



**FRANCHISE DISCLOSURE DOCUMENT**

**MAHANA FRESH, LLC**

**ISSUANCE DATE: MARCH 31, 2023**

## FRANCHISE DISCLOSURE DOCUMENT



### **Mahana Fresh, LLC**

A Florida limited liability company  
650 Golden Gate Point, Suite 401  
Sarasota, FL, 34236  
(941) 257-3663  
www.MahanaFresh.com

The franchise offered is for the establishment and operations of a fast-casual Mahana Fresh restaurant featuring freshly prepared bowls all prepared with proprietary and chef created marinades and sauces-, and other food products, side dishes, non-alcoholic beverages for on-premises and off-premises consumption and craft beer and wine in states permitted for on premise consumption under the Mahana Fresh name and mark (each a “Restaurant”).

The total investment necessary to begin operation of a Mahana Fresh Restaurant is \$221,700 to \$743,500. This includes from \$79,500 that must be paid to us or our affiliates.

Franchisor also offers qualified parties the right to open and operate multiple restaurants, a minimum of two, in accordance with a development schedule the parties agree to under Franchisor’s form of development agreement. The total investment necessary to begin operations under a development agreement will depend on the number of restaurants we grant you the right to open, a minimum of three. By way of example, the total investment necessary to begin operations under a development agreement for the right to open and operate three (3) Restaurants ranges from \$297,200 to \$819,000. This includes from \$155,000 that must be paid to us or our affiliates.

This Franchise Disclosure Document (“Disclosure Document”) summarizes certain provisions of your franchise agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with or make any payment to the franchisor or an affiliate in connection with the proposed franchise sale. Note, however, that no government agency has verified the information contained in this document.

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Dave Wood at 650 Golden Gate Point, Suite 401, Sarasota, Florida 34236, phone number (941) 257-3663, or by emailing [franchise@MahanaFresh.com](mailto:franchise@MahanaFresh.com).

The terms of your contract will govern your franchise relationship. Don’t rely on this disclosure document alone to understand your contract. Read your entire contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: March 31, 2023

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits, or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit G.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit E includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Mahana Fresh business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Mahana Fresh franchisee?</b>	Item 20 or Exhibit G lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit B.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This Franchise*

Certain states require the following risk(s) be highlighted:

- 1. Out-of-State Dispute Resolution.** The franchise agreement and development agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Florida. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Florida than in your own state.
- 2. Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.
- 3. Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.
- 4. Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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**ITEM 1.**  
**THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

**The Franchisor**

To simplify the language in this Disclosure Document, “we,” “our,” or “us” means and includes Mahana Fresh, LLC. We are a Florida limited liability company that was formed as Mahana Poke, LLC on March 22, 2018, with a principal business address at 650 Golden Gate Point, Suite 401, Sarasota, Florida 34236 with a telephone number of (941) 257-3663. On March 13, 2019, our company name was changed to Mahana Fresh, LLC. We have been offering franchises since February 2018 and conduct no other business. We do business under the name “Mahana Fresh.” We have not conducted business in or offered franchises in any other line of business. “You” or “Your” means the individual, corporation, limited liability company or partnership who buys the franchise.

**Agents for Service of Process**

Our agents for service of process in the states whose franchise laws require us to name a state agency as our agent for service of process are shown on Exhibit B.

**Parents, Predecessors and Affiliates**

Our parent, Mahana Fresh Group Holdings, LLC, is a Florida limited liability company formed on February 21, 2018, as Poke Group Holdings, LLC and has a principal business address of P.O. Box 3566, Sarasota, Florida 34230. On March 13, 2019, our parent company’s name was changed to Mahana Fresh Group Holdings, LLC. Our parent owns the Proprietary Marks (as defined below) used in connection with the System (as defined below). Our parent licenses us the exclusive rights to the Proprietary Marks in connection with the Restaurants and the System. Our parent does business under its corporate name and does not offer franchises in this or any other line of business.

Other than those listed above, we do not have any other parents, predecessors, or affiliates to disclose in Item 1.

**The Franchise Offered**

Single Unit Offering

We grant franchises for the right to operate a Restaurant, which is an upscale and sophisticated fast casual restaurant offering freshly prepared bowls all prepared with proprietary and chef created marinades and sauces-, and other food products, side dishes, non-alcoholic beverages for on-premises and off-premises consumption and craft beer and wine in states permitted for on premise consumption under the Mahana Fresh name and marks and any additional or alternative names or marks to be developed or acquired in the future.

Each Restaurant operates pursuant to our proprietary operating system, the characteristics of which include: (a) proprietary recipes and methods for preparing the food and beverage items, including the made-to-order bowls and related foods; (b) interior and exterior Restaurant designs, décor, and color schemes; (c) standards and specifications for the furniture, fixtures, and equipment necessary to operate a Restaurant; (d) sales techniques, and merchandising, marketing, advertising, and inventory management systems; and (e) standardized procedures for operating and managing a Restaurant (collectively, the “System”).

We identify the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited to, the mark “Mahana Fresh,” distinctive trade dress, and any other trade names, trademarks, and service marks we may now or in the future designate in writing for use in connection with the System (the “Proprietary Marks”). We continue to develop, use, and control the Mahana Fresh, LLC

Proprietary Marks in order to identify for the public the source of products and services marketed under the System, and to represent the System's high standards of quality, appearance, and service.

You will operate your Restaurant pursuant to our current form of franchise agreement, which is attached to this Disclosure Document as Exhibit C ("Franchise Agreement"). Under the Franchise Agreement, you are granted the right and obligation to open and operate a Restaurant at a certain location ("Approved Location") within a certain designated territory ("Territory").

### Multi-Unit Offering

We also offer qualified individuals the right to open and operate multiple Restaurants within a defined geographical area (the "Development Area") by: (i) executing our current form of development agreement (the "Development Agreement") attached as Exhibit D to this Disclosure Document; and (ii) paying our then-current development fee upon execution of your Development Agreement, which will depend on the number of Restaurants you agree to open, minimum of two (the "Development Fee").

You will be required to enter into our then-current form of franchise agreement for each of the Restaurants you are required to open under the Development Agreement, and you must execute the Franchise Agreement for your initial Restaurant contemporaneously with the execution of your Development Agreement. You may be required to sign our then-current Franchise Agreement for each subsequent unit, which Franchise Agreement may differ from the current Franchise Agreement included with this Franchise Disclosure Document. You must then ensure that you open and commence operations of each additional Restaurant in the Development Area in accordance with a development schedule set forth in your Development Agreement (the "Development Schedule").

### Area Representative Offering

We also offer area representative rights to certain individuals and companies through a separate Franchise Disclosure Document as a separate line of business. An Area Representative acts as our representative within a defined geographic area to solicit prospective franchises and to provide support before, during and after a franchisee begins operations. If your Restaurant is in an area with an Area Representative, they will assist us in providing certain support functions to you. Area Representatives are not management service organizations and will not provide any administrative staff and services to you.

### **The Market and Competition**

Fast casual dining restaurants are mature and highly competitive. You will compete with local, regional, and national restaurants offering food in the fast casual format. Your Restaurant will offer its products to the general public, and sales are not seasonal, other than any seasonality resulting from the site's physical and geographical location. Your competitive advantage in the marketplace will be based on your adherence to our standards and guidelines, as well as your entrepreneurial and managerial abilities and focus on customer service.

We have entered into a fulfillment agreement with a third-party service provider for the preparation of "Mahana Fresh" branded menu items and products that are available for order on third-party delivery applications such as "Uber Eats", "DoorDash", and "Postmates". Our agreement is an exclusive agreement with the third-party service provider, and we do not intend to enter into any other such arrangements with other service providers. The terms of our agreement permit us to terminate fulfillment through the third-party service provider in any territory in which a Restaurant location provides delivery services through third-party delivery applications. Restaurant owners will not compete with these fulfillment centers once their Restaurant locations are open and operational.



## **Laws, Rules, and Regulations**

Your Restaurant will be subject to laws and regulations in your state, county, or municipality regarding the operation of a restaurant, including laws and regulations relating to the preparation and dispensation of food products, occupational hazards and health laws, sanitation laws, and consumer protection laws.

You will also be subject to laws or regulations that are not specific to the restaurant industry, but applicable to businesses in general, including zoning laws, labor laws and the Fair Labor Standards Act, workers' compensation laws, business licensing laws, tax regulations, and the Americans with Disabilities Act.

We have not investigated the laws or regulations applicable to your Restaurant. You are solely responsible for investigating all applicable federal, state, and local laws and regulations, and your cost to comply with such laws and regulations, and you should do so before purchasing a franchise from us. We strongly suggest that you consult with an attorney, consultant and/or financial advisor regarding such regulations prior to purchasing a franchise from us. Applicable laws and regulations are subject to change.

## **Special Industry Regulation**

Federal, state and local jurisdictions have enacted laws, rules, regulations and ordinances that may apply to the operation of your Franchised Restaurant, including those that (i) establish general standards, specifications and requirements for the construction, design and maintenance of restaurant premises; (ii) regulate matters affecting the health, safety and welfare of your customers, such as general health and sanitation requirements for restaurants; employee practices concerning the storage, handling, cooking and preparation of food and beverages; restrictions on smoking; availability of and requirements for public accommodations, including restrooms; (iii) set standards pertaining to employee health and safety; (iv) set standards and requirements for fire safety and general emergency preparedness; (v) govern the use of vending machines; (vi) control the sale of alcoholic beverages; and (vii) regulate the proper use, storage and disposal of waste, insecticides, and other hazardous materials. You should investigate whether there are regulations and requirements that may apply in the geographic area in which you are interested in locating your Franchised Restaurant and should consider both their effect and cost of compliance.

Mahana Fresh Restaurants serve craft beer and wine. State alcoholic beverage regulatory authorities administer and enforce laws and regulations that govern the sale of alcoholic beverages. You are required to use your best efforts to obtain a beer and wine license for your Franchised Restaurant. You must comply with all applicable laws, rules and regulations in your state and locality related to the sale of alcoholic beverages at your Franchised Restaurant.

In addition, you must comply with all local, state, and federal laws that apply to your Franchised Restaurant including health, sanitation, no smoking, EEOC, OSHA, discrimination, employment, and sexual harassment laws, including all requirements set forth in the Alcoholic Beverage Control Act and in the California Code of Regulations, Title 4 with regard to the sale of alcoholic beverages. The Americans with Disability Act of 1990 requires readily accessible accommodation for disabled people and therefore may affect your building construction, site elements, entrance ramps, doors, seating, bathrooms, etc. You must obtain all required real estate permits, licenses, and operational licenses. You must also comply with all menu and menu board labeling laws and rules requiring restaurant operators to disclose certain calorie or other nutritional information about the foods they sell, including, for example, the FDA's Nutrition Labeling of Standard Menu Items in Restaurants and Similar Food Establishments Rule. California law requires each food facility that meets specified criteria (which cover franchised outlets with at least 19 other franchised outlets with the same name among certain other food facilities) to provide nutritional information that includes, per standard menu item, the total number of calories, grams of saturated fat, grams of trans fat, and milligrams of sodium and to have menu boards to include the total number of calories. In California, local county health departments inspect restaurants and other retail food facilities to ensure compliance with safe food handling practices and adequacy of kitchen facilities. Other states and cities may have laws similar

to these California laws.

The Nutrition Labeling and Education Act (NLEA) sets regulations for food labeling, including nutritional label standards, nutrient content claims, and health claims. NLEA applies to virtually all foods in the food supply, including food served and sold in restaurants. While NLEA specifies a number of exemptions for restaurants, there are many instances where a nutritional label is required. The Food and Drug Administration's Nutritional Labeling Guide for Restaurants and Other Retail Establishments provides answers to commonly asked questions regarding the application of NLEA. The Health Care Reform Bills that became law in March 2010 additionally contain provisions that require disclosure of nutrition and calorie information in chains of more than 20 restaurants.

The Payment Card Industry Data Security Standard ("PCI") requires that all companies that process, store, or transmit credit or debit card information maintain a secure environment. PCI applies to all organizations or merchants, regardless of size or number of transactions, that accepts, transmits, or stores any cardholder data.

You should consult with your attorney concerning these and other local laws and ordinances that may affect your Franchised Restaurant. You alone are responsible for compliance despite any advice or information that we may give you. We have not researched any of these laws or regulations to determine the specific applicability to your business.

## **ITEM 2. BUSINESS EXPERIENCE**

### **Dave Wood: CEO & Founder**

Dave Wood has been our CEO since February 2018 and has been the CEO of our parent, Mahana Fresh Group Holdings, LLC, since February 2018. From March 2017 through March 2018, Dave served as the CEO of Great Food and Friends LLC. He now serves as an advisor to them. From June 2015 through March 2018, Dave served as CEO of Firenza Pizza Franchise LLC. He now serves as an advisor to them. Since November 2012, Dave has served as an advisor to Jersey Mike's Team Washington LLC, Zinga Franchise Group LLC, and other non-franchise businesses in which he or his family have investments. Dave serves in all his capacities from our headquarters in Sarasota, Florida.

### **Dave Baer: Chief Operating Officer**

Dave Baer is our Chief Operating Officer since November 2019. From March 2017 until November 2019, he was Chief Operating Officer of Great Food and Friends LLC. From March 2018 until November 2019, he was also President of Great Food and Friends. Dave serves in all his capacities from his offices in Manassas, Virginia.

See Exhibit G for information regarding our Area Representatives.

## **ITEM 3. LITIGATION**

No litigation information is required to be disclosed in this Item.

## **ITEM 4. BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

## **ITEM 5. INITIAL FEES**

### **Initial Franchise Fee**

You must pay us a \$49,500 initial franchise fee when you sign the Franchise Agreement for a Restaurant (“Initial Franchise Fee”). The Initial Franchise Fee is uniform to all franchisees and deemed fully earned and nonrefundable upon payment.

### **Grand Opening Marketing**

You must pay us \$20,000 to conduct a grand opening advertising campaign on your behalf. If this is your first Franchised Restaurant you open with us, then you will be required to spend a total of at least \$20,000 in the four weeks before and the eight weeks after the opening date. We will require you to deposit \$20,000 (or a higher amount if you agree to a higher grand opening budget) with us upon receipt of an invoice from us. We will invoice you approximately sixty days prior to the planned opening date. The Grand Opening Marketing fee is uniform to all franchisees and is nonrefundable upon payment.

### **Onsite Training**

You must pay us an onsite training fee in the amount of \$10,000 within 30 days of receipt of our invoice. Onsite Training shall begin the week before the opening date of the Restaurant and shall last until a week after the opening date. In the event that you open more than one Restaurant, the Onsite Training Fee shall only be imposed for the first location unless you request onsite training for an additional restaurant. The Onsite Training fee is deemed fully earned and nonrefundable upon payment.

### **Development Fee**

If we grant you the right to more than one Franchised Restaurant under a Development Agreement, you must pay us a one-time Development Fee upon executing your Development Agreement. Your Development Fee will depend on the number of Franchised Restaurants we grant you the right to open within the Development Area and is calculated as follows: (i) \$125,000 for the right to open three Franchised Restaurants, plus an additional \$37,500 for the right to open each additional Franchised Restaurant (up to a total of five); (ii) \$35,000 per Franchised Restaurant if we grant you the right to open and operate between six and nine Franchised Restaurants; and (iii) \$30,000 per Franchised Restaurant if we grant you the right to open and operate 10 or more Franchised Restaurants.

### **Refunds, Different Fees, and Financing**

The Initial Franchise Fee and Development Fee are fully earned by us when paid and are not refundable under any circumstances. We may reduce, finance, defer or waive the Initial Franchise Fee or Development Fee if and when we determine, it is warranted by a unique or compelling situation. We generally do not provide financing for the Initial Franchise Fee or Development Fee. We may do so if and when we determine it is warranted by a unique or compelling situation.

**ITEM 6  
OTHER FEES**

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Royalty Fee	3% of Gross Sales during the first 26 weeks of operations, and 6% of Gross Sales thereafter.	Weekly payment (Wednesday) to us, via electronic funds transfer.	“Gross Sales” means the total receipts from all sales by the Restaurant of all bowls, beverages and other products or services authorized for sale at the Restaurant or at any approved off-site location but exclusive of sales or equivalent taxes, coupon and similar discounts, and beverage container deposits approved by us. Premium or similar promotional items must be included in computing Gross Sales unless these items have been sold at or below cost by the Restaurant.
Advertising and Marketing Fund Contribution	Up to 4% of Gross Sales  Currently, 2% of Gross Sales	Weekly payment (Wednesday) to us, via electronic funds transfer.	We have established an advertising and marketing fund (the “Advertising and Marketing Fund”) for the common benefit of System franchisees. Currently, you are required to participate in and contribute 2% of your Gross Sales weekly to the Advertising and Marketing Fund (the “Advertising and Marketing Fund Contribution”) in the manner we prescribe. You must pay the Advertising and Marketing Fund Contribution in the same manner as the royalty fees due under the Franchise Agreement. We reserve the right to increase your Advertising and Marketing Fund to up to 4% of Gross Sales upon 30 days’ notice.
Local Advertising, Marketing, and Promotional Expenditure	2% of Gross Sales	As incurred	In addition to the Advertising and Marketing Fund Contributions, you must spend a minimum of 2% per month on local advertising and promotion implemented in a format and using materials and designs approved by us.
Technology Fee	Currently \$400 per month.  We anticipate the development of a mobile application which will increase this technology fee to \$575 per month	Monthly beginning in the month you open your Restaurant	The Technology Fee currently includes fees related to your maintenance, licensing, access to and usage of our designated software, our intranet, and the Mahana Fresh website. We may add, delete, or otherwise modify the products and services that are included in the Technology Fee. In addition to the monthly Technology

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
			Fee, you will be responsible for any “per transaction” fee charged by third-party vendors for mobile application or online ordering We may increase the Technology Fee upon 30 days’ written notice.
Cooperative Marketing Fees	As determined by us and 50% or more of the participating MahanaFresh Restaurants in the Cooperative Marketing Program, not to exceed 2% of Gross Sales.	As we designate	You must contribute to the Cooperative if we establish a Cooperative Marketing Program in the Marketing Coverage Area where your Franchised Restaurant is located. Your contributions will be credited against your local marketing expenditures.
Social Media Management	Up to \$250 per month.  Currently \$0 per month.	As incurred	You will pay this amount to our approved supplier, which may be us. We may adjust this fee upon 30 days’ written notice to you.
Audit fee	The costs of the audit	10 days after notice of amount due	You will pay us the costs of an audit to be performed if you fail to provide monthly financial statements, which are required by the Franchise Agreement in excess of 3 times per calendar year or if a random audit shows an understatement of Gross Sales in excess of 3%.
Late fee	10% of the amount due	Within 10 days of the date of the statement for the amount due	You will pay us a late fee in the amount of 10% if you fail to pay the Royalty and Advertising and Marketing Fund Contribution within 10 days of the due date.
Interest on late payments	1.5% per month	Within 10 days of the date of the statement for the amount due	You will pay us interest on any overdue fee that is payable to us in the amount of 1.5% per month.
Additional training fee	Then-current fee, which will not exceed \$500 per day	Prior to commencement of the training program	You will pay us a fee if you ask for special assistance or we determine that additional training is warranted after your initial training period.
Pre-Opening Additional Initial Training Fees	\$2,500 per additional trainee plus your out-of-pocket expenses, including transportation, food, and lodging.	On demand.	We will provide an Initial Training Program for up to 2 supervisory or managerial personnel. If you send more than 2 supervisory or managerial personnel to the Initial Training Program, you must pay this Pre-Opening Additional Initial Training Fee per week per additional trainee.

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Post-Opening Additional Initial Training Fees	\$1,000 per week for each of our employees who provide post-opening Additional Initial Training Programs for you, plus our out-of-pocket expenses, for transportation, food and lodging.	On demand.	If, following the opening date of a Franchised Restaurant, you request us to provide additional Initial Training Programs for new or replacement supervisory or managerial personnel, you must pay this Post- Opening Additional Initial Training Fee.
Operating Manual	\$250	As incurred	In the event an Operating Manual is lost, stolen, or otherwise unavailable to you, you shall pay us up to \$250.
Alternative Supplier Evaluation Fees	\$500 application fee	When the application is submitted	If you seek approval of a new supplier or product, we may charge you the \$500 application fee for conducting the evaluation.
Renewal Fee	10% of our then-current initial franchise fee	At least five months before the signing of the renewal franchise agreement	Payable to us if you wish to renew your franchise agreement.
Transfer fee	10% of the amount of the future, then applicable system franchise fee or \$4,000, whichever is greater	Due at time Transferee signs Franchise Agreement	Either you or transferee must pay us 10% of the future, then-applicable system franchise fee, or \$4,000, whichever is greater.
Seminar and Convention Fee	Then-current attendance fee	As incurred	We reserve the right to charge our then-current conference fee for your attendance at any required conference or seminar, regardless of whether or not you attend. Fees for travel, food, and lodging to attend seminars and conventions also must be paid by you. Paid to various vendors. Travel and lodging fees may be reimbursed if agreed in advance and you are helping to conduct the training.
Licenses and permits	Various amounts	Prior to commencement of business operations	Due to various local government entities for operating a business.

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Sanitation and Food Safety Audits	Cost of the inspection.	On demand.	We may, in our sole discretion, contract with a third party to conduct sanitation and food safety audits during the term of your Franchise Agreement.
New Product and Supplier Testing Fees	Actual cost of inspection testing; \$1,000 must be paid as a deposit before facility inspection.	As incurred.	If you propose to purchase any goods or materials from a supplier that we have not previously approved, we have the right to require an inspection of the supplier's facilities and testing of samples we designate. You must pay us a fee equal to the actual cost of the inspection and testing.
Mahanamobile (Food Truck) Rental Fee (if available).	\$100 per day plus all costs for operation of the food truck.	As incurred.	You may rent our or our affiliate's food truck for mobile catering if we or our affiliate has a food truck serving your trade area and the food truck is available for your use. If we or our affiliate does not have a food truck serving your trade area or if the food truck is not available for your use, we may authorize you to purchase your own food truck and operate under a separate agreement with us.
Costs and attorneys' fees, and expert fees	Will vary under circumstances	As incurred	Payable to us, to reimburse us for fees incurred by us in obtaining injunctive or legal relief for the enforcement of any item of the Franchise Agreement or for costs incurred for Arbitration proceedings. These fees are non-refundable
Indemnification	Will vary under circumstances	As incurred	You must reimburse us if we are held liable for any claims arising from your business. This fee is nonrefundable.
Insurance	Will vary according to coverage and area	As incurred	You must be fully covered in all areas of operating a business. Earned premiums are not refundable.

<sup>1</sup>These fees are uniformly imposed on franchisees and non-refundable unless otherwise noted.

