of action by you against the Franchisor based on this Agreement or otherwise, is not a defense to the enforcement by the Franchisor of this Agreement. The Franchisor's failure to object to any conduct in violation of this Agreement is not deemed a waiver by the Franchisor, but the Franchisor may, if it wishes, specifically waive any part of those agreements to the extent that any waiver is stated in writing.

8. You agree, and will not later claim otherwise, that the duration and nature of the restrictions in this Agreement are fair and reasonable. If any court holds that the duration or nature of the restrictions in this Agreement is an unreasonable restriction upon you, the provisions of this Agreement are not rendered void, but apply as to any duration or to any other extent as the court indicates is a reasonable restriction. The unenforceability of any provision of this Agreement will not affect the enforceability of any other provision or remaining portion of this Agreement.

9. If the Franchisor should bring any legal action or other proceeding for the enforcement of Section 5, the time for calculating the term of the restrictions in Section 5 will not include the period of time beginning with the filing of legal action or other proceeding to enforce the terms of Section 5 through the date of final judgment of final resolution, including all appeals of any legal action or other proceeding.

10. The parties recognize the necessity of your compliance with the terms of this Agreement to the Franchisor. Accordingly, you agree that the Franchisor is a third party beneficiary of your obligations under this Agreement and the Franchisor is entitled to all rights conferred upon the Franchisor under this Agreement, that the Franchisor may enforce directly against with or without the Franchisor's consent or joinder.

11. This Agreement is the entire understanding and agreement among you and the Franchisor with respect to the subject matter of this Agreement, and supersedes all other understandings and representations, if any, made by and between you and the Franchisor. No modification or waiver of any of the terms of this Agreement is effective unless made in writing and signed by you and the Franchisor. All of the terms of this Agreement are binding upon, inure to the benefit of, and are enforceable by you and the Franchisor and their respective legal representatives, heirs, successors and assigns.

12. The Confidential Information is a unique and valuable asset of the Franchisor and the Franchisor will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, upon a breach or threatened breach by you of this Agreement, the Franchisor entitled to injunctions restraining the breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of this Agreement. You: (a) agree that any legal proceeding involving this Agreement may be brought in the state courts in the county in which the Franchisor's principal place of business is then located; (b) consents to the jurisdiction of this court; (c) waives any objection that you may have to the laying of venue of any proceeding in this court; and (d) agree that service of any court paper may be effected on you by mail, or in any other manner as may be provided under applicable laws of the state of Nevada.

13. If the Franchisor prevails in any legal action or other proceeding brought for the enforcement of this Agreement, that party entitled to recover from you reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including all fees, costs and expenses incident to appellate, bankruptcy and post judgment proceedings), incurred in that action or proceeding. No right in this Section conferred upon the Franchisor is intended to be exclusive of any other remedy. No single or partial exercise by the Franchisor of any right precludes any other or additional exercise of any right.

14. All capitalized terms not specifically defined in this Agreement have the same meaning as that certain Franchise Agreement between the Franchisor and the Franchisee dated [ ] (the "Franchise Agreement"). Upon any conflict between the terms of this Nondisclosure and Noninterference Agreement and the terms of the Franchise Agreement, the terms of the Franchise Agreement will supersede and control.

15. This Agreement will be governed by the internal laws of the State of Nevada without regard to principles of conflicts of laws

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

16. YOU WAIVE THE RIGHT TO A TRIAL BY JURY OF ALL CLAIMS MADE BETWEEN YOU AND THE FRANCHISOR WHETHER NOW EXISTING OR ARISING 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 TO WHICH THIS NONDISCLOSURE AND NONINTERFERENCE AGREEMENT RELATES.

YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND AGREE TO BE BOUND BY THIS AGREEMENT.

IN WITNESS WHEREOF:

Executed in the presence of :

\_\_\_\_\_  
Disclosee Signature

\_\_\_\_\_  
Disclosee Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name