**ITEM 7.**  
**ESTIMATED INITIAL INVESTMENT**

**A. Franchise Agreement – Single Restaurant**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment Is to be Made
	Low Estimate	High Estimate			
Initial Franchise Fee <sup>1</sup>	\$49,500	\$49,500	Cash, check or electronic funds transfer	Upon signing Franchise Agreement	Us
Travel/Living Expenses While Training <sup>2</sup>	\$1,500	\$5,000	Check, cash, or credit card	As incurred	Various vendors
Real estate/Rent and Deposit <sup>3</sup>	\$5,000	\$20,000	As agreed to	As incurred	Landlord
Leasehold Improvements <sup>4</sup>	\$30,000	\$325,000	As agreed to	As incurred	Various providers
Buildout Management <sup>5</sup>	\$0	\$15,000	As agreed to	As incurred	An approved vendor
Equipment and Small Wares <sup>6</sup>	\$50,000	\$150,000	As agreed to	As incurred	Various suppliers
Mill Works and Furniture <sup>7</sup>	\$8,000	\$42,000	As agreed to	As incurred	Various designated suppliers
Signage <sup>8</sup>	\$5,000	\$20,000	As agreed to	As incurred	Vendor
Computer System & Technology Fee <sup>9</sup>	\$5,000	\$7,500	As agreed to	As incurred	Designated vendor
Office Supplies <sup>10</sup>	\$500	\$2,000	As agreed to	As incurred	Various suppliers
Licenses and Permits <sup>11</sup>	\$500	\$5,000	As agreed to	As incurred	Licensing and permit authorities
Legal and Accounting <sup>12</sup>	\$1,000	\$5,000	As agreed to	As incurred	Attorney, Accountant
Dues and Subscriptions <sup>13</sup>	\$200	\$500	As agreed to	As incurred	Various vendors
Utility Deposits <sup>14</sup>	\$0	\$5,000	As agreed to	As incurred	Utility companies
Insurance <sup>15</sup>	\$500	\$3,000	As agreed to	As incurred	Insurance company
Initial Inventory <sup>16</sup>	\$5,000	\$9,000	As agreed to	As incurred	Designated and approved suppliers
Grand Opening Marketing <sup>17</sup>	\$20,000	\$20,000	As agreed to	As incurred	Us
Onsite Training <sup>18</sup>	\$10,000	\$10,000	As agreed to	30 days of invoice	Us
Additional Funds—3 months <sup>19</sup>	\$30,000	\$50,000	As agreed to	As incurred	Various vendors
<b>Total<sup>20</sup></b>	<b>\$221,700</b>	<b>\$743,500</b>			

\*Unless otherwise noted below, the expenses listed above are non-refundable.

Explanatory Notes:

(1) Initial Franchise Fee. The initial Franchise Fee is \$49,500 for a single-unit Franchise Agreement. Please see Item 5 for details.

(2) Travel and Living Expenses While Training. We provide the initial training program tuition-free for up to two (2) of your representatives, however, you are required to pay the expenses that you will incur for



travel, food, and lodging during the initial training program.

The cost you incur will vary depending upon factors such as distance traveled, mode of transportation, travel preferences (such as air travel or ground transportation), nature of accommodations, per diem expenses actually incurred, and the number of persons who attend training. The low end of this estimate assumes that one (1) person will be attending initial training at our corporate offices in Fairfax, VA, and that you will not need to purchase a flight to attend, while the high end assumes that a total of two (2) individuals will attend the initial training and will be required to purchase a flight to/from that training in order to attend. Your other managers or personnel may attend training classes for an additional fee of \$500 per person, plus travel, lodging and living expenses, which fees and expenses are not included in the estimated range above. This cost does not include salaries or wages owed to employees of your Restaurant, which are covered under the “Additional Funds” estimated range.

(3) Real Estate/Rent and Deposit. A Mahana Fresh Restaurant is estimated to require about 1,600 to 2,400 square feet of space. Rent depends on geographic location, size, local rental rates, businesses in the area, site profile, and other factors and could be considerably higher in large metropolitan areas than in more suburban or small-town areas. Mahana Fresh Restaurants can be located in strip shopping centers, shopping malls, free-standing units, and other venues in downtown commercial areas and in residential areas. We anticipate that you will rent the Restaurant’s premises. It is possible, however, that you will choose to buy, rather than rent, real estate on which a building suitable for the Restaurant already is constructed or could be constructed. Real estate costs depend on location, size, visibility, economic conditions, accessibility, competitive market conditions, and the type of ownership interest you are buying.

(4) Leasehold Improvements. Leasehold improvement costs, including floor covering, wall treatment, counters, ceilings, painting, window coverings, electrical, carpentry, and similar work. Architect’s and contractor’s fees depend on various factors, including: (i) the site’s condition, location, and size; (ii) the demand for the site among prospective lessees; (iii) the site’s previous use; the build-out required to conform the site for your Restaurant; and (iv) any construction or other allowances the landlord grants. The lower figures provided here under “Leasehold Improvements” assume that you remodel an existing building that has previously been utilized as a restaurant. Construction of a new building on a pad site or otherwise likely would require a greater initial investment, the amount of which would depend on market conditions.

Your actual costs will depend on, among other factors, the Restaurant location, the size of the Restaurant, the condition of the premises being remodeled, national and local economic factors, the local costs of material and labor, and the amount of tenant improvement allowances that you are able to obtain, if any.

In certain major metropolitan markets such as Boston, Chicago, New York, Los Angeles, San Francisco, Seattle, and Washington, D.C., costs may be higher due to local market rates for materials and labor.

(5) Buildout Management. You may, but are not required to, hire a construction management firm to assist you in managing the build out of your Restaurant. The low estimate assumes that you do not hire any such firm. For your first restaurant, we reserve the right to require you to hire a construction management firm of our choosing. Additionally, we reserve the right to act as the construction management firm for the buildout of your Restaurant. If we exercise this right, we may use additional vendors to assist us with the buildout. You will pay us this fee at the time of lease signing for your location (or, at site approval by us if you own the proposed location).

(6) Equipment and Small Wares. These amounts include specific specialized equipment used in the preparation of all of our menu items that you may be required to purchase from any available supplier. These amounts also include refrigerators, freezers, and other equipment, such as office equipment and furniture, telephone system, and computer system and software. Additionally, the price for a self-serve pour-by-the-ounce beer, wine and kombucha system is included in these amounts. If you install such a system, you must comply with all local, state, and federal laws and install only a system approved by us.

- (7) Mill Works and Furniture. These amounts include purchases of furniture and millwork for the Restaurant.
- (8) Signage. This estimate includes the cost for one inside sign and one outside sign.
- (9) Computer System. This estimate includes the cost of your back-office computer and printer, as well as your POS System, and any accompanying software purchase we require. This estimate also includes three months' payment of the required Technology Fee, which is currently \$400 per month, but may change upon 30 days' written notice to you.
- (10) Office Supplies. These amounts include your purchase of miscellaneous office supplies for use in the operation of your Restaurant such as printer paper, ink, writing utensils, and organizational supplies.
- (11) Licenses and Permits. You must obtain business licenses as dictated by state and local regulations. You will need to provide funds for deposits for utilities and insurance. Insurance costs depend on policy limits, types of policies, nature and value of physical assets, gross revenue, number of employees, square footage, location, business contents, and other factors bearing on risk exposure. The estimate contemplates insurance costs for the policies we require for three months. While we may provide guidance on these matters, you acknowledge that researching and obtaining business licenses and insurance in accordance with any law and regulation is solely your responsibility.
- (12) Legal and Accounting. This estimate includes the cost of professional fees that you may incur in establishing your business. Such expenses may include fees payable to attorneys, accountants, and finance originators that you will need to use for the review of this Disclosure Document and its Exhibits, as well as for entity formation and lease negotiation.
- (13) Dues and Subscriptions. This estimate is for the costs for joining a local chamber of commerce or similar civic organizations in the area in which your Restaurant operates.
- (14) Utility Deposits. This estimate includes the costs of deposits for utility services at your Restaurant, which may be paid directly to utility providers or your landlord.
- (15) Insurance. This estimate is for your insurance premium deposit and your first three months of insurance coverage, which may be paid prior to opening. We require you to maintain: (i) property insurance; (ii) general liability insurance; (iii) automobile liability insurance, if applicable; and (iv) workers' compensation insurance (in your name) or other comparable insurance or benefit programs for your employees. We also require you to name us and our affiliates as an additional insured. See Item 8 for details.
- (16) Initial Inventory. This estimate includes the initial supply of inventory of food and beverage products, paper products, cleaning supplies, and printing, uniforms, promotional material, and other supplies.
- (17) Grand Opening Marketing. You must pay us \$20,000 to conduct a grand opening advertising campaign on your behalf. You can expend any additional amounts that you wish on a grand opening advertising campaign and we estimate that you will do so. If this is your first Franchised Restaurant you open with us, then you will be required to spend a total of at least \$20,000 in the four weeks before and the eight weeks after the opening date. We will require you to deposit \$20,000 (or a higher amount if you agree to a higher grand opening budget) with us upon receipt of an invoice from us. We will invoice you approximately sixty days prior to the planned opening date.
- (18) Onsite Training Fee. You agree to pay us an onsite training fee in the amount of \$10,000 ("Onsite Training Fee") within 30 days of receipt of our invoice. Onsite Training shall begin the week before the opening date of the Restaurant and shall last until a week after the opening date. In the event that you open

more than one Restaurant, the Onsite Training Fee shall only be imposed for the first location unless you request onsite training for an additional restaurant.

(19) Additional Funds – 3 Months. This item estimates your expenses during the initial period (first three months) of operation of your Mahana Fresh Restaurant (other than the items identified separately in the table). These expenses include payroll costs. These figures are estimates, and we cannot guarantee that you will not have additional expenses starting the business. Your costs depend on how much you follow our methods and procedures; your management skill, experience, and business acumen; local economic conditions; local rental rates and the local real estate market; the local market for your products and services; the prevailing wage rate; the competition; and the sales level reached during the initial period of operation of your Restaurant.

(20) TOTAL. We relied on our business experience in compiling these estimates. Two of our officers have over fifty combined years of opening, owning and operating restaurants. You should review these figures carefully with a business advisor before deciding to acquire the franchise. We do not currently offer financing directly or indirectly for any part of the initial investment, although we reserve the right to do so in the future. The availability and terms of financing depend on many factors, including: the availability of financing, generally; your creditworthiness and collateral; and the lending policies of financial institutions from which you request a loan.

**B. Development Agreement – Three (3) Restaurants**

Type of Expenditure <sup>1</sup>	Amount	Method of Payment	When Due	To Whom Payment Is to be Made
Development Fee <sup>2</sup>	\$125,000	Lump Sum	Upon execution of Development Agreement	Franchisor
Initial Investment to Open Initial Restaurant <sup>3</sup>	\$172,200 to \$694,000	See Chart A of this Item 7.		
<b>TOTALS<sup>4</sup></b>	<b>\$297,200 to \$819,000</b>			

Explanatory Notes:

1. All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. This chart details the estimated initial investment associated with executing a Development Agreement for the right to own and operate three (3) Restaurants, as well as the initial investment to open your first Restaurant under your Development Schedule.

2. The Development Fee is described in greater detail in Item 5 of this Disclosure Document, and this Development Fee is for the right to open and operate a total of three (3) Restaurants. If you choose to open more than three (3) Restaurants, your Development Fee will be calculated as follows: (i) \$125,000 for the right to open and operate three franchised restaurants, plus an additional \$37,500 for the right to open and operate each additional Franchised Restaurant (up to a total of five); (ii) \$35,000 per Franchised Restaurant if we grant you the right to open and operate between six and nine Franchised Restaurants; and (iii) \$30,000 per Franchised Restaurant if we grant you the right to open and operate ten or more Franchised Restaurants.

3. This figure represents the total estimated initial investment required to open the initial Restaurant you agreed to open and operate under the Development Agreement. You will be required to enter into our then-current form of franchise agreement for initial Restaurant you open under your Development Agreement. The range includes all the items outlined in Chart 7.A. of this Item, except for Franchise Fee (because you are not required to pay any Franchise Fee for those Restaurants you open under the Development Agreement). It does not include any of the costs you will incur in opening any additional

Restaurant(s) that you are granted the right to open and operate under your Development Agreement.

4. This is the total estimated initial investment to enter into a Development Agreement for the right to own a total of three (3) Restaurants, as well as the costs to open and commence operating your initial Restaurant for the first three months (as described more fully in Chart A of this Item 7).

## **ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

In order to maintain our standards of consistent and high quality Mahana Fresh Products and uniformity in Mahana Fresh Restaurants, you must purchase all products and services required for the operation of your Restaurant from suppliers that we have identified and approved as meeting all of our specifications and standards or from us directly. You must operate your Restaurant in strict conformance with our methods, standards, and specifications which we prescribe in our confidential operating manual and various other confidential manuals and writings prepared for use by you in operating a Restaurant (collectively, the “Operating Manual”). The Operating Manual covers nearly all aspects of your Restaurant’s operations, such as food preparation and presentation techniques, employee training, and Restaurant management. These standards are subject to change. We will give to you and you must comply with our standards and specifications for the services and products offered at your Mahana Fresh Restaurant regarding food and beverages, menu, food type and quality, dry goods, sauces, raw ingredients, packaging material, promotional items, uniforms, smallwares, computer software and hardware, payroll services, facility services (for example, mats, mops and towels), telephone equipment, services, furnishings, fixtures, and equipment used in connection with operating your Mahana Fresh Restaurant, leasehold improvements, food preparation and storage, supplies, recipes, materials, forms, and other Mahana Fresh Products sold or used through a Mahana Fresh Restaurant. We reserve the right to change the standards and specifications from time to time on written notice to you or as may be specified by the Operations Manual. We do not provide material benefits to franchisees based on their purchase of particular products or services

### **Approved Products, Services, and Suppliers**

You may only offer approved products and services (“Approved Products and Services”) through your Restaurant. We will provide you with a list of Approved Products and Services prior to the opening of your Restaurant. All Approved Products and Services must meet our standards and specifications. In order to: (i) better assure the supply and quality of the Approved Products and Services; and/or (ii) enable us, in our sole discretion, to take advantage of marketplace efficiencies, we have the right to require you to purchase certain Approved Products and Services only from us or other suppliers or distributors approved or designated by us. We may develop certain proprietary products that you must purchase from us and offer for sale at your Restaurant. If you wish to offer products or services other than those we have authorized in connection with operating your Restaurant, you must obtain our prior written consent.

We may in the future designate certain products and menu items licensed to us by third parties which you may be authorized to sell in your Restaurant in our discretion. We may revoke our authorization to provide these products or menu items at any time, and upon notice from us you must immediately discontinue selling these products or menu item.

We are currently not an approved supplier of any products or services. Our affiliate, Centurion Guides, is an approved supplier of optional restaurant management services. Some of our officers own an interest in our affiliate and may derive revenue from the services provided. We may designate ourselves and/or any affiliates we may have as an approved supplier, or the only approved supplier, from which you may or must lease or purchase particular products or services in developing and operating your Franchised Restaurant. As of now, we specify brands and specifications of products that you must purchase, such as a brand of rice, specific brands of fish and other proteins, toppings, other food items, sauces and beverages. Those brands of products are available from multiple suppliers. We do not at present require you to obtain them from any specific or designated supplier or source. We do not specify or designate any supplier from

whom you must purchase products or services. Therefore, we do not now make available to franchisees our criteria for approving alternative suppliers. You must offer products and services in the manner we prescribe, provide quality customer service, and otherwise operate your Restaurant in a manner which will enhance the image intended by us for the System.

### **Mahana Fresh Authorized Products**

We may provide you with our proprietary sauces and marinades, branded products and proprietary beverages, fish products, packaging and other products that are produced or manufactured according to our trade secrets, proprietary recipes, specifications and/or formulas (collectively, the “Mahana Fresh Proprietary Products”). You must buy Mahana Fresh Proprietary Products only from us, our affiliate or our Mahana Fresh Approved Suppliers. We will not be obligated to reveal our trade secrets or the recipes, specifications and/or formulas of Mahana Fresh Proprietary Products to you or any third party. You must purchase, use, and maintain in stock a sufficient amount of Mahana Fresh Authorized Products and Mahana Fresh Proprietary Products to operate your Franchised Restaurant. In the previous fiscal year, ending December 31, 2021, we and our affiliates did not derive any revenue from required franchisee purchases or leases, but may do so in the future. “Mahana Fresh Branded Products” are products that bear any of the Mahana Fresh Marks, including products that are prepared, sold and/or manufactured in strict accordance with our, methods, standards and specifications, including pre-packaged food and beverage products, clothing, souvenirs and novelty items.

### **“Virtual Kitchen” Authorized Products**

We may permit you to offer additional products under marks that we have licensed from third parties as a “ghost kitchen” or “virtual kitchen” (“Virtual Kitchen Products”) but we are under no obligation to do so. Virtual Kitchen Products are food products which are marketed under a name other than the “Mahana Fresh” Marks and are prepared at your Restaurant and made available for delivery to customers through third-party delivery services such as DoorDash, UberEats, PostMates, and similar service providers. You may not offer Virtual Kitchen Products without our prior written approval. We may revoke our approval of any Virtual Kitchen Products at any time, even if we have previously granted you approval. If we permit you to offer Virtual Kitchen Products, revenue generated from the sale of Virtual Kitchen Products will be included in the definition of “Gross Sales” under your Franchise Agreement.

### **Computer Hardware**

Currently, franchisees must purchase a designated point of sale (“POS”) computer system for each Restaurant. The POS system must include a minimum of 2 stations, 2 credit card processors, and 2 printers from our designated supplier, Toast. We have established a negotiated pricing arrangement for the benefit of our franchisees with Toast. You may be able to purchase certain items from this supplier at a reduced rate as a result of this negotiated purchase arrangement. We do not receive any material benefits as a result of franchisee purchases with this supplier. We and our affiliates do not presently and have not in the past received consideration from negotiating any purchasing arrangements with suppliers on behalf of franchisees, but we may do so in the future.

### **Grand Opening Advertising**

We will require franchisees, within 30 days of signing the lease for the Restaurant to purchase a specified package of pre-opening and grand opening advertising and promotional materials from our designated supplier, which may be us. We do not now have any purchasing or distribution cooperatives, and we do not now require your participation in any purchasing or distribution cooperatives.

We reserve the right to formulate and modify our standards and specifications for operating a Restaurant based upon the collective experience of our executive team. We reserve the right to designate ourselves or an affiliate as an approved, or the sole approved, supplier for any item you must purchase in connection with the Restaurant. Our standards and specifications are described in the Franchise Agreement, the

Operating Manual, and other written documents. We have the right, under the Franchise Agreement, to change the standards and specifications applicable to operation of the franchise, including standards and specifications for products, signs, interior designs and furnishings, supplies, fixtures, inventory and equipment by written notice to you or through changes in the Operating Manual. We may issue our standards or specifications for goods and services directly to you or our approved supplier. You may incur an increased cost to comply with these changes at your own expense. We will notify you of any change to our standards and specifications by way of written amendments to the Operating Manual or otherwise in writing.

In the event you wish to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, you must provide us the name, address and telephone number of the proposed supplier, a description of the item you wish to purchase, and the purchase price of the item, if known. At our request, you must provide us with a sample of the item you wish to purchase for testing purposes. If we incur any costs in connection with testing a particular product or evaluating an unapproved supplier at your request, you must reimburse our reasonable testing costs, regardless of whether we subsequently approve the item or supplier.

We will use our best efforts to notify you of our approval or disapproval of a particular supplier or product within 30 days of receiving all requested information. If we do not respond within 30 days, the supplier or product is deemed disapproved. We are not required to approve any particular supplier or product. We may base our approval of a proposed item or supplier on considerations relating not only directly to the item or supplier, but also indirectly to the uniformity, efficiency, and quality of operation we deem necessary or desirable in our System as a whole. We have the right to receive payments from suppliers on account of their dealings with you and other franchisees and to use all amounts we receive without restriction (unless instructed otherwise by the supplier) for any purposes we deem appropriate. We will not approve an unreasonable number of suppliers for a given item, which approval might, in our reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Our criteria for approval of a particular supplier or product will be made available upon written request. We may revoke our approval of particular products or suppliers when we determine, in our sole discretion, that such products or suppliers no longer meet our standards. Upon receipt of written notice of such revocation, you must cease purchasing products from such suppliers. You must use products purchased from approved suppliers solely in connection with the operation of your Restaurant and not for any competitive business purpose.

We and our affiliates do not currently derive any revenues, rebates or material consideration from required purchases or leases made in accordance with our specifications. Zero percent of the revenues of we and our affiliates presently derive are derived from required purchases or leases of goods or services made in accordance with our specifications. Less than one percent of your total initial opening costs, and zero percent of your ongoing operating costs, is now comprised of required purchases or leases of goods or services from sources or suppliers designated by us.

We estimate that your required purchases will account for approximately 70% to 95% of all purchases and leases necessary to open your Restaurant and approximately 35% to 50% of your annual costs to operate your Restaurant on an ongoing basis. Neither we nor our affiliates have received any prior income from required franchisee purchases as of the date of this disclosure, but we reserve the right to do so in the future.

We provide you with no material benefits (such as granting additional franchises) based on your use of designated or approved suppliers or sources. There are presently no purchasing or distribution cooperatives, but we reserve the right to implement them in the future and to require your participation in them.

We have established negotiated pricing arrangements for the benefit of our franchisees with U.S. Foods, Inc. You may be able to purchase certain items from this supplier at a reduced rate as a result of this

negotiated purchase arrangement. We do not receive any material benefits as a result of franchisee purchases with this supplier. We and our affiliates do not presently and have not in the past received consideration from negotiating any purchasing arrangements with suppliers on behalf of franchisees, but we may do so in the future.

### **Advertising**

We must approve all advertising before first publication or use. Our advertising requirements are discussed more fully in Item 11 of this Disclosure Document.

### **Insurance**

You will be required to procure and maintain insurance in the amounts we prescribe and specify in the Operating Manual, which we may update from time to time in our sole discretion. You agree to provide us with proof of coverage on demand. The types of policies you are required to maintain include: (i) property insurance on a replacement cost basis at a minimum limit based on the total value of your assets; (ii) general liability insurance with a minimum limit of \$1,000,000.00 per occurrence; (iii) automobile liability insurance with a minimum limit of \$500,000.00 per occurrence (including, but not limited to, owned automobiles titled or leased in the name of you or your owners and used at any time, whether principally or occasionally in your business, hired and non-owned coverage), if applicable; and (iv) workers' compensation insurance (in your name) or other comparable insurance or benefit programs for your employees as required by us.

All insurance policies must be written by an insurance company with a Best's Insurance Guide minimum rating of A-VIII or better. All policies must include a waiver of subrogation in favor of us. In addition to the information listed above, you agree to carry such insurance as may be required by the lease of your location, by any lender or equipment lessor you select, and such workers' compensation insurance as may be required by applicable law. You must add us, and any parties we may designate, to all insurance contracts as additional insureds under your insurance policies at your cost.

### **Rebates**

We may, from time to time, receive rebates from Mahana Fresh Approved Suppliers based on the aggregate volume of items ordered. You will not be entitled to receive any portion of these rebates. We do not currently receive rebates based on purchases by franchisees. In addition, we may negotiate certain arrangements (including price terms) for the purchase of certain items, such as logoed paper products and cups with suppliers. We do not provide material benefits to franchisees (for example, renewal or granting additional franchises) based upon their purchase of particular products or services or use of particular suppliers. There are currently no purchasing or distribution cooperatives for the System. For the fiscal year ending December 31, 2020, we derived no revenue in the form of rebates from manufacturers or vendors as a result of required purchases by franchisees.

### **Gift Cards, Loyalty, CRM, Social Media Software, Online and Mobile Ordering Programs**

You may not create or issue any gift certificates or gift cards and may only sell gift certificates or gift cards that have been issued by us that are accepted at all Mahana Fresh Restaurants. You must participate in all gift certificate and/or gift card administration programs as we may designate from time to time. You must honor all coupons, gift certificates, gift cards and other programs or promotions we direct. You must fully participate in all guest loyalty or frequent customer programs now or in the future adopted or approved by us. You must not issue coupons or discounts of any type for use at your Franchised Restaurant except as approved by us in writing. In addition, you must purchase, enroll in or subscribe to, as applicable, all CRM, social media analytics and online and mobile ordering software or programs that we designate. We may change the designated suppliers of these or similar services in our discretion. You must change, purchase, or subscribe to the additional programs or software, as applicable, after we give you notice to do so.

## Music and Music Selection

You must play only the music and music selections that we approve. You must install the equipment necessary to receive and play approved music.

## Leases and Leasehold Improvements

You must purchase or lease a retail space for your Restaurant which meets our standards and specifications for a Mahana Fresh Restaurant. We must approve your location and lease terms before you sign a lease for a Restaurant location. We will condition our approval of your lease upon, among other conditions, your and your landlord's signing of a Lease Rider (which is attached to the Franchise Agreement as an Exhibit), through which your landlord grants us the rights to assume your rights and obligations under the lease in the event that you breach your lease agreement or your Franchise Agreement is terminated or expires.

We do not currently have a designated vendor to manage the construction and buildout of your Restaurant, but we reserve the right to designate one in the future. We must approve of all vendors used in the buildout of your Restaurant. We will provide you with a prototype layout for your architect to use in the buildout of your Restaurant. You must purchase and install furniture and fixtures as we prescribe.

### ITEM 9. FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

Obligation	Section in Agreement	Disclosure Document Item
(a) Site selection and acquisition/lease	Paragraph 6.3, 6.4, and 7.1 of the Franchise Agreement and Paragraphs 4 and 5 of the Development Agreement	Items 7 and 11
(b) Pre-opening purchases/leases	Paragraphs 6, 7, 9, 11, 14.3, 14.6 and 14.8 of the Franchise Agreement	Items 6, 7, 8, and 11
(c) Site development and other pre-opening requirements	Paragraphs 6, 7, 9, 14.6 and 14.8 of the Franchise Agreement, and Paragraphs 4.5 and 9.2 of the Development Agreement	Items 6, 7, 8 and 11
(d) Initial and ongoing training	Paragraphs 9, 10.2 and 14.8 of the Franchise Agreement	Items 6, 7 and 11
(e) Opening	Paragraph 7.3 of the Franchise Agreement, Paragraph 4 of the Development Agreement	Item 11
(f) Fees	Paragraphs 3.1, 5, 7.2, 9.1, 9.3, 12, 13.3, 14.3 and 14.8 of the Franchise Agreement, Paragraph 7 of the Development Agreement	Items 5, 6, 7 and 11
(g) Compliance with standards and policies/operations	Paragraphs 11 and 14 of the Franchise Agreement	Item 11
(h) Trademarks and proprietary information, including assignment of inventions	Paragraphs 15 and 19.5 of the Franchise Agreement, and Paragraph 10 of the Development Agreement.	Items 13, 14 and 17



<b>Obligation</b>	<b>Section in Agreement</b>	<b>Disclosure Document Item</b>
(i) Restrictions on products/services offered	Paragraphs 6.1, 7.1, 7.2, 11 and 14.8 of the Franchise Agreement.	Items 6, 8, and 11
(j) Warranty and customer service requirements	Paragraphs 14.1 and 14.2 of the Franchise Agreement	Item 8
(k) Territorial development and sales quotas	Paragraphs 2.1, 4 and 7 of the Franchise Agreement, and Paragraphs 4 and 5 of the Development Agreement	Item 12
(l) On-going product/service purchases	Paragraphs 7.2, 9, 11, 12, 14.6 and 14.8 of the Franchise Agreement	Items 8 and 11
(m) Maintenance, appearance, and remodeling requirements	Paragraphs 7.1(e), 8 and 14 of the Franchise Agreement	Items 8 and 11
(n) Insurance	Paragraph 14.7 of the Franchise Agreement	Items 7 and 8
(o) Advertising	Paragraph 12 of the Franchise Agreement	Items 6, 7 and 11
(p) Indemnification	Paragraphs 15.3 and 21.3 of the Franchise Agreement	Item 6
(q) Owner's participation/ Management/ staffing	Paragraph 14.5 of the Franchise Agreement, and Section 8 of the Development Agreement	Items 11 and 15
(r) Records/reports/ audits	Paragraph 13 of the Franchise Agreement	Item 11
(s) Inspections	Paragraph 16 of the Franchise Agreement	Item 6
(t) Transfer	Paragraph 20 of the Franchise Agreement, and Paragraphs 12 and 13 of the Development Agreement	Item 17
(u) Renewal	Paragraph 3 of the Franchise Agreement	Item 17
(v) Post-termination obligations	Paragraph 17.5 of the Franchise Agreement	Item 17
(w) Non-competition covenants	Paragraph 19 of the Franchise Agreement	Item 17
(x) Dispute resolution	Paragraph 21.6 of the Franchise Agreement, and Paragraph 16 of the Development Agreement	Item 17
(y) Update e-mail address	Paragraph 21.7 of the Franchise Agreement	Item 9
(z) Guaranty	Paragraphs 18.6 and 20.3(d) and Exhibit A of the Franchise Agreements	Item 15

**ITEM 10.  
FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease, or other obligation.

## ITEM 11.

### FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

**Except as listed below, we are not required to provide you with any assistance.**

#### Franchise Agreement

Before you open the Restaurant, we will:

1. Approve the location of your Restaurant (previously defined as the "Approved Location") and designate such location in the Franchise Agreement. Our decision as to whether to approve your proposed site will be made within thirty (30) days after receipt of all relevant information and documentation reasonably requested by us. You must obtain a location that is acceptable to use within three (3) months of signing the Franchise Agreement. (Franchise Agreement - Paragraph 6.1). If you do not obtain a location that is acceptable to us within three (3) months of signing the Franchise Agreement, we shall have the right to terminate the Franchise Agreement and your initial fee or deposit will be forfeited if you fail to correct this failure within thirty (30) calendar days after written notice is delivered to you (Franchise Agreement – Paragraph 17.3(d));
2. Approve the lease or other document for occupancy of the Approved Location. (Franchise Agreement – Paragraph 6.3). Franchisor generally does not own the premises and does not lease it to the franchisee;
3. Provide you with standards and a list of approved suppliers for authorized food and beverages, storage and display equipment, other equipment, fixtures, furniture, signs and decorating required. Franchisor will only supply the names of approved suppliers and the written specifications for these items. (Franchise Agreement - Paragraph 7.2);
4. Offer certain training programs which you must enroll in and complete in operating the Restaurant. (Franchise Agreement - Paragraph 9.1);
5. Provide you with reasonable operating assistance and provide general guidance. (Franchise Agreement – Paragraph 10.1); and,
6. Make available to you for purchase a package of advertising and promotional materials for advertising and promoting your Restaurant opening. (Franchise Agreement – Paragraph 12).

During your operation of the Restaurant, we will:

1. Provide you with information on operating the Restaurant. Operating assistance will include:
  - a. methods of authorized food and beverage preparation, packaging, and sale; and,
  - b. administrative, accounting, inventory control and general operating procedures. (Franchise Agreement - Paragraph 10.1);
2. Advise you of operating problems from your reports or our inspections. (Franchise Agreement – Paragraph 10.2);
3. From time to time formulate, develop, produce, and conduct advertising and promotional programs in the form and media as we determine to be most effective as described below. (Franchise Agreement - Paragraph 12.1);
4. Offer you guidance on prices for the products and services that in our judgment constitute good

business practice. (Standard Franchise Agreement - Paragraph 14.3);

5. Offer certain additional training programs which we may require you to attend as more fully described below. If we determine that we may lawfully require you to charge certain prices for goods or services, certain minimum prices for goods or services, or certain maximum prices for goods or services, you must adhere to our pricing policies as set forth in the Manuals or otherwise in writing from time to time. (Franchise Agreement – Paragraph 9.3);

6. Not unreasonably withhold approval to a proposed transfer if all requirements are met. (Franchise Agreement - Paragraph 20.4); and,

7. Loan to you one or more copies of an operating manual or operational bulletins or similar materials containing mandatory and suggested specifications, standards and operating procedures and rules and information about your other obligations under the Franchise Agreement and the operation of the Restaurant (the “Operating Manual”). (Franchise Agreement -Section 14.3).

### **Advertising and Marketing Fund**

We have established an Advertising and Marketing Fund for the common benefit of System franchisees. All franchisees contribute an equal amount to the Advertising and Marketing Fund. We also contribute to the Advertising and Marketing Fund for each Company-Owned Restaurant at the same rate as franchisees. Currently, you must contribute 2% of your Gross Sales to the Advertising and Marketing Fund in the manner we prescribe, and participate in Advertising and Marketing Fund programs. We reserve the right to increase your Advertising and Marketing Fund Contribution to up to 4% of Gross Sales upon 30 days’ notice to you. We have the right to use Advertising and Marketing Fund Contributions, in our sole discretion, to develop, produce, and distribute national, regional and/or local advertising and to create advertising and public relations materials which promote, in our sole judgment, the products offered by System franchisees. We may use the Advertising and Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising, including: (a) the cost of preparing and producing television, radio, magazine, Internet, and newspaper advertising campaigns; (b) the cost of direct mail and outdoor billboard advertising; (c) the cost of public relations activities and advertising agencies; (d) the cost of developing and maintaining an Internet website, which may be used to collect customer orders, conduct surveys; and (e) personnel and other departmental costs for advertising that we internally administer or prepare. We are not obligated to expend monies from the Advertising and Marketing Fund in any particular franchisee’s market in proportion to the payments to the Advertising and Marketing Fund made by the franchisee in that market. We do not represent that we will spend any particular amount of Advertising and Marketing Funds locally, regionally, or nationally. While we do not anticipate that any part of Advertising and Marketing Fund Contributions will be used for advertising which is principally a solicitation for franchisees, we reserve the right to use the Advertising and Marketing Fund for public relations or recognition of our brand, for the creation and maintenance of a web site, a portion of which can be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating “Franchises Available.” (Franchise Agreement - Paragraph 12.3).

We use Advertising and Marketing Fund Contributions to develop and prepare advertising which we distribute to System franchisees for their placement in the local media. The advertising is prepared by us and by outside sources. If we do not spend all Advertising and Marketing Fund Contributions by the end of each fiscal year, the funds will be carried forward into the next fiscal year. There is no requirement that the Advertising and Marketing Fund be audited. Upon your written request, we will provide you with an unaudited accounting of Advertising and Marketing Fund expenditures. During the 2022 fiscal year the Advertising and Marketing Fund spent 8% of its income on the production of advertisements and other promotional material, 46% for media placement, and 104% for general and administrative expenses. Included in the general and administrative expenses are payroll wages and taxes for full-time employees whose primary job responsibilities are the administration, production, and distribution of advertising materials to franchisees. (Franchise Agreement - Paragraph 12.3).

We shall administratively segregate all contributions to the Advertising and Marketing Fund on our books and records. All such payments to the Advertising and Marketing Fund may be deposited in our general operating account, may be commingled with our general operating funds, and may be deemed an asset of ours, subject to our obligation to expend the monies in the Advertising and Marketing Fund in accordance with the terms hereof. We may, in our sole discretion, elect to accumulate monies in the Advertising and Marketing Fund for such periods of time, as we deem necessary or appropriate, with no obligation to expend all monies received in any fiscal year during that fiscal year. In the event our expenditures for the Advertising and Marketing Fund in any one fiscal year shall exceed the total amount contributed to the Advertising and Marketing Fund during such fiscal year, we shall have the right to be reimbursed to the extent of such excess contributions from any amounts subsequently contributed to the Advertising and Marketing Fund or to use such excess as a credit against its future contributions. The parties do not intend that the Fund be deemed a trust. (Franchise Agreement - Paragraph 12.3).

We have the sole right to determine how to spend the Advertising and Marketing Fund Contributions, or funds from any other advertising program, and the sole authority to determine the selection of the advertising materials and programs, provided, however, that we will make a good faith effort to expend such funds in the general best interests of the System on a national or regional basis. We are not required, under the Franchise Agreement, to spend any amount of Advertising and Marketing Fund Contributions in your Territory and not all System franchisees will benefit directly or on a pro rata basis from our expenditures. We have the right to reimbursement from the Advertising and Marketing Fund Contributions for reasonable costs and overhead, if any, as we may incur in activities which are reasonably related to directing and implementing the Advertising and Marketing Fund and advertising programs for franchisees and the System, including costs of personnel for creating and implementing advertising, promotional and marketing programs. (Franchise Agreement - Paragraph 12.3).

### **Local Advertising, Marketing, and Promotional Expenditure**

In addition to the Advertising and Marketing Fund Contributions described above, you must spend a minimum of two percent (2%) per month on local advertising and promotion implemented in a format and using materials and designs approved by us as your “Local Advertising, Marketing, and Promotional Expenditure”. You may spend any additional sums you wish on local advertising. You are permitted to use your own advertising materials, so long as you have submitted them to us for approval before your use. We have the right, in our discretion, to require you to submit receipts documenting this marketing activity. (Franchise Agreement - Paragraph 12.4).

All advertising and promotion by you, including, but not limited to, all advertising and promotion conducted by you in print, or on radio, television, the Internet, and other electronic media, must be completely factual and shall conform to the highest standards of ethical advertising and be consistent with the then current image and policies relating to advertising and promotional programs of a Mahana Fresh Restaurant. You must obtain our advance written approval prior to using or producing any advertising or marketing materials using any of the Marks, in whole or in part. We have no obligation to spend any amount on advertising in your territory. We will have the final decision on all creative development of advertising and promotional messages. If our written approval is not received within 14 days from the date we received the material, the material is deemed disapproved. We reserve the right to require you to discontinue the use of any advertising or marketing materials. (Franchise Agreement – Paragraph 12.2)

### **Regional Advertising Cooperative**

We have the right, in our discretion, to designate any geographic area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”). All Company-Owned Restaurants and Franchised Restaurants in the designated geographical area must participate in the Cooperative. If established, the Cooperative will be administered by us and governing documents will be established and available for your review. All franchisees in the designated geographical area must participate in the Cooperative. Cooperative contributions will be credited towards your Local Advertising, Marketing, and Mahana Fresh, LLC

Promotional Expenditure, and will not exceed the Local Advertising, Marketing, and Promotional Expenditure unless a majority of the Cooperative's members vote to spend an amount greater than the Local Advertising, Marketing, and Promotional Expenditure on advertising. Each Cooperative will be organized for the exclusive purpose of administering regional advertising programs and developing, subject to our approval, standardized advertising materials for use by the members in local advertising. No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without our prior approval. All such plans and materials will be submitted to us in accordance with the procedure set forth in Section 12.1 of the Franchise Agreement. We may grant to any franchisee, in our sole discretion, an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating reasons supporting such exemption. Our decision concerning such request for exemption will be final. (Franchise Agreement - Paragraph 12.4).

## **Computer Systems**

We have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by you, including without limitation: (i) a "back office" computer system that complies with our standards and specifications; (ii) the point of sale system ("the "POS System") from our designated supplier; (iii) all-in-one printer, scanner and fax machine; and (iv) Internet access mode and speed (collectively, the "Computer System"). You will purchase, use, and maintain any and all computer software programs ("Software") which we have developed or may develop and/or designate for use for the System, and will purchase such computer hardware as may be necessary for the efficient operation of the Software.

Specifically, you must obtain the software program designated by us for use in the operation of Restaurant. Currently, you can obtain this software for free. Additionally, you must obtain and use Jolt Restaurant Management Software for your Restaurant. The cost of your use of the Jolt software is included in your Technology Fee.

The POS System, as described in Item 8 above, must include a minimum of 2 stations, 2 credit card processors, and 2 printers from our approved supplier, Toast.

You will strictly comply with our standards and specifications for all items associated with the Computer System and any Software. You agree, at your own expense, to keep your Computer System in good maintenance and repair and install such additions, changes, modifications, substitutions, and/or replacements to the Computer System or Software as we direct from time to time in writing. We estimate that the cost of obtaining the required Computer System will be between \$5,000 and \$7,500. Although we estimate that you will not incur a substantial cost in updating the Computer System on an annual basis, we estimate that the annual costs of any optional or required maintenance, updating, or support contracts will be less than \$7,000, which includes the monthly fee for the POS System.

If and at such time we develop and custom design any software programs for conducting scheduling, accounting, inventory and point-of-sale functions and related activities ("Proprietary Software Program"), you, at your own expense, agree to obtain the computer hardware required to implement the Proprietary Software Program into your Restaurant, and to comply with all specifications and standards prescribed by us regarding the Proprietary Software Program, as provided in the Operating Manual or otherwise in writing. This Proprietary Software Program will be proprietary to us and Confidential Information of ours. It is possible that we might not be able to alter the Proprietary Software Program to accommodate each and every franchisee of the System, and therefore, at such time that we require the implementation of such software, you will only utilize the program as prescribed by us. At such time as we require the implementation of such Proprietary Software Program, we or our designee agree to provide ongoing service and support to you regarding the Proprietary Software Program and will lease such Proprietary Software Program to you at the then current rates published by us. (Section 7.8.5 of the Franchise Agreement). We reserve the right to have independent access to any data you collect electronically. You must install, at your expense, the necessary computer hardware and software to provide us with full and

direct electronic access to all of your data, software systems, and related information. (Franchise Agreement - Paragraph 14.8).

We shall have independent access to data on your Computer System, including but not limited to sales figures, client information, projections, evaluations, and reports. We may require that your Computer System, and all other electronic media, be programmed to automatically transmit data and reports about the operation of the Franchised Business to us. There are no contractual limitations on our right to access this information.

We reserve the right to specify and designate by brand, model, size, type and any other relevant standards or specifications the digital and other signs and displays which must be used or displayed in yours and any other Mahana Fresh Restaurant, including the right to require that you purchase any relevant signs or displays from us or from our affiliates.

You may be required to enter into licenses and agreements with us or with designated or approved third party vendors for technical support, warranty service, or collateral software licenses.

### **Internet**

You must have and maintain adequate hardware and software in order to access the Internet at the bit speed we require from time to time. We may, but are not obligated to, establish an Internet website that provides information about the System and the products and services offered by Restaurants. In the event we exercise our right to create such a website, we have sole discretion and control over the website (including timing, design, contents, and continuation). We may, but are not obligated to, create interior pages on our website(s) that contain information about your Restaurant and other Restaurants. If we do create these pages, we may require you to prepare all or a portion of the page for your Restaurants, at your expense, using a template that we provide. All such information will be subject to our approval prior to posting. (Franchise Agreement - Paragraph 14.8(E)).

Except as approved in advance in writing by us, you may not establish or maintain a separate website, splash page, profile, or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Restaurants, including any profile on Facebook, Pinterest, Twitter, LinkedIn, Instagram, YouTube, Snapchat or any other social media and/or networking site. If such approval is granted by us, you must: (i) establish and operate such Internet site in accordance with System standards and any other policies we designate in the Operating Manual or otherwise in writing from time to time; and (ii) utilize any templates that we provide to you to create and/or modify such site(s). (Franchise Agreement - Paragraph 14.8(E)).

We have the right to modify our policies regarding both our and your use of Internet websites as we deem necessary or appropriate for the best interests of the System. (Franchise Agreement, Section 12.3.4). You acknowledge that we and/or our affiliates are the lawful, rightful and sole owner of the Internet domain name www.MahanaFresh.com, as well as any other Internet domain names registered by us, and you unconditionally disclaim any ownership interest in such domain names and any colorably similar Internet domain names. You agree not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by us or our affiliates or any abbreviation, acronym, phonetic variation, or visual variation of those words. (Franchise Agreement - Paragraph 14.8(E)).

### **Computer Network, Intranet or Extranet Participation**

You are required to participate in any System-wide computer network, intranet system or extranet system that we implement and may be required by us to use such computer network, intranet system, or extranet system to, among other things: (i) submit your reports due under the Franchise Agreement to us on- line; (ii) view and print portions of or updates to the Operating Manual; (iii) download approved local advertising materials; (iv) communicate with us and other System franchisees; and (v) complete training.

You agree to use the facilities of any computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that we include in the Operating Manual, including those related to the encryption of confidential information and prohibitions against the transmission of libelous, derogatory or defamatory statements. (Franchise Agreement - Paragraph 14.8(E)).

### **Site Selection**

You will operate the Restaurant at the Approved Location agreed upon by you and us. (Franchise Agreement - Paragraph 6.1). While it is your responsibility to obtain a mutually acceptable site and negotiate a lease for your Restaurant, we may designate a vendor to assist you in the site selection process and provide input on the location as we deem reasonable and appropriate. We consider factors such as size, location, traffic patterns, visibility from roadways, parking space and outdoor seating in approving any given site. Your leased/purchased space should be between 1,600 square feet and 2,400 square feet.

We currently have a designated vendor to manage the construction and buildout of your Restaurant but we reserve the right to change this designated vendor in the future. You are solely responsible for obtaining the applicable ordinances, building codes, and permits required to operate the Restaurant from your Approved Location, and ensuring your compliance with all applicable laws and regulations, including the Americans with Disabilities Act. All costs connected with the design, construction, leasehold improvements, equipment, furnishings, fixtures, and signs are your responsibility.

You must obtain a location acceptable to us within three (3) months of signing the Franchise Agreement. Failure to do so may result in termination of your Franchise Agreement. (Franchise Agreement- Paragraph 6.1). We estimate that it will take approximately nine (9) months from signing the Franchise Agreement for you to open your Restaurant. The actual length of this period will depend upon factors such as your ability to obtain a mutually acceptable site and the lease for that site, financing arrangements, training schedules, delivery schedules for inventory and equipment and other factors including the time necessary to obtain zoning permits, licenses, and variances. Under the Franchise Agreement, you are required to open your Restaurant no later than nine (9) months after you obtain the site for the Restaurant. If the Restaurant has not been opened within this nine (9)-month time frame, we may, at our sole discretion, elect to terminate your Franchise Agreement. (Franchise Agreement – Paragraph 17.2(b)).

### **Social Media**

In order to maintain a consistent image and message and to protect the Mahana Fresh Marks and the Mahana Fresh System, you must not participate or market through the use of social technology, social media such as Facebook, Instagram, TikTok, Pinterest and Twitter, social networking platforms or other forms of electronic media not yet developed (“Social Media Platforms”) using the Mahana Fresh Marks, or in connection with the your Franchised Restaurant, without our prior written consent. If you separately register any Social Media Platform account (a “Social Media Account”) containing the Mahana Fresh Marks or related to your Franchised Restaurant, whether with our prior consent or not (i) you must promptly notify us and provide us with all necessary information related to the Social Media Account we require or demand, without compensation to you; and (ii) the Social Media account will become our property, without compensation to you. We will be the sole owner of all related intellectual property rights in all Social Media Accounts and all content posted on Social Media Accounts.

### **Designated Franchise Portal**

You must actively use and monitor our then current online portal or portals (the “Designated Franchise Portal”) in connection with the development and operation of your Mahana Fresh Restaurant, if and when we implement use of a portal. You or your Principal Owner or any other Owner and/or General Manager must log into the Designated Franchise Portal at least once a week. (Franchise Agreement Section 14.2).

## **Data Security Safeguards**

You must use your best efforts to protect your customers against identity theft, data breach or any other theft of personal information (a “Cyber Event”). You must reimburse us for our out-of-pocket costs we incur in responding to and remedying any Cyber Event you. You must at all times maintain compliance with all applicable laws regarding data privacy, data security and security breaches and our security policies and guidelines that we may adopt and/or amend from time to time. (Franchise Agreement, Section 14.2).

## **Grand Opening Plan**

You must pay us \$20,000 to conduct a grand opening advertising campaign on your behalf. You can expend any additional amounts that you wish on a grand opening advertising campaign, and we estimate that you will do so. If this is your first Franchised Restaurant you open with us, then you will be required to spend a total of at least \$20,000 in the four weeks before and the eight weeks after the opening date. We will require you to deposit \$20,000 (or a higher amount if you agree to a higher grand opening budget) with us upon receipt of an invoice from us. We will invoice you approximately sixty days prior to the planned opening date (Franchise Agreement, Section 12.6). We are not required, under the Franchise Agreement, to spend any amount of on advertising in your area or territory outside of the grand opening advertising campaign.

## **Promotional Campaigns**

We may conduct promotional campaigns on a national or regional basis to promote products or marketing themes. You must participate in all promotional campaigns which we may establish for the region in which your Franchised Restaurant is located. (Franchise Agreement, Section 12.1).

## **Advisory Council**

We may establish an Advisory Council for Mahana Fresh Franchisees to work with us and to consult with us on potential improvements to the Mahana Fresh System, the products offered by Mahana Fresh Restaurants, advertising conducted by the Marketing Fund and any other matters that we deem appropriate. If an Advisory Council is formed, it will act solely in an advisory capacity, will not have decision making authority, and will be comprised of our representatives and Mahana Fresh Franchisees who may be chosen by us or elected by other Mahana Fresh Franchisees. All Mahana Fresh Franchisees who serve on an Advisory Council must pay their own transportation costs, food, lodging and similar expenses to attend Advisory Council meetings. We will have the right to form, change, merge or dissolve any Advisory Council at any time, in our discretion. As of the issuance date of this Disclosure Document, we have formed an advisory council comprised of our CEO Dave Wood, our COO Dave Baer, certain members of our marketing team, and two franchisees selected by us. Franchisee members are appointed by us for a one-year term and may only be removed for a failure to attend two consecutive meetings or a total of four meetings prior to the expiration of their term. The advisory council serves in an advisory capacity only and does not have operational or decision-making power. (Franchise Agreement, Section 12.5).

## **Training**

### Initial Training Program

After signing your Franchise Agreement and before opening your Restaurant, you or (if you are an approved entity) your Controlling Person, must enroll in and complete all training programs and classes which we require for the operation of a Mahana Fresh Restaurant. The franchisee’s designated operator or manager must also attend. These training programs and classes will be furnished at such times and places as we designate. All training programs and classes must be completed to our satisfaction. You will be responsible for the travel, lodging, and living expenses and other costs incurred during these training programs and classes.



We offer initial training at our corporate headquarters (“Initial Training”) tuition-free for up to two people per franchisee Restaurant, who ordinarily should be your designated operator or manager and the franchisee or (if it is an Approved Entity) its Controlling Person. Your other managers or personnel may attend training classes for an additional fee, initially expected to be \$500 per person, plus travel, lodging and living expenses.

We expect that the initial training classes will take approximately one week and will be held in Sarasota, Florida or another location that we designate and will be based on the Operating Manual. To reduce travel costs to the franchisee, we may also permit training to occur in Mahana Fresh Restaurants around the country.

#### INITIAL TRAINING TABLE

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON-THE-JOB TRAINING	LOCATION
Introduction to the Mahana Fresh system	4	0	Sarasota, FL or other location we designate
Site Selection, Design, Development, Business Basics	16	0	Tampa, FL or other location we designate
Hiring, Training and Technology	4	0	Tampa, FL or other location we designate
Ongoing Management and Local Store Marketing	8	0	Tampa, FL or other location we designate
Store Operations	8	40	Tampa, FL or other location we designate
<b>TOTALS</b>	<b>40 hours</b>	<b>40 hours</b>	

Dave Baer, our COO, will oversee and supervise the training program. Mr. Baer is a professional with over twenty years of experience training for quick-serve and fast casual food establishments, including franchises.

Dave Wood, our CEO and Founder, whose experience is described above in Item 2, is also likely to assist in training. The Operating Manual is used as the principal instruction material.

The training supervisors may utilize our employees and other individuals for various aspects of training who have at least 6 months of experience in the restaurant industry.

Should you or your employee fail to complete Initial Training to our satisfaction, at our option, the respective person may repeat the course, or in the case of an employee, you may send a replacement (the “Replacement Personnel”) to the next available Initial Training program. Failure by you, your employee, manager, or any Replacement Personnel to complete the Initial Training program to our satisfaction is a material breach of the Franchise Agreement and we may terminate the Franchise Agreement.

Your other employees may be trained by you, or at your request, and subject to the availability of our personnel, we will train your additional personnel at one of our restaurants at a fee of \$500 per person per day. All training related expenses for your additional teaching personnel, including transportation to and from the training site, lodging, meals, and salaries during training, are your sole responsibility. We will provide you with training materials for you to use in training your personnel. You may only use the training materials that we provide to you to train your personnel. Updated training materials will be provided to you as they are developed. All training materials provided to you are our property, and you agree not to challenge our or our affiliates’ title or rights in or to the training materials. You may not make

any disclosure, duplication, or other unauthorized use of any portion of the training materials.

We may also, at our option, require you (or the Controlling Person if you are an Approved Entity) to attend supplemental or additional training programs which may be offered from time to time by us or our affiliates during the term of the franchise. The fee for such training shall not exceed \$500.00 per training class. You will be responsible for the reasonable costs of such programs and also for the travel, lodging and living expenses and any other costs incurred during these programs. You must complete this supplemental or additional training within one year of the time in which it is originally requested by us or our affiliates or designees. These supplemental or additional classes are not expected to require more than two days of classroom or on the job training, plus any travel time. We expect that the initial training classes will be held in Manassas, Virginia. To reduce travel costs to the franchisee, we may also permit supplemental training to occur in Mahana Fresh Restaurants around the country.

### **Onsite Training Program**

Prior to opening your first Franchise Restaurant you must complete our additional “Onsite Training” at your Franchise Restaurant. We anticipate Onsite Training will be conducted starting on the day that is one week prior to the opening date of your Restaurant and continuing for up to one week after the opening date. You must pay us the Onsite Training Fee of \$10,000 within thirty (30) days of receipt of our invoice. If you open more than one Restaurant, the Onsite Training Fee will only be imposed for the first location, unless you request Onsite Training for any additional Restaurant(s).

**ONSITE TRAINING TABLE**

<b>SUBJECT</b>	<b>HOURS OF CLASSROOM TRAINING</b>	<b>HOURS OF ON-THE-JOB TRAINING</b>	<b>LOCATION</b>
Opening Your Restaurant	5	10	Your Restaurant location
POS System Setup and Operations	1	5	Your Restaurant location
Kitchen and Prep Area Setup and Breakdown	4	10	Your Restaurant location
Cleaning	0	5	Your Restaurant location
Store Operations	10	30	Your Restaurant location
<b>TOTALS</b>	<b>20 hours</b>	<b>60 hours</b>	

Onsite Training program will be developed and supervised by our training supervisors and executive team but may be provided by our employees who have experience in restaurant operations and training.

### **Operating Manual**

The Table of Contents to our Operating Manual is attached hereto as Exhibit F. The total number of pages in the Operating Manual is 94.

### **Development Agreement**

Our obligations regarding site selection assistance, training, computer hardware and software selections, and advertising for additional Restaurants developed under a Development Agreement will be governed by the form of single-unit franchise agreement you sign for each additional Restaurant. Under each single-unit franchise agreement you sign, we will approve the location of your Restaurant and designate such location in each franchise agreement based on our then-current standards for sites and territories.

## **ITEM 12. TERRITORY**

### **Approved Location and Relocation**

You will operate the Restaurant only from the Approved Location which will be identified on the Data Sheet of the Franchise Agreement. If you have secured a site for the Restaurant that we approve at the time you sign the Franchise Agreement, you will establish the Restaurant at the Approved Location.

You may not relocate your Restaurant without our permission, which we may grant or withhold in our sole and absolute discretion. We will consider the following factors in making our discretionary decision as to whether to approve a relocation request: (A) whether the location's rent is too high to make the location profitable; (B) whether the location meets our brand image and quality control requirements; (C) whether we believe the location's traffic patterns, traffic volume and demographics make it commercially viable; (D) whether the site and accessibility of the location are suitable; and, (E) any other location-specific factors that we may deem relevant to our decision. If your lease expires or terminates without your fault or if the site is condemned, destroyed, or rendered unusable ("Closing Event"), we may grant permission for relocation of the Restaurant to a location and site meeting our requirements, policies and standards. Any relocation will be at your sole expense and the relocated Restaurant must be open and operating no later than six (6) months after the Closing Event. In addition, within ten days of vacating the Approved Location, you must make such reasonable modifications to the exterior and interior of the Restaurant (including signage, menu boards, job aids, product photos and the like) as we require to fully eliminate its identification and appearance as a Mahana Fresh Restaurant. If you fail or refuse to fully de-identify the Restaurant to the extent and in the manner required by the Franchise Agreement, we may, at our option and in addition to other rights and remedies we may have, make the modifications that are contemplated by the Franchise Agreement on your behalf and you agree to promptly pay and reimburse us on demand for any costs incurred by us including, without limitation, the proportionate compensation of our employees who devote time and render services in the de-identification of the Restaurant.

### **Territory**

You will operate your Restaurant at the Approved Location within the Territory that is identified in the Data Sheet. You will receive a Territory of approximately a 1-mile radius around the Approved Location in urban areas or a three-mile radius around the Approved Location in suburban or rural areas. There is no minimum size for a Territory if you wish to establish your Restaurant in what we deem to be a metropolitan area. You may not solicit customers and/or advertise outside your Territory or deliver any products or services to any destination outside your Territory without our prior written consent.

Except as otherwise provided in and during the term of the Franchise Agreement, for so long as you comply with the terms and conditions of the Franchise Agreement, we will not establish and operate, nor license any party other than you to establish and operate, any Mahana Fresh Restaurant under the System and the Proprietary Marks within your Territory. Your territory is not dependent upon meeting a certain sales quota or the opening of additional Restaurants. The boundaries of your Territory will not change, even if the population within your Territory increases or decreases, during the initial term of your Franchise Agreement.

Because we reserve the right to open Restaurants at Non-Traditional Sites (as defined below) which may be located within the physical boundaries of your Territory, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

## **Development Agreement**

If you enter into a Development Agreement, you will obtain the right to own and operate a certain number of Restaurants in the Development Area where you must open each Restaurant in compliance with the Development Schedule. The size of the Development Area will depend upon the number of Restaurants you are obligated to open but will vary based on demographics and whether the Development Area is primarily urban or suburban. Provided you comply with the terms of the Development Agreement, and any Franchise Agreements signed for Restaurants within the Development Area, we will not locate another Restaurant operating under the Proprietary Marks, whether franchised or company-owned, in your Development Area. We will review and approve the location for each restaurant within the Development Area based on our then-current standards for sites.

You must comply with your development obligations in the Development Schedule in order to maintain your Development Area exclusivity. In the event that you fail to meet your development obligations and the Development Agreement is terminated, you will retain your rights to any previously owned Restaurants, including the territorial rights described in the Franchise Agreement for such Restaurants, provided that the Development Agreement was not terminated as a result of your failure to comply with the terms of your existing Franchise Agreement(s). Your rights to any Restaurants for which there is no Franchise Agreement and your exclusivity in the Development Area will terminate immediately upon termination of the Development Agreement. Thereafter, we will have the right to develop the Development Area on our own or through third parties.

Because we reserve the right to open Restaurants at Non-Traditional Sites (as defined below), you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

## **Reservation of Rights under the Franchise Agreement and Development Agreement**

We and our affiliates will have the right, in our sole discretion, under the Franchise Agreement and Development Agreement to: (i) own and operate Restaurants at any location(s) outside your Territory/Development Area under the same or different marks, or to license others the right to own and operate Restaurants at any location(s) outside your Territory/Development Area under the same or different marks; (ii) use the Proprietary Marks and System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, including grocery stores, fine dining restaurants, retail stores, foodservice wholesalers, catering businesses (including, without limitation, catering businesses established by us) and via the Internet at any location, including within the Territory/Development Area; (iii) own and operate Restaurants in “Non-Traditional Sites” including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, malls and other shopping outlets, food courts, military bases, airports and train stations both within or outside your Territory/Development Area; (iv) own and operate restaurants or businesses, or market similar products and services, at any location(s) inside your Territory/Development Area under different marks, or to license others the right to own and operate restaurants or businesses, or market similar products and services at any location(s) inside your Territory/Development Area under different marks; (v) acquire, or be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere; and (vi) engage and license other parties to engage in any other activities not expressly prohibited by the Franchise Agreement/Development Agreement.

The Franchise Agreement and Development Agreement do not grant you any options, rights of first refusal, or similar rights to acquire additional franchises within the Territory/Development Area granted or any contiguous territories. Any dispute as to whether a particular site is a Non-Traditional Site will be determined by us, and our determination will be final and binding. We have the exclusive right to negotiate and enter into agreements or approve forms of agreements to operate Restaurants at Non-Traditional Sites, either directly or through our affiliates, licensees, or designees, and you will not be entitled to any compensation as a result of our operation of Restaurants at Non-Traditional Sites.

## Alternative Channels of Distribution

Certain products or services from our affiliates, whether currently existing, in research and development, or developed in the future, may be distributed in your Territory by us or our affiliates, or our franchisees, licensees or designees, in such manner and through certain channels of distribution as we determine, in our sole discretion. Alternate channels of distribution include, but are not limited to, sale of products on the Internet or through supermarkets, grocery stores, other retail outlets, mail order catalogs, direct mail advertising, or other distribution methods, without regard to location. The Franchise Agreement grants you no rights to: (i) distribute the products as described above; or (ii) share in any of the proceeds from our activities through alternative channels of distribution.



We have entered into a fulfillment agreement with a third-party service provider for the preparation of “Mahana Fresh” branded menu items and products that are available for order on third-party delivery applications such as “Uber Eats”, “Doordash”, and “Postmates”. Our agreement is an exclusive agreement with the third-party service provider, and we do not intend to enter into any other such arrangements with other service providers. The terms of our agreement permit us to terminate fulfillment through the third-party service provider in any territory in which a Restaurant location provides delivery services through third-party delivery applications. Restaurant owners will not compete with these fulfillment centers once their Restaurant locations are open and operational.

### ITEM 13. TRADEMARKS

The principal trademark which we will license to you is the word trademark Mahana Fresh.

As Item 1 describes, we have the exclusive licensing and franchising rights we obtained from our parent company, Mahana Fresh Group Holdings, LLC, pursuant to a license agreement executed in March 2019. Under the license agreement, we have the non-exclusive worldwide right to use the Proprietary Marks and license others the right to use the Proprietary Marks in the United States. The license agreement may be terminated (resulting in the loss of our right to use and to sublicense the use of the trademarks to you) by mutual agreement of the parties, or by Mahana Fresh Group Holdings, LLC for a number of reasons, including if we default on any obligations, we are dissolved, make an assignment for the benefit of creditors, become insolvent, consent to appointment of a receiver, or our business is seized.

The following is a description of trademarks that we license to Restaurants, and for which we have a registration on the Principal Register of the United States Patent and Trademark Office:

Mark	Registration Number	Registration Date
MAHANA POKE	5772822	June 11, 2019
	5791778	July 2, 2019
	6548141	November 2, 2021

While we have not renewed any of our registered Marks, we expect and intend to submit all affidavits and filings necessary to maintain the registrations above.

There are currently no effective determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court; no pending interference, opposition, or cancellation proceedings; nor any pending material litigation involving the Proprietary Marks.

You must promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. We have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including the right to settle the proceedings or litigation. We have the exclusive right, but not the obligation, to affirmatively prosecute actions against third parties for infringement or threatened infringement of the Proprietary Marks.

We have the right, though not the obligation, to defend you against any third-party claim, suit, or demand arising solely out of your use of the Proprietary Marks in a manner expressly authorized by us. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with the Franchise Agreement and the Operating Manual, we will pay the cost of defending the action, including the cost of any judgment or settlement. If we, in our sole discretion, determine that you have not used the Proprietary Marks in accordance with the Franchise Agreement and the Operating Manual, you will be required to pay for the defense or to reimburse us for costs we incurred in providing the defense, including the cost of any judgment or settlement. In the event of any litigation relating to your use of the Proprietary Marks, you are required to sign all documents and assist us, as we deem necessary, to carry out the defense or prosecution including, without limitation, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner not in accordance with the terms of the Franchise Agreement, we will reimburse you for your out-of-pocket costs in performing such acts.

We are the lawful and sole owner of the domain name(s) [www.MahanaFresh.com](http://www.MahanaFresh.com). You cannot register any of the Proprietary Marks owned by us or any abbreviation, acronym or variation of the Proprietary Marks, or any other name that could be deemed confusingly similar, as Internet domain names. We retain the sole right to advertise the System on the Internet and to create, operate, maintain and modify, or discontinue using of a website using the Proprietary Marks. You may access our website. Except as we may authorize in writing in advance, however, you cannot: (i) link or frame our website; (ii) conduct any business or offer to sell or advertise any products or services on the worldwide web; or (iii) create or register any Internet domain name in connection with your franchise.

You may use only the Proprietary Marks which we designate, and may use them only in the manner we authorize and permit. Any goodwill associated with Proprietary Marks, including any goodwill which might be deemed to have arisen through your activities, inures directly and exclusively to our benefit. You may use the Proprietary Marks only for the operation of the Restaurant and only at the Approved Location or in advertising for the Restaurant. You will use all Proprietary Marks without prefix or suffix and in conjunction with the symbols “SM,” “TM,” “S,” or “R,” as applicable. You may not use the Proprietary Marks in connection with the offer or sale of any services or products which we have not authorized for use in connection with the System. You may not use the Proprietary Marks as part of your corporate or other legal name. We must approve your corporate name and all fictitious names under which you propose to do business in writing before use. You must use your corporate or limited liability company name either alone or followed by the initials “D/B/A” and the business name “Mahana Fresh.” You must promptly register at the office of the county in which your Restaurant is located, or such other public office as provided for by the laws of the state in which your Restaurant is located, as doing business under such assumed business name.

All of your advertising must prominently display the Proprietary Marks and must comply with our standards for using the Proprietary Marks. All such advertising is subject to our prior written approval, which we will not unreasonably withhold. We reserve the right to approve all signs, stationery, business cards, forms, and other materials and supplies bearing the Proprietary Marks. You may use the Proprietary Marks including, without limitation, trade dress, color combinations, designs, symbols, and slogans, only in the manner and to the extent specifically permitted by the Franchise Agreement or by our prior written consent. You must submit to us and we must approve all advertising, publicity, signs, decorations, furnishings, equipment or other materials employing the Proprietary Marks, or related marks, before first publication or use. You must identify yourself as the owner of the Restaurant (in the manner we prescribe) in conjunction with any use of the Proprietary Marks including, without limitation, on invoices, order forms, receipts, and business stationery, as well as at such conspicuous locations as we may designate in writing at the Approved Location.

We reserve the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. You must discontinue using all Proprietary Marks which we have notified you, in writing, have been modified or discontinued within 10 days of receiving written notice and must promptly begin using such additional, modified or substituted Proprietary Marks at your expense.

#### **ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

We do not own any registered patents or copyrights which are material to the franchise, however, we claim common law copyright and trade secret protection for several aspects of the franchise System including our Operating Manual, advertising, and business materials.

There are no current determinations, proceedings or litigation involving any of our copyrighted materials. Should you become aware of any unauthorized third party using any of our copyrighted materials, we request that you notify us of such unauthorized use. We may revise our System and any of our copyrighted materials in our discretion and may require that you cease using any outdated copyrighted materials.

You will be responsible for printing any revised or new advertising, marketing, or other business materials.

During the term of the Franchise Agreement, you will receive information which we consider trade secrets and confidential information. You may not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any trade secrets, copyrighted materials, operating procedures, sources of supply, supplier contracts, advertising materials, equipment specifications, any information contained in the Operating Manual, trade secrets, the proprietary recipes, and other methods, techniques and know-how concerning the operation of the Restaurant, and any and all other information related to your Restaurants or any Restaurant generally that is labeled proprietary or confidential (“Confidential Information”). You acknowledge and agree that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, (iii) customer service purchasing histories, (iv) rates charged to customers, and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute the trade secrets and Confidential Information of us. You may divulge such Confidential Information only to your employees who must have access to it in order to perform their employment obligations. You must require your manager and any personnel having access to any of our Confidential Information to sign an agreement stating that they will maintain the confidentiality of information they receive in connection with their employment and restricting their right to work for a competitor while they are employed by you. Such agreement, which will be in a form that we prescribe, will identify us as a third-party beneficiary to the agreement and will give us independent enforcement rights.

The Franchise Agreement provides that if you, your employees, or principals develop any new concept, process or improvement in the operation or promotion of the Restaurant, you will promptly notify us and provide us with all necessary related information, without compensation. Any such concept, process or improvement will become our sole property and we will be the sole owner of all patents, patent applications, trademarks, copyrights, and other intellectual property rights related to such new concepts. You and your principals will assign to us any rights you may have or acquire in new concepts you or your employees develop, including the right to modify such concept, process, or improvement, and otherwise will waive and/or release all rights of restraint and moral rights to any new concepts you or your employees develop.

You and your principals agree to assist us in obtaining and enforcing the intellectual property rights to any such concept, process, or improvement in any and all countries and further agree to execute and provide us with all necessary documentation for obtaining and enforcing such rights. You and your principals will irrevocably designate and appoint us as your agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process, or improvement. In the event that such provisions of the Franchise Agreement are found to be invalid or otherwise unenforceable, you and your principals will grant to us a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent the Franchise Agreement, directly or indirectly infringe on your rights to the new concepts.

**ITEM 15.**  
**OBLIGATIONS TO PARTICIPATE IN THE ACTUAL OPERATION**  
**OF THE FRANCHISE BUSINESS**

We do not require that the Franchisee or its Controlling Person must be full-time employees of the Restaurant, the franchisee, or the Approved Entity.

We do, however, require that you (or the Controlling Person if you are an entity) are obligated to actively, personally, and frequently monitor and supervise the performance and operation of each Restaurant. In the event that your Controlling Person resigns or is otherwise terminated, you must hire a replacement approved by us in writing who meets our then current standards for Controlling Person and who is approved by us in writing before hiring, within 30 days after the resignation or termination of the former Controlling Person. You must train the new Controlling Person within 30 days of hiring. Your Controlling Person and certain key employees and their spouses will be bound by the confidentiality and non-compete covenants of the Franchise Agreement and will execute the Confidentiality and Restrictive Covenant Agreement attached as an Exhibit to the Franchise Agreement.

Each Restaurant must also be under the direct, on-premises supervision of either you directly or of a manager:

- (a) who has been properly trained by you;
- (b) who has been approved by us and whose identity has been disclosed to us in writing; and
- (c) who shall have executed, upon our request, an invention assignment and confidentiality agreement in the form provided by us agreeing not to divulge any trade secret or confidential or proprietary information, including the contents of the Operating Manual.

Each person or entity owning any percent of the equity or ownership interest in the franchisee or any approved entity relating to the franchise must personally and individually guarantee the franchisee's performance of its obligations to us. Each such person will be jointly and severally financially responsible for the monetary obligations of the franchisee entity.



All employees you hire or employ at your Franchised Restaurant will be your employees and your employees alone, and will not, for any purpose, be deemed to be our employees or subject to our direct or indirect control, most particularly with respect to any mandated or other insurance coverage, taxes or contributions, or requirements regarding withholdings, levied or fixed by any governmental authority. You will file your own tax, regulatory and payroll reports, and be responsible for all employee benefits and workers compensation insurance payments for your employees and operations. We will not have the power to hire or fire your employees. Our authority under the Franchise Agreement to train and approve your supervisory or managerial personnel for qualification to perform certain functions at your Franchised Restaurant does not directly or indirectly vest us with the power to hire, fire or control any of your personnel. You and you alone will be solely responsible for all hiring and employment decisions and functions relating to the Franchised Restaurant, including those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision, and discipline of employees, regardless of whether you have received advice from us on these subjects or not. Any guidance we may give you regarding employment policies should be considered merely examples. You will be responsible for establishing and implementing your own employment policies, and should do so in consultation with local legal counsel experienced in employment law.

**ITEM 16.**  
**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You agree that you will not offer for sale or sell at the Restaurant any products or services except those authorized by us in writing.

You agree that you will offer for sale and sell at the Restaurant for final consumption and not for resale, all bowls and other authorized food and beverage products that we from time to time authorize; provided, however, you may offer for resale any authorized products for certain programs which may be approved by us in our sole and absolute discretion, considering factors including but not limited to: (i) quality control or assurance; (ii) brand image; and, (iii) such other factors as we determine.

All bowls and other food ingredients, beverage products, cooking materials, containers, packaging materials, other paper and plastic products, utensils, uniforms, menus, forms, cleaning and sanitation materials and other supplies and materials used in the operation of the Restaurant must conform to the specifications and quality standards established by us from time to time. You must use in the operation of the Restaurant boxes, cups, containers and other paper or plastic products imprinted with the Marks as prescribed from time to time by us. We may in our sole and absolute discretion require that ingredients, supplies and materials used in the preparation, service or packaging of bowls and other authorized food products be purchased exclusively from us, our affiliates or from approved suppliers or distributors. Any ingredient, supply or material not previously approved by us as conforming to our specifications and quality standards must be submitted for examination and/or testing prior to use. We reserve the right from time to time to examine the facilities of any approved supplier or distributor, and to conduct reasonable testing and inspection of the ingredients, materials or supplies to determine whether they meet our standards and specifications. We also reserve the right to charge fees for testing and evaluating proposed suppliers or distributors and examining and inspecting operations and to impose reasonable limitations on the number of approved suppliers or distributors of any product. Approval of a supplier or distributor may be withheld or conditioned on requirements relating to frequency of delivery, standards of service including prompt attention to complaints and the ability to service and supply Restaurants within areas designated by us.

We may change the components of the Mahana Fresh System (and the requirements of the Mahana Fresh System), including, for example, changing the food products, beverages, programs, methods, standards, forms, policies, procedures, and services of the Mahana Fresh System, and adding to, deleting from or modifying the programs, services and products which we authorize or require you to conduct or offer.

You must comply with any of these modifications, additions, deletions, substitutions, and alterations. However, the changes will not materially and unreasonably increase your obligations under the Franchise Agreement.

We may, on occasion, require you to test market products and/or services at your Franchised Restaurant. You must cooperate with us in conducting these test marketing programs and must comply with all rules and regulations established by us.

No vending, gaming machines, payphones, automatic teller machines, Internet kiosks or other mechanical or electrical devices are permitted in your Franchised Restaurant without our prior written consent.

**ITEM 17.  
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

**This table lists important provisions of the franchise agreement. You should read these provisions in the agreements attached to this Disclosure Document.**

**A. Franchise Agreement**

	<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
a.	Length of the franchise term	FA ¶2.2	Ten years commencing from the date the Franchise Agreement is signed and approved by us.
b.	Renewal or extension of the term	FA ¶3	You have the option to renew the franchise agreement for one additional ten-year term provided that you are not in violation of your agreement and other contractual requirements are met. At least five months prior to renewal, you must pay a renewal fee equal to ten percent of our then-current franchise fee. You must be able to retain possession of the Restaurant or to obtain an alternative cite acceptable to us. You must refurbish the site as provided in Paragraphs 8 and 14 of the franchise agreement or, at our option, relocate the Restaurant to a site agreeable to and approved by us. You will be offered our then-current franchise agreement applicable at the time of renewal to sign, which may be materially different.
c.	Requirements for franchisee to renew or extend	FA ¶3	Renewal means you and we agree to sign a new franchise agreement, which may contain materially different terms than your original franchise agreement. Some of the other criteria to renew are: Not be in material default on franchise, supplier, or affiliate agreements; Pay a renewal fee; Maintain possession of Restaurant premises or secure suitable alternative, refurbish Restaurant or relocate to alternative suitable site; Execute then current standard Franchise Agreement which may contain materially different terms to your current Franchise Agreement.
d.	Termination by franchisee	FA ¶17.1	If you are in compliance with your FA and we materially breach this Agreement and fail to cure any breach within thirty (30) days after written notice is delivered to us, you may terminate your FA and the franchise effective ten (10) days after

	Provision	Section in Franchise Agreement	Summary
			delivery of notice to us. (Subject to state law)
e.	Termination by us without cause	FA ¶17	The FA does not permit either party to terminate the agreement without cause.
f.	Termination by us with cause	FA ¶17.2, 17.3	The FA permits the Franchisor to terminate the agreements for cause during their terms and before expiration. If you sign a DA, the termination of the DA does not permit us to terminate the FA: however, termination of an FA does permit us to terminate the DA.
g.	“Cause” defined – curable defaults	FA ¶17.3	<p>The FA permits the franchisee an opportunity to cure the following defaults before a termination notice is effective:</p> <p>Failure to obtain or maintain the required insurance;</p> <p>Failure to comply with operating standards, trademarks usage requirements, safety, security or sanitation requirements, or product quality requirements;</p> <p>Failure to timely pay amounts due to us, our affiliates, creditors or suppliers of the Restaurant, or tax authorities; or,</p> <p>Failure to comply with any other provision of the FA or any specification, standard or operating procedure.</p>
h.	“Cause” defined – non-curable defaults	FA ¶17.3	<p>We may terminate the FA immediately upon written notice without providing you an opportunity to cure if any of the following conditions exist or events have transpired:</p> <p>(a) You or any of your owners have made any material misrepresentation on any record or report required by us under the FA, or on your application for the franchise, or in any other application submitted to us;</p> <p>(b) You do not open the Restaurant within six (6) months from the date of the FA;</p> <p>(c) You are judged a bankrupt or file a bankruptcy petition, become cash flow or balance sheet insolvent, make an assignment for the benefit of creditors, are unable to pay your debts as they become due in the ordinary course of business, or a petition under any bankruptcy law is filed by or against you, or a receiver or custodian is appointed for a substantial part of the assets of the Restaurant;</p> <p>(d) You abandon or fail to continuously and actively operate the Restaurant, or, without our prior written</p>

	Provision	Section in Franchise Agreement	Summary
			<p>consent, permit any person other than a qualified employee designated by you, whose identity has been disclosed to us, to operate the Restaurant in your absence;</p> <p>(e) The lease or sublease for the Restaurant is terminated or cancelled or you are unable to renew or extend the lease or sublease or you fail to maintain possession of the Restaurant premises unless you are permitted to relocate the Restaurant under section 6.2 of the FA;</p> <p>(f) You or any of your owners is convicted of a felony, or a crime which substantially impairs the goodwill associated with the Marks or you or any of your owners engages in any conduct which, in our judgment, adversely affects the reputation of the Restaurant or the goodwill associated with the Marks or involves dishonesty, fraud, deceit, or misrepresentation;</p> <p>(g) You intentionally, recklessly, or with gross negligence under-report the royalty sales of the Restaurant for any period or periods;</p> <p>(h) You or any of your owners violates any of the restrictions contained in Articles 19 or 20 of the FA (which relate to restrictive</p> <p>(i) You intentionally on one or more occasion during the term of this Agreement, violate any Child Labor Laws in connection with your operation of the Restaurant;</p> <p>(j) An audit by us discloses an understatement of royalty sales and you fail to pay to us the applicable royalty fee and advertising contribution and interest due within ten (10) days after receipt of the final audit report;</p> <p>(k) The interest of a deceased or permanently disabled person is not disposed of in accordance with the terms of your FA;</p> <p>(l) You or any of your owners fail on three (3) or more occasions during any twelve (12) month period to comply with any one or more provisions of your FA, including without limitation, your obligation to submit when due sales reports or financial statements, to pay when due the royalty fees, advertising contributions or other payments due to us or our affiliates or subsidiaries or any</p>

	Provision	Section in Franchise Agreement	Summary
			<p>other creditors or suppliers of the Restaurant, whether or not such failure to comply is corrected after notice is delivered to you;</p> <p>(m) Any of your assets or items used in the operation of the Restaurant are seized or you are otherwise denied the use of the property or access to the Restaurant because of you failure to pay any taxing authority or any amount due a creditor of the Restaurant, or because of any other act or omission of you or any of your owners; or, you fail to notify us of tax levy or delinquency; or,</p> <p>(n) You fail to cease operating the Restaurant, or fail to correct the conditions in the Restaurant causing a present threat of imminent danger to public health or safety, after notice to you as provided in Section 17.4 of your FA.</p>
i.	Franchisee's obligations on termination/non-renewal	FA ¶17.5, ¶18.7, ¶18, ¶19.2, and ¶19.5	<p>After termination, expiration or nonrenewal under the FA, you must:</p> <p>(a) Immediately return to us all copies of the Operating Manual;</p> <p>(b) Cancel all assumed name or fictitious name registrations relating to the use of any Mark;</p> <p>(c) Cancel and transfer to us or our designee all telephone numbers, post office boxes and directory listings relating to any Mark or to your Restaurant;</p> <p>(d) (d) Immediately pay all royalty fees, advertising contributions and other charges and fees due and owing under your FA;</p> <p>(e) Immediately cease identifying yourself as a Mahana Fresh Restaurant or as being associated with the Mahana Fresh system;</p> <p>(f) If you retain possession of the Restaurant premises, at your expense, modify the exterior and interior of the Restaurant to fully eliminate its identification and appearance as a Mahana Fresh Restaurant. And,</p> <p>(g) Make the Restaurant accessible and available for us to operate pursuant to ¶18.7 of your FA if we elect to do so.</p> <p>Also upon termination, expiration, or nonrenewal, you must make the Restaurant and (if you own or control it) the land on which it located available to</p>

	Provision	Section in Franchise Agreement	Summary
			<p>us to purchase the Restaurant and purchase or lease the land at our option pursuant to the purchase and lease terms set forth in ¶18 of your FA, and to permit us to operate the Restaurant during the option period if we elect to do so.</p> <p>For a period of one year after the termination, expiration, or nonrenewal, of the FA, you agree not to open or operate a “Bowl Store Business” (as defined in ¶19.2 of the FA) within ten miles of the premises of any of your Restaurants and within five miles of any other Mahana Fresh Restaurants in any state in which you operated a Mahana Fresh Restaurant.</p> <p>Your obligations not to disclose or use for other purposes our trade secrets, confidential business information, or other proprietary materials remains in effect upon and after the termination, expiration or nonrenewal of the FA.</p>
j.	Assignment of contract by us	FA ¶20.1	<p>We may assign the FA without limitation and the assignee or other legal successor to our interests will be entitled to all of the benefits of the FA.</p> <p>However, no assignment will be made except to an assignee who in our good faith business judgment is willing and financially able to assume the franchisor’s obligations under the agreement.</p>
k.	“Transfer” by franchisee definition	FA ¶20.2	<p>The FA defines transfers by the franchisee to include any assignment or transfer of the FA, any interest in the FA, any sale of transfer of any interest in an Approved Entity not specifically authorized in the FA, or a transfer of the Restaurant or its assets.</p>
l.	Our approval of transfer by franchisee	FA ¶20.3	<p>The FA may be assigned to an Approved Entity provided that:</p> <p>(a) operation of Mahana Fresh Restaurants is the only business of the Approved Entity;</p> <p>(b) the Approved Entity is actively managed by you;</p> <p>(c) the Controlling Person own and controls not less than 40% and the largest share of the equity or partnership interest in the Controlling Person;</p> <p>(d) all owners of greater than a 19.9 percent equity interest in the Approved Entity meet our future, then-current franchisee approval requirements, guarantee the obligations of the Approved Entity, and agree to be bound by the terms of the FA;</p>

	Provision	Section in Franchise Agreement	Summary
			<p>(e) The Approved Entity’s stock certificates and organizational documents state that they are subject to the restrictions set forth in the FA;</p> <p>(f) The owners of the Approved Entity enter into a buy/sell Agreement acceptable to us; and,</p> <p>(g) All documents to be executed in connection with the transfer or assignment are provided to and approved by us.</p>
m.	Conditions for our approval of transfer	FA ¶20.4, ¶20.5 and ¶20.6	<p>Assignment or Transfer to Others</p> <p>We will permit sales, transfers, or assignments of your FA or, if you are an Approved Entity, of an ownership interest in the Approved Entity to others provided:</p> <p>(a) You (and your owners) are not in default under your FA or any other agreement with us or our subsidiaries or affiliates or any other creditor or supplier of the Restaurant:</p> <p>(b) The proposed transferee or assignee (and its Controlling Person and all other owners if it is an Approved Entity) meets our then-applicable standards for franchisees or owners;</p> <p>(c) The proposed transferee or assignee (and its owners) is not engaged in any other Bowl Store Business activity without our prior written consent, except other Mahana Fresh Restaurants;</p> <p>(d) The proposed transferee or assignee (and its owners if it is an Approved Entity) must sign our then-current form of standard Franchise Agreement for a term equal to the remaining term of your FA or, at our election, the then-current term if longer;</p> <p>(e) The proposed transferee or assignee (or the person designated by us) must complete all required training to the extent required by us;</p> <p>(f) At our request, the proposed transferee or assignee refurbishes the Restaurant in the manner and subject to the provisions prescribed in Articles 8 and 14 of the FA;</p> <p>(g) The proposed transferee or assignee pays us a transfer fee equal to the greater of: (A) \$4,000.00, or (B) ten percent of the future, then-applicable single Restaurant initial franchise fee; and,</p>

	Provision	Section in Franchise Agreement	Summary
			<p>(h) Your FA is terminated according to the terms of our then- customary form of mutual termination agreement.</p> <p>You must provide us with all documents to be executed by you and/or your owners and the proposed purchasers in connection with any transfer or assignment at least thirty (30) days prior to signing.</p> <p>Death or Permanent Disability</p> <p>Upon your death or permanent disability or the death or permanent disability of the Controlling Person, your FA or the ownership interest of such deceased or permanently disabled Controlling Person must be transferred to a party approved by us. Any transfer, including, without limitation, transfers by devise or inheritance or trust provisions, shall be subject to the same conditions for transfers which are contained in ¶20.4 of the FA. We will not unreasonably withhold our consent to the transfer of your FA or of such ownership interest to your spouse, heirs, or relatives or to the spouse, heirs, or relatives of such deceased or permanently disabled Controlling Person, provided the requirements of ¶20.4 are satisfied. Upon the death of any other owner, the interest of such owner shall be transferred within a reasonable time to a person meeting our requirements. All such transfers must also comply with ¶20.4 your FA.</p> <p>Definition of Permanent Disability</p> <p>You or your Controlling Person, will be deemed to have a “permanent disability” if you or your Controlling Person’s usual, active participation in the Restaurant as contemplated by your FA is for any reason curtailed or prevented for a substantially continuous period of six (6) months, or if you become imprisoned, hospitalized, a resident of a mental institution, or in a persistent vegetative state for a substantially continuous period of six months.</p>
n.	Our right of first refusal to acquire franchisee’s business	FA ¶20.8	<p>Except for assignments or transfers to an Approved Entity, we have a 30-day right of first refusal to acquire all or any part of your Restaurant, its assets, or an ownership interest in an Approved Entity if you or any owners of the Approved Entity propose to sell them. If the offer to purchase is for the interest of a Controlling Person, then we also have a right of first refusal to purchase all of any other owners’ shares or equity in your company at the</p>



	Provision	Section in Franchise Agreement	Summary
			same price per share or per unit. If you or your owners do not accept an offer to purchase within 60 days, our right of first refusal is renewed.
o.	Our option to purchase your business	FA ¶18	Upon termination, nonrenewal or expiration, you must make the Restaurant and (if you own or control it) the land on which it located available to us to purchase the Restaurant and purchase or lease the land at our option pursuant to the purchase and lease terms set forth in ¶18 of your FA, and you must permit us to operate the Restaurant during the option period if we elect to do so.
p.	Death or disability of franchisee	FA ¶20.5 and ¶20.6	<p><u>Death or Permanent Disability</u></p> <p>Upon your death or permanent disability or the death or permanent disability of the Controlling Person, your FA, or the ownership interest of such deceased or permanently disabled Controlling Person must be transferred to a party approved by us. Any transfer, including, without limitation, transfers by devise or inheritance or trust provisions, shall be subject to the same conditions for transfers which are contained in ¶20.4 of the FA. We will not unreasonably withhold our consent to the transfer of your FA or of such ownership interest to your spouse, heirs, or relatives or to the spouse, heirs or relatives of such deceased or permanently disabled Controlling Person, provided the requirements of ¶20.4 are satisfied. Upon the death of any other owner, the interest of such owner shall be transferred within a reasonable time to a person meeting our requirements. All such transfers must also comply with ¶20.4 your FA.</p> <p><u>Definition of Permanent Disability</u></p> <p>You or your Controlling Person, will be deemed to have a “permanent disability” if you or your Controlling Person’s usual, active participation in the Restaurant as contemplated by your FA is for any reason curtailed or prevented for a substantially continuous period of six (6) months, or if you become imprisoned, hospitalized, a resident of a mental institution, or in a persistent vegetative state for a substantially continuous period of six months.</p>
q.	Non-competition covenants during the term	FA ¶19.1 and ¶19.4	<p>During the term of your FA, you will not own or be engaged in any bowl food business, excluding ownership of less than ten percent of the stock of shares in any corporation whose stock is publicly traded. (Subject to state law)</p> <p>During the term of your FA, you will not solicit for employment or employ any employees of us, put</p>

	Provision	Section in Franchise Agreement	Summary
			affiliates or other Mahana Fresh franchisees if that solicitation or employment results in that person terminating his or her present employment and working for you, or if that solicitation or employment results in that person working in or for or operating a competing Bowl Store Business, chain or franchise business. (Subject to state law).
r.	Non-competition covenants after the Franchise Agreement is terminated or expires	FA ¶19.2	For one year after termination or expiration of your FA, you will not own or be engaged in any bowl food business within ten miles of the location of your Mahana Fresh Restaurant or within five miles of any Mahana Fresh Restaurant in any state in which you owned a Mahana Fresh Restaurant, excluding ownership of less than ten percent of the stock of shares in any corporation whose stock is publicly traded. (Subject to state law)
s.	Modification of the agreement	FA ¶21.1 and ¶21.5	This FA may be amended or modified only through a signed writing and constitutes the complete agreement between the parties hereto, superseding any prior or contemporaneous oral agreements or understandings of the parties relating to the Restaurant at issue. We cannot waive any rights or claims under the FA except through a writing signed by a duly authorized officer. No modification, waiver, termination, etc. of the FA shall release any claim of any party hereto based on facts or events that occurred prior to the modification, waiver, termination, etc. Nothing in the FA, the DA, or any related agreement is intended to disclaim any representation made in this Disclosure Document.
t.	Integration/merger clause	FA ¶21.5	<p>This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral or written agreements or understandings of the parties regarding the subject matter of this Agreement for the Restaurant at issue.</p> <p>Nothing contained in this Agreement or in any related agreement is intended to disclaim any representation made by us in this Franchise Disclosure Document.</p> <p>Only the terms of the Franchise and/or Development Agreements are binding (subject to state law).</p>
u.	Dispute resolution by arbitration or mediation	FA ¶21.6	The FA requires disputes to be submitted first to mediation in Florida and then to binding arbitration in Florida. There is an exception permitting claims for temporary or preliminary injunctive relief to be asserted in state or federal courts in or over Sarasota County, Florida to prevent irreparable harm pending arbitration. The arbitrator has no authority to award punitive damages. These provisions are subject to state law.

	Provision	Section in Franchise Agreement	Summary
v.	Choice of forum	FA ¶21.6	Any mediation, arbitration or litigation must be held and conducted in Sarasota County, Florida or federal courts over Sarasota County, Florida. These provisions are subject to applicable state law.
w.	Choice of law	FA ¶21.6	The FA, and the parties' relationship, and all disputes arising from or relating to them are governed by Florida law, excluding the Florida Franchise Act except with respect to Mahana Fresh Restaurants which are physically located in Florida. These provisions are subject to state law.

**This table lists important provisions of the development agreement. You should read these provisions in the agreements attached to this Disclosure Document.**

**B. Development Agreement**

	Provision	Section in Development Agreement	Summary
a.	Length of the franchise term	DA ¶3	Three to twenty years for development rights depending on the agreement and the number of Restaurants, ten years for each Restaurant opened.
b.	Renewal or extension of the term	DA ¶3	No express renewal provision; Renewal or extension occurs only by mutual written agreement.
c.	Requirements for you to renew or extend	Not Applicable	No express renewal requirements or right are provided for in the DA; Restaurant franchise renewal requirements are those set forth in the FA.
d.	Termination by you	DA ¶9.1	No unilateral franchisee termination right is provided by the DA; The franchisee retains common law rights to terminate for material breach by us; Restaurant franchise termination rights are those set forth in the FA. The DA permits termination by mutual agreement. (Subject to state law)
e.	Termination by us without cause	DA ¶9	The DA does not permit either party to terminate the agreement without cause.
f.	Termination by us with cause	DA ¶9.2	The DA permits the Franchisor to terminate the agreements for cause during their terms and before expiration. Termination of the DA does not permit us to terminate the FA: however, termination of an FA does permit us to terminate the DA
g.	“Cause” defined – curable defaults	DA ¶9	The DA does not provide any opportunity to cure defaults thereunder. Franchise Agreements opened under the DA are subject to the same rights to cure set forth in (f) of Table 17A above. Termination of the DA does not permit us to terminate the FA: however, termination of an FA does permit us to terminate the DA.

	<b>Provision</b>	<b>Section in Development Agreement</b>	<b>Summary</b>
h.	“Cause” defined – non-curable defaults	DA ¶9.2	<p>We may terminate the DA immediately upon written notice without providing you an opportunity to cure if any of the following conditions exist or events have transpired:</p> <p>(a) You fail to meet the Development Requirements set forth in Section 4 of your DA;</p> <p>(b) You or your owners fail to comply with any other provision of your DA;</p> <p>(c) You or your owners fail to comply with any Development Agreement or Franchise Agreement or any such agreement with any entity that you or your Controlling Person directly or indirectly owns in whole or in part, is terminated by us in accordance with its terms;</p> <p>(d) You and your owners fail to maintain the capacity and necessary skills and experience to meet the Development Requirements and timely develop and operate the Restaurants required to be opened and operated under this Agreement based upon criteria established by us from time to time; or,</p> <p>(e) The Controlling Person of the Developer under your DA is not at any time the Controlling Person of all approved entities operating Restaurants in the Development Area, unless a sale or transfer has been made with our express written consent.</p> <p>(f) Termination of the DA does not permit us to terminate the FA: however, termination of an FA does permit us to terminate the DA.</p>
i.	Your Obligations on termination/non-renewal	DA ¶10	Other than maintaining the confidentiality of our confidential information and trade secrets before and after termination, expiration or nonrenewal, the DA does not impose any separate or additional obligations upon termination, expiration or nonrenewal other than those set forth above relating to the FA.
j.	Assignment of contract by us	DA ¶13	We may assign the DA without limitation and the assignee or other legal successor to our interests will be entitled to all of the benefits of the DA.
k.	“Transfer” by you – defined	DA ¶12	The DA defines transfers by the franchisee to include assigning, transferring, or encumbering the DA or the development rights provided therein, including the sale, assignment or transfer of the interests of any owner owning more than 19.9% of the equity or ownership interest in an Approved Entity.

	<b>Provision</b>	<b>Section in Development Agreement</b>	<b>Summary</b>
i.	Our approval of transfer by franchisee	Not Applicable	Not Applicable
m.	Conditions for our approval of transfer	DA ¶12	You cannot assign the DA without our express written consent, which may be granted or withheld in our sole and absolute discretion.
n.	Our right of first refusal to acquire your business	Not Applicable	Not Applicable
o.	Our option to purchase your business	Not Applicable	Not Applicable
p.	Your death or disability	Not Applicable	Not Applicable
q.	Non-competition covenants during the term of the franchise	Not Applicable	Not Applicable
r.	Non-competition covenants after the franchise is terminated or expires	Not Applicable	Not Applicable
s.	Modification of the agreement	Not Applicable	Not Applicable
t.	Integration/ merger clause	Not Applicable	Not Applicable
u.	Dispute resolution by arbitration or mediation	DA ¶16	The DA follows the dispute provisions of the FA. These provisions are subject to state law.
v.	Choice of forum	DA ¶16	Any mediation, arbitration or litigation must be held and conducted in Sarasota County, Florida or federal courts over Sarasota County, Florida. These provisions are subject to state law.
w.	Choice of law	DA ¶16	The DA and the parties' relationship, and all disputes arising from or relating to them are governed by Florida law, excluding the Florida Franchise Act except with respect to Mahana Fresh Restaurants which are physically located in Florida. These provisions are subject to state law.

*[Remainder of page intentionally left blank. Item 18 begins next page.]*

**ITEM 18.  
PUBLIC FIGURES**

We do not currently use any public figures to promote the sale of our franchises, but we reserve the right to do so in the future.

**ITEM 19.  
FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee’s future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Dave Wood, our CEO, at 650 Golden Gate Point, Suite 401, Sarasota, Florida 34236, Phone 941-257-3663, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**TABLE 1  
SYSTEMWIDE OUTLET SUMMARY  
FOR YEARS 2020 TO 2022**

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2020	1	5	+4
	2021	5	7	+2
	2022	7	5	-2
Company-Owned	2020	0	0	0
	2021	0	0	0
	2022	0	0	0
<b>Total</b>	<b>2020</b>	<b>1</b>	<b>5</b>	<b>+4</b>
	<b>2021</b>	<b>5</b>	<b>7</b>	<b>+2</b>
	<b>2022</b>	<b>7</b>	<b>5</b>	<b>-2</b>

*[Remainder of page intentionally left blank. Item 20 continues next page.]*

**TABLE 2  
TRANSFERS OF OUTLETS FROM FRANCHISEES  
TO NEW OWNERS (OTHER THAN FRANCHISOR)  
FOR YEARS 2020 TO 2022**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
<b>FL</b>	2020	0
	2021	0
	2022	1
<b>Total</b>	<b>2020</b>	<b>0</b>
	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>1</b>

**TABLE 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2020 TO 2022**

<b>State</b>	<b>Year</b>	<b>Outlets at Start of Year</b>	<b>Outlets Opened</b>	<b>Terminations</b>	<b>Non-Renewals</b>	<b>Reacquired by Franchisor</b>	<b>Ceased Operations – Other Reasons</b>	<b>Outlets at End of the Year</b>
Florida	2020	0	1	0	0	0	0	1
	2021	1	2	1	0	0	0	2
	2022	2	0	0	0	0	1	1
Idaho	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
New Jersey	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
North Carolina	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
North Dakota	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
Virginia	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	1	0	0	0	0
<b>Total</b>	<b>2020</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>
	<b>2021</b>	<b>5</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>
	<b>2022</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>

*[Remainder of page intentionally left blank. Item 20 continues next page.]*

**TABLE 4**  
**STATUS OF COMPANY-OWNED OUTLETS**  
**FOR YEARS 2020 TO 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Virginia	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
<b>Total</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**TABLE 5**  
**PROJECTED OPENINGS AS OF DECEMBER 31, 2022**

State	Franchise Agreements Signed But Outlets Not Yet Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Arkansas	1	0	0
Florida	2	2	0
Georgia	2	2	0
Michigan	1	0	0
New Jersey	1	0	0
North Carolina	2	1	0
North Dakota	1	1	0
Texas	2	0	0
<b>Total</b>	<b>12</b>	<b>6</b>	<b>0</b>

The contact information for our franchisees is attached as to this Disclosure Document as Exhibit G. A list of franchisees who have left the System or who have not communicated with us within the 10-week period immediately preceding the effective date of this Disclosure Document will also be attached to this Disclosure Document in Exhibit G once we have them. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the System.

There is presently no trademark specific franchisee organization associated with the System. No franchisees have signed provisions during our last three fiscal years restricting their ability to speak openly about their experience with us.

**ITEM 21.**  
**FINANCIAL STATEMENTS**

Attached to this Disclosure Document as Exhibit E are our audited financial statements as of our previous fiscal year end of December 31, 2022, as of December 31, 2021, and as of December 31, 2020. Our fiscal year ends December 31 of each year.



**ITEM 22.**  
**CONTRACTS**

The following exhibits to this Disclosure Document contain all contracts proposed for use or in use regarding the offer of our franchises, including the following agreements:

Exhibit A – State Specific Addenda  
Exhibit C – Franchise Agreement  
Exhibit D – Development Agreement  
Exhibit H – Form of General Release

**ITEM 23.**  
**RECEIPTS**

Exhibit J of this Franchise Disclosure Document contains a detachable document, in duplicate, acknowledging receipt of this Franchise Disclosure Document by a prospective franchisee. You should sign both copies of the Receipt. You should retain one signed copy for your records and return the other signed copy to: Dave Wood, our CEO, at 650 Golden Gate Point, Suite 401, Sarasota, Florida 34236; or by phone at 941-257-3663

**EXHIBIT A**

**STATE-SPECIFIC ADDENDA**

## CALIFORNIA ADDENDUM TO DISCLOSURE DOCUMENT

OUR WEBSITE ([www.MahanaFresh.com](http://www.MahanaFresh.com)) HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [WWW.DFPI.CA.GOV](http://WWW.DFPI.CA.GOV).

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of California:

### ITEM 3 – LITIGATION

1. Neither Mahana Fresh, LLC, nor any person identified in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 79a et seq., suspending or expelling such persons from membership in such association or exchange

### ITEM 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

1. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. The Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

2. The Franchise Agreement provides for termination upon bankruptcy, this provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq).

3. The Franchise Agreement and the Development Agreement contain provisions requiring application of the laws of Florida. This provision may not be enforceable under California law.

4. The Franchise Agreement and the Development Agreement require venue to be limited to Florida. This provision may not be enforceable under California law.

5. The Franchise Agreement contains a covenant not to compete which extends beyond the termination or non-renewal of the franchise. This provision may not be enforceable under California law.

6. THE FRANCHISE AGREEMENT MAY REQUIRE THE FRANCHISEE TO EXECUTE A GENERAL RELEASE OF CLAIMS UPON EXECUTION OF THE FRANCHISE AGREEMENT. CALIFORNIA CORPORATIONS CODE SECTION 31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE SECTIONS 31000 THROUGH 31516). BUSINESS AND PROFESSIONS CODE SECTION 20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE SECTIONS 20000 THROUGH 20043).

7. California Corporations Code, Section 31125 requires us to give you a disclosure document, approved by the Department of Corporations before we ask you to consider a material modification of your Franchise Agreement or the Development Agreement.

8. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

9. The Franchise Agreement and Area Development Agreement require binding arbitration. The arbitration will occur in Sarasota County, Florida. If we are the substantially prevailing party, we will be entitled to recover reasonable attorney's fees and litigations costs and expenses in connection with the

arbitration. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

**CONNECTICUT ADDENDUM TO DISCLOSURE DOCUMENT**

**DISCLOSURES REQUIRED BY CONNECTICUT LAW**

The state of Connecticut does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

## **ILLINOIS ADDENDUM TO DISCLOSURE DOCUMENT**

Illinois law governs the Disclosure Document and Franchise Agreement(s).

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a disclosure document and franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a disclosure document and franchise agreement may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Disclosure Act, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

## INDIANA ADDENDUM TO DISCLOSURE DOCUMENT

Notwithstanding anything to the contrary set forth in the Franchise Agreement or Area Development Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Indiana:

1. The Franchise Agreement and Development Agreement will be governed by Indiana law, Venue for litigation will not be limited to a venue outside of the State of Indiana, as specified in the Franchise Agreement and Development Agreement.
2. The prohibition by Indiana Code 23-2-2.7-1 (7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, shall supersede any conflicting provisions of the Franchise Agreement and the Development Agreement in the State of Indiana to the extent they may be inconsistent with such prohibition.
3. No release language set forth in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
4. The post-termination non-competition covenants set forth in the Franchise Agreement and Development Agreement shall be limited in time to a maximum of three (3) years and in geographic scope to the designated territory granted by the Agreement.
5. Nothing in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana, and the laws of the State of Indiana supersede any conflicting choice of law provisions set forth herein if such provision is in conflict with Indiana law.
6. You will not be required to indemnify us and the other Indemnities for any liability caused by your proper reliance on or use of procedures or materials provided by us or caused by our negligence.
7. If we receive any payments related to purchases from you that we do not pass on in full to the supplier, we will promptly account for the amount of the payment that we retained and we will transmit the retained amount to you.

## MARYLAND ADDENDUM TO DISCLOSURE DOCUMENT

The following provisions will supersede anything to the contrary in the Franchise Disclosure Document, Franchise Agreement or Development Agreement and will apply to all franchises offered and sold under the laws of the State of Maryland:

### **Special Risks to Consider About This Franchise**

**Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

### **Item 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

1. No release language in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland. Any general release required as a condition of renewal, sale and/or assignment or transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
2. A franchisee may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the franchise.
3. The provision in the Franchise Agreement which provides for termination upon bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

### **Additional Disclosures**

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.



**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE MICHIGAN  
FRANCHISE INVESTMENT LAW**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver or estoppel which deprives franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits a Franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a Franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the Franchisor and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years, and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of Franchisor's intent not to renew the franchise.
- (e) A provision that permits the Franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a Franchisor to refuse to permit a transfer or ownership of a franchise, except for good cause. This subdivision does not prevent a Franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (i) The failure of the proposed transferee to meet the Franchisor's then current reasonable qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of the Franchisor or subfranchisor.
  - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the Franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to resell to the Franchisor items that are not uniquely

identified with the Franchisor. This subdivision does not prohibit a provision that grants to a Franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the Franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the Franchise Agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the Franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual service.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE ATTORNEY GENERAL.

ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO THE OFFICE OF THE ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION, ATTN.: FRANCHISE, 670 LAW BLDG., LANSING, MICHIGAN 48913, (517) 373-7117.

## INFORMATION REQUIRED BY THE STATE OF MINNESOTA

Notwithstanding anything to the contrary set forth in the Disclosure Document, the Franchise Agreement, or the Development Agreement, the following provisions will supersede and apply:

1. We will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols and/or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the same.
2. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit the Franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement(s) can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.
3. No release language set forth in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Minnesota.
4. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C.14, subdivisions 3, 4, and 5 require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for nonrenewal of the Franchise Agreement or Development Agreement.
5. Under the terms of the Franchise Agreement and Development Agreement, as modified by the Minnesota Addendum to the Franchise Agreement, you agree that if you engage in any non-compliance with the terms of the Franchise Agreement or unauthorized or improper use of the Mahana Fresh System Marks, or Proprietary Materials during or after the period of the Agreements, we will be entitled to seek both temporary and permanent injunctive relief against you from any court of competent jurisdiction, in addition to all other remedies which we may have at law, and you consent to the seeking of these temporary and permanent injunctions.

**NEW YORK ADDENDUM TO DISCLOSURE DOCUMENT NOTICE TO PROSPECTIVE  
FRANCHISEES IN THE STATE OF NEW YORK**

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21<sup>ST</sup> FLOOR, NEW YORK, NEW YORK 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

a. No such party has an administrative, criminal, or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

b. No such party has pending actions, other than routine litigation . incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

c. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

d. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust; trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the "Summary" section of Item 17(c), titled "**Requirements for franchisee to renew or extend,**" and Item 17(m), entitled "**Conditions for franchisor approval of transfer**":

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver

provisions of General Business Law Section 687.4 and 687.5 be satisfied.

4. The following language replaces the "Summary" section of Item 17(d), titled "**Termination by franchisee**":

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the "Summary" section of Item 17(v), titled "**Choice of forum**", and Item 17(w), titled "**Choice of Law**":

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

6. Any requirements of the Area Representative Agreement that you consent to the entry of an injunction prohibiting any breach by you of your obligations under the Franchise Agreement are modified in the State of New York to provide only that you consent to the seeking of such an injunction.

## **NORTH CAROLINA ADDENDUM TO DISCLOSURE DOCUMENT**

The State of North Carolina has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

If the seller fails to deliver the product(s), equipment or supplies necessary to begin substantial operation of the business within 45-days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled.

## NORTH DAKOTA ADDENDUM TO DISCLOSURE DOCUMENT

In North Dakota, the Disclosure Document is amended as follows to conform to North Dakota law:

1. Item 17(c) “Requirements for Franchisee to Renew or Extend” of the Disclosure Document is amended to provide as follows: “Any provision in the Franchise Agreement which requires the franchisee to sign a general release upon renewal of the Franchise Agreement is unfair, unjust or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.”
2. Item 17(r) “Non-competition Covenants” of the Disclosure Document is amended to provide as follows: “Any provision in the Franchise Agreement restricting competition is contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust or inequitable within the intent of Section 51-09-09 of the North Dakota Franchise Investment Law”.
3. Item 17(u) “Dispute Resolution” of the Disclosure Document is amended to provide as follows: “Any provision in the Franchise Agreement which provides that the parties agree to an arbitration or mediation of disputes which place at a location that is remote from the site of Franchisee’s business is unfair, unjust or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.”
4. Item 17(v) “Venue” of the Disclosure Document is amended to provide as follows: “Any provision in the Franchise Agreement which designates jurisdiction or venue or requires the Franchisee to agree to jurisdiction or venue in a forum outside of North Dakota is void with respect to any cause of action which is otherwise enforceable in North Dakota.”
5. Item 17(w) “Governing Law” is amended to provide as follows: “Any provision in the Franchise Agreement requiring that the Franchise Agreement be construed according to the laws of a state other than North Dakota is unfair, unjust or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.”

## **RHODE ISLAND ADDENDUM TO DISCLOSURE DOCUMENT**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Rhode Island.

### **ITEM 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

§19-28.1.-14 of the Rhode Island Franchise Investment Act provides that “A provision in a Franchise Agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.”



## VIRGINIA ADDENDUM TO DISCLOSURE DOCUMENT

**In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Mahana Fresh, LLC, for use in the Commonwealth of Virginia shall be amended as follows:**

The following addition risk factor is added to the Risk Factors page:

The franchisee will be required to make an estimated initial investment ranging from \$213,400 to \$721,200. This amount exceeds the franchisor's stockholder's equity as of December 31, 2020, which is \$(910,395).

Additional Disclosure: The following statements are added to Item 5:

The Virginia State Corporate Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

Additional Disclosure: The following statements are added to Item 17

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement do not constitute "reasonable cause" as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

## INFORMATION REQUIRED BY THE STATE OF WASHINGTON

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

## **INDIANA ADDENDUM TO FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT**

Notwithstanding anything to the contrary set forth in the Franchise Agreement or Area Development Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Indiana:

1. The Franchise Agreement and Development Agreement will be governed by Indiana law, Venue for litigation will not be limited to a venue outside of the State of Indiana, as specified in the Franchise Agreement and Development Agreement.
2. The prohibition by Indiana Code 23-2-2.7-1 (7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, shall supersede any conflicting provisions of the Franchise Agreement and the Development Agreement in the State of Indiana to the extent they may be inconsistent with such prohibition.
3. No release language set forth in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
4. The post-termination non-competition covenants set forth in the Franchise Agreement and Development Agreement shall be limited in time to a maximum of three (3) years and in geographic scope to the designated territory granted by the Agreement.
5. Nothing in the Franchise Agreement or Development Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana, and the laws of the State of Indiana supersede any conflicting choice of law provisions set forth herein if such provision is in conflict with Indiana law.
6. You will not be required to indemnify us and the other Indemnities for any liability caused by your proper reliance on or use of procedures or materials provided by us or caused by our negligence.
7. If we receive any payments related to purchases from you that we do not pass on in full to the supplier, we will promptly account for the amount of the payment that we retained and we will transmit the retained amount to you.
8. This Addendum will only have effect if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Indiana Franchise Act and the Indiana Deceptive Franchise Practices Act, without considering this Addendum. Except as modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.

**[SIGNATURE PAGE FOLLOWS]**

**Agreed:**

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**ILLINOIS ADDENDUM TO FRANCHISE AGREEMENT AND AREA DEVELOPMENT  
AGREEMENT**

This Addendum amends the Franchise Agreement and/or Development Agreement with even date herewith between Mahana Fresh, LLC, a Florida limited liability company, (“Franchisor”) and the party identified as the franchisee below (“Franchisee” or “your”).

Illinois law governs the Disclosure Document, Franchise Agreement(s), and Development Agreement(s).

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a disclosure document and franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a disclosure document and franchise agreement may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Disclosure Act, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

This Addendum will only have effect if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Illinois Franchise Disclosure Act, without considering this Addendum. Except as modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.

Agreed to by:

**FRANCHISEE:**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## **MARYLAND ADDENDUM TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT**

With respect to franchisor's right to terminate you upon your bankruptcy as set forth in the Franchise Agreement and the Development Agreement, termination of the Franchise Agreement or Development Agreement for this reason may not be enforceable under federal bankruptcy (11 U.S.C. 101 et. Seq.).

Any general release required by the terms and conditions of the Franchise Agreement as a condition of renewal, assignment or transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Notwithstanding anything to the contrary in the Franchise Agreement or Development Agreement, the Maryland Franchise Registration and Disclosure Law prohibits the Franchisor from precluding the Franchisee from initiating litigation against the Franchisor in Maryland. Accordingly, the Franchise Agreement and Development Agreement are hereby modified to provide that the Franchisee may initiate litigation or sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

No representation or disclaimer by the Franchisee in the Franchise Agreement is intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

This Addendum will only have effect if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, without considering this Addendum. Except as modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.

### **Additional Disclosures**

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise."

**[SIGNATURE PAGE FOLLOWS]**

The undersigned does hereby acknowledge receipt of this addendum.

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## **MINNESOTA ADDENDUM TO THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT**

In recognition of the Minnesota Franchise Law, Minn. Stat. §§ 80C.01-80C.22 and the Rule and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, the parties agree to modify the Franchise Agreement and Area Development Agreement as follows:

1. Releases.

Notwithstanding anything to the contrary set forth in this Agreement, the Franchisee will not be required to assent to a release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statute §§ 80C.01-80C.22, provided that foregoing shall not bar the voluntary settlement of disputes.

2. Term and Successor Franchise Agreement, Default and Termination.

Notwithstanding anything to the contrary set forth in this Agreement, Franchisor will comply with Minnesota Statutes Clause 80C.14 Subdivision 3, 4, and 5, which require, except in certain cases, that Minnesota Franchisees be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement.

3. Licensed Marks.

Franchisor will protect your right to use the trademarks, service marks, trade names, logotypes, or other commercial symbols and/or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the same provided that your use is in accordance with the requirements of the Franchise Agreement and the System..

4. Time Limit on Filing.

Notwithstanding anything to the contrary set forth in this Agreement, any claim or action arising out of or relating to the Minnesota Franchise Law must be commenced within three (3) years from the occurrence of the facts giving rise to the claim or action, or the claim or action is barred.

5. Jurisdiction and Venue.

Nothing in this Agreement will abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, including the right to submit matters to the jurisdiction of the courts in Minnesota. Minnesota Stat. §80C.21 and Minn. Rule 2860.4400J prohibits us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes.

6. Under the terms of the Franchise Agreement and Development Agreement, as modified by this Addendum, you agree that if you engage in any non-compliance with the terms of the Franchise Agreement or unauthorized or improper use of the Mahana Fresh System Marks, or Proprietary Materials during or after the period of the Agreements, we will be entitled to seek both temporary and permanent injunctive relief against you from any court of competent jurisdiction, in addition to all other remedies which we may have at law, and you consent to the seeking of these temporary and permanent injunctions.

7. This Addendum will only have effect if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of Minnesota Statutes §§ 80C.01-80C.22 without considering this Addendum. Except as modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.



The undersigned does hereby acknowledge receipt of this addendum.

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## NEW YORK ADDENDUM TO THE FRANCHISE AGREEMENT

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs., tit. 13, §§ 200.1 through 201.16), the parties agree to modify the Franchise Agreement as follows:

1. Any provision in the Franchise Agreement that is inconsistent with the New York General Business Law, Article 33, Sections 680 – 695 may not be enforceable.
2. Releases. The release of claims set forth in this Agreement does not release any claim you may have under New York General Business Law, Article 33, Sections 680-695.
3. Assignment by Franchisor. Notwithstanding anything to the contrary set forth herein, Franchisor will not assign its rights under the Franchise Agreement except to an assignee who in Franchisor's good faith judgment is willing and able to assume Franchisor's obligations under the Franchise Agreement.
4. Termination by Franchisee. Notwithstanding anything to the contrary set forth herein, you may terminate this Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.
5. Governing Law. Notwithstanding anything to the contrary set forth herein, the New York General Business Law shall govern any claim arising under that law.
6. This Addendum will have effect only if the Franchise Agreement and/or the relationship between Franchisor and you satisfy all of the jurisdictional requirements of New York General Business Law, without considering this Addendum. Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.

Agreed:

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## **NORTH DAKOTA ADDENDUM TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT**

This Addendum amends the Franchise Agreement and/or Development Agreement with an even date herewith (collectively, “Agreements”) between Mahana Fresh, LLC, a Florida limited liability company, (“Franchisor”) and the party identified below as the franchisee (“Franchisee” or “your”).

1. Any provision in the Agreements which requires the franchisee to sign a general release upon renewal of the Franchise Agreement is unfair, unjust, or inequitable within the intent of Section 51- 19-09 of the North Dakota Franchise Investment Law.
2. In North Dakota, provisions of the Agreements which unreasonably limit the statute of limitations or remedies under the North Dakota Franchise Investment Law, such as the right to jury trial, may not be enforceable.
3. Provisions of the Agreements requiring the Franchisee to consent to liquidated damages or termination penalties, requiring the Franchisee to consent to a limitation of claims or requiring the Franchisee to pay all of Franchisor’s costs and expenses incurred in enforcing the agreement may not be enforceable under North Dakota law.
4. Provisions of the Agreements requiring that the Agreements be construed according to the laws of a state other than North Dakota are unfair, unjust or inequitable within the intent of Section 51-19- 09 of the North Dakota Franchise Investment Law.
5. Provisions of the Agreements which provide that the parties agree to arbitration or mediation of disputes at a location that is remote from the site of Franchisee’s business is unfair, unjust or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.
6. Provisions of the Agreements which designate jurisdiction or venue or require the Franchisee to agree to jurisdiction or venue in a forum outside of North Dakota are void with respect to any cause of action which is otherwise enforceable in North Dakota.
7. Provisions of the Agreements requiring a franchisee to sign a general release upon the renewal of the Agreement(s) are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.
8. Provisions of the Agreements restricting competition are contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-09-09 of the North Dakota Franchise Investment Law.
9. In the event of any conflict between the terms of this Addendum and the terms of the Franchise Agreement or Development Agreement, the terms of this Addendum shall prevail.
10. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the North Dakota Franchise Investment Law are met independently without reference to this Addendum.

**[SIGNATURE PAGE FOLLOWS]**

Agreed to by:

**FRANCHISEE:**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**RHODE ISLAND ADDENDUM TO FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT**

Notwithstanding anything to the contrary set forth in the Franchise Agreement or Area Development Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Rhode Island.

1. Governing Law. The Franchise Agreement and Development Agreement is amended, in relevant part to reflect the following:

Notwithstanding anything to the contrary set forth herein, Rhode Island law governs any claim arising under the Rhode Island Franchise Investment Act.

2. Jurisdiction and Venue. The Franchise Agreement and Development Agreement is amended, in relevant part to reflect the following:

Notwithstanding anything to the contrary set forth herein, you have the right to file any litigation under the Rhode Island Franchise Investment Act in Rhode Island.

3. This Addendum will have effect only if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Rhode Island Franchise Investment Act, without considering this Addendum. Except as expressly modified by this Addendum, the Franchise Agreement and Development Agreement remain unmodified and in full force and effect.

Agreed:

**FRANCHISEE:**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## VIRGINIA ADDENDUM TO FRANCHISE AGREEMENT

Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Virginia.

1. Deferral of Initial Fees.

Notwithstanding anything to the contrary set forth herein, the Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the Franchise Agreement.

2. This Addendum will have effect only if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Virginia Retail Franchising Act, without considering this Addendum. Except as expressly modified by this Addendum, the Franchise Agreement and Development Agreement remain unmodified and in full force and effect.

Agreed:

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

## VIRGINIA ADDENDUM TO AREA DEVELOPMENT AGREEMENT

Notwithstanding anything to the contrary set forth in the Franchise Agreement or Area Development Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Virginia.

1. Deferral of Initial Fees.

Notwithstanding anything to the contrary set forth herein, the Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the development fee owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the Development Agreement.

2. This Addendum will have effect only if the Franchise Agreement, Development Agreement, and/or the relationship between you and the Franchisor satisfy all of the jurisdictional requirements of the Virginia Retail Franchising Act, without considering this Addendum. Except as expressly modified by this Addendum, the Franchise Agreement and Development Agreement remain unmodified and in full force and effect.

Agreed:

**FRANCHISEE:**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**WASHINGTON ADDENDUM TO FRANCHISE AGREEMENT, DEVELOPMENT  
AGREEMENT AND RELATED AGREEMENTS**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**[SIGNATURE PAGE FOLLOWS]**



The undersigned does hereby acknowledge receipt of this addendum.

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**

MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**EXHIBIT B**

**LIST OF STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS**

## List of State Regulatory Administrators

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

<b>LIST OF STATE ADMINISTRATORS</b>	
<p><b><u>CALIFORNIA</u></b>                      Department of Financial Protection and Innovation                      320 West 4th Street, Suite 750                      Los Angeles, California 90013-2344                      (213) 576-7500                      Toll Free (866) 275-2677</p>	<p><b><u>CONNECTICUT</u></b>                      State of Connecticut                      Department of Banking                      Securities &amp; Business Investments Division                      260 Constitution Plaza                      Hartford, Connecticut 06103-1800                      (860) 240-8230</p>
<p><b><u>HAWAII</u></b>                      Commissioner of Securities of the State of Hawaii                      Department of Commerce and Consumer Affairs                      Business Registration Division                      Securities Compliance Branch                      335 Merchant Street, Room 203                      Honolulu, Hawaii 96813                      (808) 586-2722</p>	<p><b><u>ILLINOIS</u></b>                      Franchise Bureau                      Office of the Attorney General                      500 South Second Street                      Springfield, Illinois 62706                      (217) 782-4465</p>
<p><b><u>INDIANA</u></b>                      Indiana Secretary of State                      Franchise Section                      302 Washington Street, Room E-111                      Indianapolis, Indiana 46204                      (317) 232-6681</p>	<p><b><u>MARYLAND</u></b>                      Office of the Attorney General                      Securities Division                      200 St. Paul Place                      Baltimore, Maryland 21202-2021                      (410) 576-6360</p>
<p><b><u>MICHIGAN</u></b>                      Michigan Attorney General's Office                      Corporate Oversight Division, Franchise Section                      525 W. Ottawa Street                      G. Mennen Williams Building, 1<sup>st</sup> Floor                      Lansing, Michigan 48933                      (517) 373-7117</p>	<p><b><u>MINNESOTA</u></b>                      Minnesota Department of Commerce                      85 7<sup>th</sup> Place East, Suite 280                      St. Paul, Minnesota 55101-2198                      (651) 539-1600</p>
<p><b><u>NEW YORK</u></b>                      New York State Department of Law                      Investor Protection Bureau                      28 Liberty Street, 21<sup>st</sup> Floor                      New York, NY 10005                      (212) 416-8222</p>	<p><b><u>NORTH DAKOTA</u></b>                      North Dakota Securities Department                      State Capitol                      Department 414                      600 East Boulevard Avenue, Fourteenth Floor                      Bismarck, North Dakota 58505-0510                      (701) 328-4712</p>
<p><b><u>OREGON</u></b>                      Department of Business Services                      Division of Finance and Corporate Securities                      Labor and Industries Building                      350 Winter Street, NE Room 410                      Salem, Oregon 97310                      (503) 378-4387</p>	<p><b><u>RHODE ISLAND</u></b>                      Department of Business Regulation Securities Division,                      Building 69, First Floor                      John O. Pastore Center                      1511 Pontiac Avenue                      Cranston, Rhode Island 02920                      (401) 462-9527</p>
<p><b><u>SOUTH DAKOTA</u></b>                      Division of Insurance                      Securities Regulation                      124 S. Euclid, Suite 104                      Pierre, South Dakota 57501                      (605) 773-3563</p>	<p><b><u>VIRGINIA</u></b>                      State Corporation Commission                      Division of Securities and Retail Franchising                      1300 East Main Street, 9th Floor                      Richmond, Virginia 23219                      (804) 371-9051</p>
<p><b><u>WASHINGTON</u></b>                      Department of Financial Institutions                      Securities Division,                      P.O. Box 9033                      Olympia, Washington 98507                      (360) 902-8760</p>	<p><b><u>WISCONSIN</u></b>                      Division of Securities                      4822 Madison Yards Way, North Tower                      Madison, Wisconsin 53705                      (608) 266-2139</p>

## List of Agents for Service of Process

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states:

<b>LIST OF STATE AGENT FOR SERVICE OF PROCESS</b>	
<p><b><u>CALIFORNIA</u></b>                      Commissioner                      Department of Financial Protection and Innovation                      320 West 4<sup>th</sup> Street, Suite 750                      Los Angeles, California 90013-2344                      (213) 576-7500                      Toll Free (866) 275-2677</p>	<p><b><u>CONNECTICUT</u></b>                      Banking Commissioner                      Department of Banking                      Securities &amp; Business Investments Division                      260 Constitution Plaza                      Hartford, Connecticut 06103-1800                      (860) 240-8230</p>
<p><b><u>HAWAII</u></b>                      Commissioner of Securities of the State of Hawaii                      Department of Commerce and Consumer Affairs                      Business Registration Division                      Securities Compliance Branch                      335 Merchant Street, Room 203                      Honolulu, Hawaii 96813                      (808) 586-2722</p>	<p><b><u>ILLINOIS</u></b>                      Illinois Attorney General                      Office of the Attorney General                      500 South Second Street                      Springfield, Illinois 62706                      (217) 782-4465</p>
<p><b><u>INDIANA</u></b>                      Indiana Secretary of State                      Franchise Section                      302 West Washington Street, Room E-111                      Indianapolis, Indiana 46204                      (317) 232-6681</p>	<p><b><u>MARYLAND</u></b>                      Maryland Securities Commissioner                      200 St. Paul Place                      Baltimore, Maryland 21202-2021                      (410) 576-6360</p>
<p><b><u>MICHIGAN</u></b>                      Michigan Attorney General's Office                      Corporate Oversight Division, Franchise Section                      525 W. Ottawa Street                      G. Mennen Williams Building, 1<sup>st</sup> Floor                      Lansing, Michigan 48933                      (517) 373-7117</p>	<p><b><u>MINNESOTA</u></b>                      Minnesota Commissioner of Commerce                      Minnesota Department of Commerce                      85 7th Place East, Suite 280                      St. Paul, Minnesota 55101-2198                      (651) 539-1600</p>
<p><b><u>NEW YORK</u></b>                      New York Secretary of State                      New York Department of State                      One Commerce Plaza                      99 Washington Avenue, 6th Floor                      Albany, NY 12231                      (518) 472-2492</p>	<p><b><u>NORTH DAKOTA</u></b>                      North Dakota Securities Commissioner                      State Capitol                      600 East Boulevard Avenue, Fifth Floor                      Bismarck, North Dakota 58505                      (701) 328-4712</p>
<p><b><u>OREGON</u></b>                      Secretary of State                        Corporation Division - Process Service                        255 Capitol Street NE, Suite 151                      Salem, OR 97310-1327                      (503) 986-2200</p>	<p><b><u>RHODE ISLAND</u></b>                      Director of Department of Business Regulation                      Department of Business Regulation                      Securities Division, Building 69, First Floor                      John O. Pastore Center                      1511 Pontiac Avenue                      Cranston, Rhode Island 02920                      (401) 462-9527</p>
<p><b><u>SOUTH DAKOTA</u></b>                      Division of Insurance                      Securities Regulation                      124 S. Euclid, Suite 104                      Pierre, South Dakota 57501                      (605) 773-3563</p>	<p><b><u>VIRGINIA</u></b>                      Clerk of the State Corporation Commission                      1300 East Main Street, 1<sup>st</sup> Floor                      Richmond, Virginia 23219                      (804) 371-9733</p>
<p><b><u>WASHINGTON</u></b>                      Director, Department of Financial Institutions                      Securities Division, 3rd Floor                      150 Israel Road, Southwest                      Tumwater, Washington 98501                      (360) 902-8760</p>	<p><b><u>WISCONSIN</u></b>                      Administrator, Division of Securities                      4822 Madison Yards Way, North Tower                      Madison, Wisconsin 53705                      (608) 266-2139</p>

**EXHIBIT C**

**FRANCHISE AGREEMENT**



**FRANCHISE AGREEMENT**

**BETWEEN**

**MAHANA FRESH, LLC**

**AND**

---

**FRANCHISEE**

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## ATTACHMENTS

- A. FRANCHISEE-SPECIFIC TERMS
- B. PERSONAL GUARANTY
- C. LEASE RIDER
- D. ACH AUTHORIZATION
- E. CONFIDENTIALITY AGREEMENT
- F. ASSIGNMENT OF PHONE NUMBERS, FAX NUMBERS, AND WEBSITES

# MAHANA FRESH, LLC

## FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is being entered into between Mahana Fresh, LLC, a Florida limited liability company ("we", "Mahana Fresh" or "us" in this Agreement), and ("you" or "Franchisee" in this Agreement). If you are a corporation, partnership, limited liability company or other entity approved by us to own a Mahana Fresh Restaurant (the "Approved Entity"), the term "owners" in this Agreement shall refer to your shareholders, partners, members, or other interest holders. Unless otherwise approved by Mahana Fresh, the term "Controlling Person" refers to the person who owns forty percent (40%) or more and the largest share of the general partnership interest of such partnership; the equity and voting power of all classes of the issued and outstanding capital stock of such corporation; the membership interests of such limited liability company or the voting and ownership interests of such other entity.

### 1. INTRODUCTION.

We are in the business of franchising retail outlets specializing in the preparation and sale in a fast casual atmosphere of freshly prepared bowls all prepared with proprietary and chef created marinades and sauces-, and other food products, side dishes, non-alcoholic beverages for on-premises and off-premises consumption and craft beer and wine. These outlets are known as "Mahana Fresh" restaurants and conduct business under a uniform business format, with specially designed or selected equipment, computer hardware and software designated by us, and specifications for the preparation and sale of freshly prepared bowls and certain other authorized food and beverage products (the "Mahana Fresh System"). We have obtained the license to use and the right to sublicense the use of certain valuable trademarks, service marks and commercial symbols in connection with the operation of Mahana Fresh Restaurants including the mark "Mahana Fresh" (the "Marks").

You have applied to us for a franchise to operate a Mahana Fresh restaurant utilizing the Mahana Fresh System and the Marks at the location identified in this Agreement. Your application has been approved by us in reliance upon all of the representations made in your application including those concerning your financial resources, your fast casual dining experience and other business interests and the manner in which the franchise will be owned and operated.

You acknowledge that you have read this Agreement and our Franchise Disclosure Document and have been given an opportunity to obtain clarification of any provision that you did not understand. You also understand and agree that the terms and conditions contained in this Agreement are necessary to maintain our high standards of quality and service and the uniformity of those standards at all Mahana Fresh restaurant.

### 2. GRANT AND TERM OF FRANCHISE.

#### 2.1. Grant.

Subject to the terms of this Agreement, Mahana Fresh grants to you a franchise to operate a Mahana Fresh restaurant (the "Restaurant") under the Mahana Fresh System and a sublicense to use the Marks in the operation of the Restaurant at the location listed in Schedule 1 of Attachment A to this Agreement. If, no previously selected or approved site is specified herein, then your initial location must be submitted to us in writing and is subject our approval or disapproval in our sole discretion, which shall be provided within thirty (30) days of your location proposal. Despite Mahana Fresh's right of approval or disapproval, Mahana Fresh shall incur no duty or responsibility to Franchisee or its owners for assuring that any site which we approve is viable, beneficial, or profitable.



## 2.2. Term of Franchise.

The term of this Agreement, unless earlier terminated pursuant to the provisions hereof, shall be for a period of ten (10) years, commencing on the date Mahana Fresh signs and accepts this Agreement (or if this Agreement is being signed in connection with a renewal or transfer of the franchise, commencing on the day following the expiration or termination of the previous franchise agreement, as the case may be).

## 3. **RENEWAL OF FRANCHISE.**

### 3.1. Option to Renew.

You may, at your option, renew the franchise for one additional ten (10) year term provided that:

- (a) you are not in material default of any provision of this Agreement or any other agreement with us or our subsidiaries or affiliates or any other creditor or supplier of the Restaurant and have substantially complied with the terms and conditions of these agreements during their terms;
- (b) at least five months prior to renewal, you pay a renewal fee equal to ten percent of Mahana Fresh's then current initial franchise fee for new restaurants;
- (c) you are able to maintain possession of the Restaurant premises or to secure and develop a suitable alternative site approved by us; and
- (d) you refurbish the site as provided in Article 8 and 14 of this Agreement or, if we require, agree to relocate the premises of the Restaurant to a location approved by us and to develop the premises in accordance with our then current requirements. If we require you to relocate the premises of the Restaurant, you will be entitled to credit the costs of developing the new premises toward any refurbishing obligations you may have under the franchise agreement executed in connection with such renewal.

This option to renew may not be exercised unless all of the preceding criteria exist. The option to renew is personal to you and may not be exercised by any other person or entity without our prior written consent.

### 3.2. Manner of Renewal.

In connection with a renewal of this Agreement, you must execute our then current form of restaurant franchise agreement and all other agreements customarily used by us in the renewal franchises. You understand that the renewal franchise agreement may provide for higher royalty fees and greater expenditures for advertising and promotion than are provided for in this Agreement and may contain other terms materially different from the terms of this Agreement. The Area of Primary Responsibility (defined below) of the Restaurant will not be modified unless such modification is consistent with criteria then in effect for comparable market areas. You may also be entitled to renew the franchise at the end of the renewal term in accordance with the renewal provisions, if any, contained in the franchise agreement executed by you in connection with your renewal of the franchise.

### 3.3. Notification of Expiration.

Provided you are in compliance with this Agreement, including the provisions of Section 3.1, we will send all agreements relating to any renewal of the franchise for your review and execution approximately six (6) months prior to the expiration of this Agreement along with a notification of the expiration of this Agreement. Your failure to return these agreements to us within thirty (30) days of receipt will be deemed an election by you not to renew this Agreement. Our notice will also state what actions, if any, you must take to correct the deficiencies in your operation of the Restaurant or whether we will require you to relocate or refurbish the premises of the Restaurant as provided in Section 3.1 above. We also will specify the time period in which these deficiencies must be corrected or by which the refurbishing or relocation and development of the new premises must be completed, provided that, in the event that the then current term

of your lease or any renewal lease does not expire concurrently with the expiration of this Agreement, we will not require you to complete a relocation of your Restaurant and development of the new premises until the expiration of the then current term of your lease or any renewal lease. If we require you to relocate the Restaurant, which we may do in our sole and absolute discretion, our notice will identify the reasons for requiring relocation. Any renewal of the franchise will be conditioned on your continued compliance with all the terms and conditions of this Agreement and all other agreements with us and our affiliates and subsidiaries and all other creditors and suppliers of the Restaurant up to the date of expiration.

#### **4. AREA OF PRIMARY RESPONSIBILITY.**

##### **4.1. Area of Primary Responsibility.**

Subject to the terms of this Agreement, Mahana Fresh grants to you the non-exclusive right to operate a Mahana Fresh™ Restaurant within a 3-mile straight-line radius from your restaurant site which we have approved (the "Area of Primary Responsibility") for so long as you remain compliant and current in all of your financial and other obligations under this Agreement.

##### **4.2. Franchisor's Reservation of Rights.**

We and our affiliates will have the right, in our sole discretion, under this Agreement and to: (i) own and operate Restaurants at any location(s) outside your Area of Primary Responsibility under the same or different marks, or to license others the right to own and operate Restaurants at any location(s) outside your Area of Primary Responsibility under the same or different marks; (ii) use the Marks and Mahana Fresh System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, including grocery Restaurants, fine dining restaurants, retail restaurants, foodservice wholesalers, catering businesses (including, without limitation, catering businesses established by us) and via the Internet at any location, including within the Area of Primary Responsibility; (iv) own and operate restaurants or businesses, or market similar products and services, at any location(s) inside your Area of Primary Responsibility under different marks, or to license others the right to own and operate restaurants or businesses, or market similar products and services at any location(s) inside your Area of Primary Responsibility under different marks; (v) acquire, or be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere; and (vi) engage and license other parties to engage in any other activities not expressly prohibited by this Agreement.

You further understand, acknowledge, and agree that we and our affiliates alone have the right, both within and outside of the Area of Primary Responsibility, to offer and sell (directly, or through other franchisees or licensees) Restaurants, kiosks, mobile units, concessions or "shop in shops". "Non-Traditional Sites" include, but are not limited to, gas stations; transportation facilities, including airports, train stations, subways and rail and bus stations; military bases and government offices and facilities; sports facilities, including stadiums, arenas; theaters; reports; amusement parks, zoos and convention centers; car and truck rest stops and travel centers; educational facilities; recreational theme parks; hospitals and health care facilities; business or industrial foodservice venues; guest lodging facilities; day care facilities of any type; condominium and cooperative complexes; the premises of any third party retailer which is not a restaurant (including shops, stores and department stores); food retailers (including supermarkets, grocery stores and convenience stores); malls and mall food courts; schools and universities; venues in which foodservice is or may be provided by a master concessionaire or contract foodservice provider; Native American reservations; casinos; or any similar captive market or any other location to which access to the general public is restricted. You understand and acknowledge that if any Non-Traditional Site is located within the physical boundaries of your Area of Primary Responsibility, then the premises of this Non-Traditional Site will not be included in your Area of Primary Responsibility, and you will have no rights to this Non-Traditional Site.

#### 4.3. Non-Traditional Sites.

Notwithstanding the foregoing, you hereby understand, acknowledge, and agree that in the event we permit you to operate a Restaurant at a Non-Traditional Site, which we are under no obligation to do, you will not receive any Area of Primary Responsibility.

### 5. **INITIAL FRANCHISE FEE, ROYALTY FEE, AND OTHER CHARGES.**

#### 5.1. Initial Franchise Fee.

Contemporaneous with the execution of this Agreement, and as a condition precedent to Mahana Fresh's obligations and duties under this Agreement, you, the Franchisee, will pay Mahana Fresh or its designee an initial franchise fee of Forty-nine Thousand Five Hundred Dollars (\$49,500.00), which shall not be refundable under any circumstances (except as may be required by state statutes, regulations, or regulatory actions).

#### 5.2. Royalty Amount and Payment.

During the term of the franchise, you agree to pay us a royalty fee of three percent (3%) of the weekly royalty sales during the first twenty-six (26) weeks of operations, and six percent (6%) of the weekly royalty sales of the Restaurant thereafter. The weekly royalty payment for the week ending on each Sunday will be paid by electronic funds transfer three days later, on Wednesday, by eight pm Eastern Standard Time pursuant to Section 5.5 below.

#### 5.3. Definition of Royalty Sales.

The term "royalty sales" means the total receipts from all sales by the Restaurant of all bowls, other food items, beverages and other products or services authorized for sale at the Restaurant or at any approved off-site location but exclusive of sales or equivalent taxes, coupon and similar discounts, and beverage container deposits approved by us. Premium or similar promotional items must be included in computing royalty sales unless these items have been sold at or below cost by the Restaurant.

#### 5.4. Technology Fee.

You must pay to us, or a third party that we designate, a technology fee for various technology services that we will provide or arrange for third parties to provide, which services are subject to change over time (a "Technology Fee"). Currently, the Technology Fee is Four Hundred Dollars (\$400) per month from the date that you open your Restaurant for business and will be billed monthly in arrears. We reserve the right to increase the Technology Fee by providing you with written notice of any change at least 30 days prior to the implementation of the new fee amount. The Technology Fee currently includes fees related to your maintenance, licensing, access to and usage of our designated software, our intranet, and the system website. We may add, delete, or otherwise modify the products and services that are included in the Technology Fee. In addition to the monthly Technology Fee, you will be responsible for any "per transaction" fee charged by third-party vendors for mobile application or online ordering.

#### 5.5. Interest on Late Payments.

All royalty fees, advertising contributions and all other amounts owed to us pursuant to this Agreement will bear interest after the due date at the rate of one and one-half percent (1.5%) per month or portion thereof at the highest legal rate plus a late fee of ten percent (10%) of all amounts due for open account business credit in the state in which the Restaurant is located, whichever is lower.

## 5.6. Electronic Funds Transfer.

Mahana Fresh requires you to participate in an electronic funds transfer program under which royalty fees and advertising contribution payments are deducted or paid electronically from your bank account. You shall sign and provide to Mahana Fresh and Franchisee's bank, all documents, including Mahana Fresh's form of EFT Authorization Form attached as Attachment D to this Agreement, necessary to effectuate the electronic funds transfer program and Mahana Fresh's ability to withdraw funds from such bank account via electronic funds transfer. You shall immediately notify Mahana Fresh of any change in your banking relationship, including any change to the electronic funds transfer program account. We may permit you to initiate payments via a system established or approved by us, or at our option, require you to authorize us to initiate debit and/or credit entries and/or credit correction entries to your Restaurant bank operating account (the "Account") for payment of royalty fees and advertising contributions on forms we prescribe. In the event you are required to authorize us to initiate debit entries, you agree to make the funds available in the Account for withdrawal by electronic transfer no later than the due date for payment. The amount actually transferred from the Account to pay royalty fees and advertising contribution will be based on the Restaurant's royalty sales reported to us. If you have not reported royalty sales of the Restaurant to us for any reporting period, we will be authorized to debit the Account in an amount equal to the royalty fee transferred from the Account for the last reporting period for which a report of the royalty sales of the Restaurant was provided to us. If at any time we determine that you have under-reported the royalty sales of the Restaurant or underpaid royalty fees or advertising contributions due us under this Agreement, we will be authorized to initiate immediately a debit to the Account in the appropriate amount in accordance with the foregoing procedure, including interest as provided for in this Agreement. An overpayment will be credited to the Account through a credit effective as of the first reporting date after we and you determine that such credit is due. Our use of electronic funds transfers as a method of collecting royalty fees and advertising contributions due us does not constitute a waiver of any of your obligations to provide us with weekly sales reports as provided in Section 13.2 nor shall it be deemed a waiver of any of the rights and remedies available to us under this Agreement.

## 5.7. Application of Payments.

When we receive a payment from you, we have the right in our sole discretion to apply it as we see fit to any past due indebtedness of yours due to us or our affiliates, whether for royalties, advertising contributions, purchases, interest, or for any other reason, regardless of how you may designate a particular payment to be applied. In addition, we may offset any amount otherwise due under any discount or rebate program against any amount owed to us.

## **6. RESTAURANT LOCATION.**

### 6.1. Location and Use.

You may operate the Restaurant only at the location specified in Section 2.1 and you may not relocate the Restaurant except with our prior written consent. The Restaurant may only be used for the operation of a Mahana Fresh Restaurant and other related activities approved by us in writing. You shall not allow the premises of the Restaurant to be used for any immoral or illegal purpose, or any other purpose that may bring disrespect or disrepute to the Marks. If no previously selected or approved site is specified in Section 2.1, then your initial location must be submitted to us and is subject our approval or disapproval. You must obtain a location that is acceptable to us within three (3) months of signing this Agreement.

### 6.2. Relocation, Damage, or Condemnation.

If your lease expires or terminates without your fault or if the site is condemned, destroyed, or rendered unusable ("Closing Event"), we may grant permission for relocation of the Restaurant to a location and site meeting our requirements, policies, and standards. Any relocation will be at your sole expense and the relocated Restaurant must be open and operating no later than six (6) months after the Closing Event. In addition, within ten (10) days of vacating the Restaurant premises, you must make such reasonable

modifications to the exterior and interior of the Restaurant (including signage, menu boards, job aids, product photos and the like) as we require to fully eliminate its identification and appearance as a Mahana Fresh Restaurant. If you fail or refuse to fully de-identify the Restaurant to the extent and in the manner required by this Agreement, we may, at our option and in addition to other rights and remedies we may have, make the modifications that are contemplated by this Agreement on your behalf and you agree to promptly pay and reimburse us on demand for any costs incurred by us including, without limitation, the proportionate compensation of our employees who devote time and render services in the de-identification of the Restaurant.

### 6.3. Restaurant Lease.

The lease for the site of the Restaurant shall contain such terms as we specify from time to time for all leases of a similar type. Each original lease, renewal leases, and lease addenda and modification of any type must be submitted to us prior to execution for our examination and approval that it contains the terms we require. You must provide us with a copy of the executed lease, any renewal lease, and any addenda and modification within thirty (30) days after execution by you and the landlord. We will condition our approval of your lease upon, among other conditions, your and your landlord's signing of a rider to the lease (which is attached to this Agreement as Attachment C), through which your landlord grants us the rights to assume your rights and obligations under the lease in the event that you breach your lease agreement, or your Franchise Agreement is terminated or expires. By approving any lease, Mahana Fresh does not render any opinion as to whether the lease is fair or equitable or as to whether the lease or the location makes good business sense or will be fair or profitable for the franchisee.

### 6.4. Assumption of Lease on Termination or Expiration.

Upon the termination or expiration of the franchise for any reason, other than a termination by you for cause, we or our designee shall have the right to assume your status and replace you as lessee. You agree to execute an assignment of your interest in the lease promptly upon our request. Upon exercise of our right to assume your status as lessee, and your compliance with the other provisions of this Article, you will be fully released and discharged from all liability to us for rent and all other future liability to us under the lease (although not from any liability for unpaid rent or any other then existing liability to the lessor under the lease, including, without limitation, any damages to the premises or restoration costs). If we exercise our right to assume your lease, we will indemnify you and hold you harmless against any claim made for future rent or other future liability under the lease. We will also notify you within ninety (90) days of obtaining your written assignment of your interest in the lease of any damages to the premises or restoration costs for which you are liable or responsible.

### 6.5. Ownership of Restaurant Premises.

If you, or any entity that you own or control, owns any interest in the real estate where the Restaurant is located, you agree to furnish to us upon request, a copy of the deed and any other documents relating to the title to the real estate and a copy of your owner's policy of title insurance.

## 7. **RESTAURANT DEVELOPMENT.**

### 7.1. Development and Construction.

You agree that promptly after obtaining possession of the site for the Restaurant you will:

- (a) cause to be prepared and submit for approval by us a site plan and any modifications to our basic architectural plans and specifications for the Restaurant, including requirements for dimensions, exterior design, materials, interior layout, equipment, fixtures, furniture, signs, and decorating. You understand that you may modify our basic plans and specifications only to the extent required to comply with applicable ordinances, building codes and permit requirements and only with our prior written approval;

- (b) obtain all required zoning changes; all required building, driveway, utility, health, sanitation, and sign permits and any other required permits;
- (c) purchase or lease fixtures, furniture and signs meeting our specifications or requirements and, if we so require, from an approved vendor or vendors designated by us;
- (d) acquire through purchase, lease and/or license the Computer System as required by Section 14.8;
- (e) complete the construction and/or remodeling, equipment, fixture, furniture, and sign installation and decorating of the Restaurant in full and strict compliance with plans and specifications approved by us and all applicable ordinances, building codes and permit requirements; and,
- (f) obtain all customary contractors' sworn statements and partial and final waivers of liens for construction, remodeling, decorating and installation services.

### 7.2. Equipment, Fixtures, Furniture and Signs.

We will provide you with specifications for bowls, any other authorized food and beverage preparation, dispensing, storage and display equipment, other equipment, fixtures, furniture, exterior and interior signs and decorating that we require you to use or install in the Restaurant. We may specify brands, types or models for any of these items. You may purchase items meeting our specifications from any source unless we designate an approved source or sources for any of these items. If you propose to purchase or lease items not previously approved by us as meeting our specifications or from a vendor not approved by us, you must first notify us and we may require submission of sufficient specifications, photographs, drawings and/or other information and samples to determine whether any such item or supplier meets our specifications or our approved vendor criteria. We will advise you within a reasonable time whether any proposed item or vendor meets our specifications or our approved vendor criteria. You agree to use only such items that meet our specifications in the operation of the Restaurant and to purchase them from approved vendors, if we so require. You understand, however, that we or our affiliates or an approved vendor may be the only source for some of these items and that we may otherwise limit the number of approved vendors. We reserve the right to charge you for our reasonable expenses in testing and/or evaluating any proposed item or vendor submitted by you and will require a \$500.00 application fee.

### 7.3. Restaurant Opening.

You agree to complete development of the Restaurant and have the Restaurant ready to open within a reasonable time after obtaining possession of the site for the Restaurant. If you do not open the Restaurant within nine (9) months from the effective date of this Agreement, we will have the option to terminate this Agreement upon the giving of written notice to you. Within one month after signing this Agreement, you are required to purchase a specified and approved advertising and promotional materials package from Mahana Fresh or our designated or approved supplier.

## **8. RESTAURANT REFURBISHING.**

You have an obligation to maintain the Restaurant in a manner which contributes positively to the then current image of the Mahana Fresh brand. You agree to refurbish the Restaurant (in addition to regular maintenance and repair), within six (6) months of receipt of written notice from us, as we may from time to time require you to maintain or improve the appearance and efficient operation of the Restaurant, to increase its sales potential or to comply with our then current standards, image, or identity. Refurbishing may include:

- (a) replacement of worn out or obsolete equipment, fixtures, furniture, and signs;
- (b) the substitution or addition of new or improved equipment, including safes, fixtures, furniture, and signs, designated by us;

- (c) redecorating;
- (d) renovation of the interior and exterior of the premises and restoration and resurfacing of parking facilities; and
- (e) structural modifications and remodeling of the premises.

You will not be required to make aggregate expenditures for refurbishing of the Restaurant in excess of one percent (1%) of the royalty sales of the Restaurant from the date of its opening to the date of any required refurbishing not to exceed the ten (10) year period prior to the date of any such required refurbishing or, except in connection with a renewal of the franchise, to effect any refurbishing of the Restaurant during the last twelve (12) months of the initial term of the franchise.

For purposes of this Section 8, the term equipment shall not include computer hardware or other components of the Computer System (as defined in Section 14.8). Any additions, substitutions, replacements, or modifications to the Computer System shall be governed by the provisions of Section, 14.8 of this Agreement.

## **9. TRAINING.**

### **9.1. Initial Training.**

If you (or the Controlling Person if you are an Approved Entity) are opening your (or his or her) first Mahana Fresh Restaurant, you (or the Controlling Person) must enroll in and complete all training programs and classes which we require for the operation of a Mahana Fresh Restaurant. These training programs and classes will be furnished at such times and places as we designate. We have the right to charge a reasonable training fee for these training programs or classes. All training programs and classes must be completed to our satisfaction. You will be responsible for the travel, living expenses and any other costs incurred during these training programs and classes. Should you or your employee fail to complete the initial training program to our satisfaction, at our option, the respective person may repeat the course, or in the case of an employee, you may send a replacement (the "Replacement Personnel") to the next available training programs and classes. Failure by you, your employee, manager, or any Replacement Personnel to complete the training programs and classes to our satisfaction is a material breach of this Agreement and we may terminate this Agreement.

### **9.2. Onsite Training.**

You agree you pay us an onsite training fee in the amount of \$10,000 ("Onsite Training Fee") within thirty (30) days of receipt of our invoice. Onsite Training shall begin the week before the opening date of the Restaurant and shall last until a week after the opening date. In the event that you open more than one Restaurant, the Onsite Training Fee shall only be imposed for the first location unless you request onsite training for an additional restaurant.

### **9.3. Training of Employees.**

You agree to implement a training program for employees of the Restaurant and to be solely responsible for training each employee to legally, safely and properly perform his or her duties while inside the Restaurant and while outside the Restaurant for business purposes, including training your employees to follow appropriate procedures for their safety and well-being. You agree not to employ any person who fails or refuses to complete your training programs or is unqualified to perform his or her duties in accordance with the requirements established for the operation of a Mahana Fresh Restaurant. You acknowledge and understand that implementing a training program for employees of the Restaurant and training your employees to follow safe and proper procedures for the operation of the Restaurant will remain your sole responsibility even if, from time to time, you obtain advice or suggestions from us or our affiliates about these topics. You further acknowledge and understand that it is not our responsibility or duty to implement Mahana Fresh, LLC

a training program for your employees, nor do we have the responsibility or duty to instruct your employees about matters of safety and security in the Restaurant or elsewhere. By providing advice or suggestions, we do not assume any of your responsibilities or duties.

#### 9.4. Additional Training.

We may also, at our option, require you (or the Controlling Person if you are an Approved Entity) to attend supplemental or additional training programs which may be offered from time to time by us or our affiliates during the term of the franchise. The fee for such training shall range from between Zero (\$0) and Five Hundred Dollars (\$500.00) per training class. You will be responsible for the reasonable costs of such programs and for the travel and living expenses and any other costs incurred during these programs. You must complete this supplemental or additional training within one (1) year of the time in which it is originally offered by us or our affiliates or designees. If you request us to provide additional training programs for new or replacement personnel after your Restaurant has opened for business, we may offer such additional training programs in our discretion, and you must pay us \$1,000 per week for each of our employees who provide such additional training, plus the travel and living expenses and any other costs incurred by us in providing this additional training.

#### 9.5. Convention.

We may establish and hold a convention for franchisees and if we do so, you will be required to attend. We reserve the right to charge our then-current conference fee for your attendance at any required conference or seminar, regardless of whether or not you attend, and you will be responsible for the travel and living expenses for you and your personnel to attend the conference or seminar.

### **10. OPERATING ASSISTANCE.**

#### 10.1. Advice and Guidance.

We may furnish you with such reasonable operating assistance as we determine from time to time to be necessary for the operation of the Restaurant. You acknowledge and understand that it is not our responsibility or duty to operate the Restaurant and we do not have the legal right to direct your employees in the operation of the Restaurant. Those functions remain your sole responsibility and duty. Further, you understand that the assistance provided to you under this Section 10 does not obligate us to provide the accounting, bookkeeping or marketing services required for the operation of the Restaurant or to otherwise operate the Restaurant. By providing any advice or suggestions, we do not assume any of your responsibilities or duties.

#### 10.2. Operating Problems.

We may advise you from time to time of operating problems of the Restaurant disclosed by reports submitted to or inspections made by us or our designee. We will make no separate charge for any operating or marketing assistance except that we may make reasonable charges for forms and other materials supplied to you and for operating assistance made necessary in our judgment as a result of your failure to comply with any provision of this Agreement or for operating assistance requested by you in excess of that normally provided by us. By providing any advice or suggestions, we do not assume any of your responsibilities or duties.

### **11. RESTAURANT PRODUCTS.**

#### 11.1. Restaurant Menu.

You agree that you will offer for sale and sell at the Restaurant for final consumption and not for resale, all bowls and other authorized food and beverage products that we from time to time authorize, provided, however, you may offer for resale any authorized products for certain programs which may be approved by Mahana Fresh, LLC



us in our sole and absolute discretion, considering factors including but not limited to: (i) quality assurance; (ii) brand image; and, (iii) such other factors as we determine. You also agree that you will not offer for sale or sell at the Restaurant any other products or services except those authorized by Mahana Fresh in writing.

### 11.2. Ingredients, Supplies, and Materials.

All bowls and other food ingredients, beverage products, cooking materials, containers, packaging materials, other paper and plastic products, utensils, uniforms, menus, forms, cleaning and sanitation materials and other supplies and materials used in the operation of the Restaurant must conform to the specifications and quality standards established by us from time to time. You must use in the operation of the Restaurant boxes, cups, plates, containers and other paper or plastic products imprinted with the Marks as prescribed from time to time by us. We may in our sole and absolute discretion require that ingredients, supplies, and materials used in the preparation, service or packaging of bowls and other authorized food products be purchased exclusively from us, our affiliates or from approved suppliers or distributors.

You agree to request delivery of food products to your Restaurant in quantities and in a manner that is consistent with policies prescribed from time to time by us.

In the event you wish to purchase any ingredient, supply or material not previously approved by us, including inventory, and/or acquire such items from an unapproved supplier, you must provide us the name, address and telephone number of the proposed supplier, a description of the item you wish to purchase, and the purchase price of the item, if known. At our request, you must provide us with a sample of the item you wish to purchase for testing purposes. If we incur any costs in connection with testing a particular product or evaluating an unapproved supplier at your request, you must reimburse our reasonable testing costs, regardless of whether we subsequently approve the item or supplier.

We will use our best efforts to notify you of our approval or disapproval of a particular supplier or product within 30 days of receiving all requested information. If we do not respond within 30 days, the supplier or product is deemed disapproved. We are not required to approve any particular supplier or product. We may base our approval of a proposed item or supplier on considerations relating not only directly to the item or supplier, but also indirectly to the uniformity, efficiency, and quality of operation we deem necessary or desirable in our System as a whole. We have the right to receive payments from suppliers on account of their dealings with you and other franchisees and to use all amounts we receive without restriction (unless instructed otherwise by the supplier) for any purposes we deem appropriate. We will not approve an unreasonable number of suppliers for a given item, which approval might, in our reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Our criteria for approval of a particular supplier or product will be made available upon written request. We may revoke our approval of particular products or suppliers when we determine, in our sole discretion, that such products or suppliers no longer meet our standards. Upon receipt of written notice of such revocation, you must cease purchasing products from such suppliers. You must use products purchased from approved suppliers solely in connection with the operation of your Restaurant and not for any competitive business purpose.

### 11.3. System Changes.

We reserve the right to supplement, change, alter, modify, or make substitutions for the Mahana Fresh System menu items, product and service offerings, trademarks, business methods, advertising methods and marketing methods in efforts to improve the System and its competitiveness as we see fit in our business judgment, which may be exercised in our sole and absolute discretion. We may change the components of the Mahana Fresh System (and the requirements of the Mahana Fresh System), including, for example, changing the food products, beverages, programs, methods, standards, forms, policies, procedures, and services of the Mahana Fresh System, and adding to, deleting from or modifying the programs, services and products which we authorize or require you to conduct or offer. You must comply with any of these modifications, additions, deletions, substitutions, and alterations. However, the changes will not materially

and unreasonably increase your obligations under the Franchise Agreement.

#### 11.4. Virtual Kitchen Products.

We may permit you offer additional products under marks that we have licensed from third parties as a “ghost kitchen” or “virtual kitchen” (“Virtual Kitchen Products”) but we are under no obligation to do so. Virtual Kitchen Products are food products which are marketed under a name other than the “Mahana Fresh” Marks and are prepared at your Restaurant and made available for delivery to customers through third-party delivery services such as DoorDash, UberEats, PostMates, and similar service providers. You may not offer Virtual Kitchen Products without our prior written approval. We may revoke our approval of any Virtual Kitchen Products at any time, even if we have previously granted you approval. If we permit you to offer Virtual Kitchen Products, revenue generated from the sale of Virtual Kitchen Products will be included in the definition of “Gross Sales” under this Agreement.

### 12. **ADVERTISING AND PROMOTION.**

#### 12.1. By Mahana Fresh.

We or our designee may from time to time formulate, develop, produce, and conduct advertising and promotional programs in the form and media as we or our designee determines to be most effective. You agree to participate in all national and local and regional advertising and promotions as we determine to be appropriate for the benefit of the Mahana Fresh System. You further agree to honor any maximum pricing we may prescribe from time to time for any such national or local or regional advertising and promotions. We reserve the right, in our sole and absolute discretion, to determine the composition of all geographic territories and market areas for the development and implementation of advertising and promotional programs. All costs of the formulation, development, and production of any such advertising and promotion (including without limitation the proportionate compensation of our employees who devote time and render services in the formulation, development and production of such advertising and promotional programs or the administration of the funds), may be paid from a separate fund administered by a separate not for profit entity (the "Advertising Fund"). You will be obligated to pay a specified percentage of the weekly royalty sales of the Restaurant to the Advertising Fund. The Advertising Fund Contribution will begin at two percent (2%) of weekly royalty sales and may be increased periodically by Mahana Fresh up to a maximum total four percent (4%) of weekly royalty sales. Your contribution to the Advertising Fund must be paid by electronic funds transfer on Wednesday of each week on royalty sales for the week ending on the preceding Sunday as provided in Article 5 of this Agreement. You agree that we shall have the right from time to time to increase your contribution to the Advertising Fund by an amount not to exceed in the aggregate four percent (4%) of the royalty sales of the Restaurant. Mahana Fresh Restaurants owned by us or our affiliates will contribute to the cost of such advertising and promotional programs at least the same rate. We will submit to you upon request an annual statement of monies collected and costs incurred by the Advertising Fund. We reserve the right to engage the services of an advertising source or sources to formulate, develop, produce and conduct the advertising and promotional programs, the cost of such services to be payable from the Advertising Fund. You acknowledge and understand that the Advertising Fund is intended to maximize general public recognition and patronage of the Marks in the manner determined to be most effective by us and our affiliates and that neither we nor our affiliates undertake any obligation in developing, implementing or administering these programs to ensure that expenditures which are proportionate or equivalent to your contributions are made for the market area of the Restaurant or that any Mahana Fresh Restaurant, area developer, or franchisee will benefit directly *or pro rata* from the placement of advertising.

#### 12.2. By Franchisee.

All advertising and promotion by you, including, but not limited to, all advertising and promotion conducted by you in print, or on radio, television, the Internet, and other electronic media, must be completely factual and shall conform to the highest standards of ethical advertising and be consistent with the then current image and policies relating to advertising and promotional programs of a Mahana Fresh Restaurant. You must obtain our advance written approval prior to using or producing any advertising or marketing materials

using any of the Marks, in whole or in part. We will have the final decision on all creative development of advertising and promotional messages. If our written approval is not received within 14 days from the date we received the material, the material is deemed disapproved. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

### 12.3. Marketing and Advertising Fund.

We have established an Advertising and Marketing Fund for the common benefit of System franchisees. Currently, you must contribute 2% of your royalty sales to the Advertising and Marketing Fund in the manner we prescribe, and participate in Advertising and Marketing Fund programs. We reserve the right to increase your Advertising and Marketing Fund Contribution to up to 4% of royalty sales upon 30 days' notice to you. We have the right to use Advertising and Marketing Fund Contributions, in our sole discretion, to develop, produce, and distribute national, regional and/or local advertising and to create advertising and public relations materials which promote, in our sole judgment, the products offered by System franchisees. We may use the Advertising and Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising. We are not obligated to expend monies from the Advertising and Marketing Fund in any particular franchisee's market in proportion to the payments to the Advertising and Marketing Fund made by the franchisee in that market. We do not represent that we will spend any particular amount of Advertising and Marketing Funds locally, regionally, or nationally.

We shall administratively segregate all contributions to the Advertising and Marketing Fund on our books and records. All such payments to the Advertising and Marketing Fund may be deposited in our general operating account, may be commingled with our general operating funds, and may be deemed an asset of ours, subject to our obligation to expend the monies in the Advertising and Marketing Fund in accordance with the terms hereof. We may, in our sole discretion, elect to accumulate monies in the Advertising and Marketing Fund for such periods of time, as we deem necessary or appropriate, with no obligation to expend all monies received in any fiscal year during that fiscal year. In the event our expenditures for the Advertising and Marketing Fund in any one fiscal year shall exceed the total amount contributed to the Advertising and Marketing Fund during such fiscal year, we shall have the right to be reimbursed to the extent of such excess contributions from any amounts subsequently contributed to the Advertising and Marketing Fund or to use such excess as a credit against its future contributions. The parties do not intend that the Fund be deemed a trust.

We use Advertising and Marketing Fund Contributions to develop and prepare advertising which we distribute to System franchisees for their placement in the local media. The advertising is prepared by us and by outside sources. If we do not spend all Advertising and Marketing Fund Contributions by the end of each fiscal year, the funds will be carried forward into the next fiscal year. There is no requirement that the Advertising and Marketing Fund be audited. Upon your written request, we will provide you with an unaudited accounting of Advertising and Marketing Fund expenditures.

We have the sole right to determine how to spend the Advertising and Marketing Fund Contributions, or funds from any other advertising program, and the sole authority to determine the selection of the advertising materials and programs, provided, however, that we will make a good faith effort to expend such funds in the general best interests of the System on a national or regional basis. We are not required, under the Franchise Agreement, to spend any amount of Advertising and Marketing Fund Contributions in your Area of Primary Responsibility and not all System franchisees will benefit directly or on a pro rata basis from our expenditures. We have the right to reimbursement from the Advertising and Marketing Fund Contributions for reasonable costs and overhead, if any, as we may incur in activities which are reasonably related to directing and implementing the Advertising and Marketing Fund and advertising programs for franchisees and the System, including costs of personnel for creating and implementing advertising, promotional and marketing programs.

#### 12.4. Local Advertising.

In addition to the Marketing and Advertising Fund Contributions described above, you must spend a minimum of two percent (2%) of royalty sales per month on local advertising and promotion implemented in a format and using materials and designs approved by us as your “Local Advertising, Marketing, and Promotional Expenditure”. You may spend any additional sums you wish on local advertising. You are permitted to use your own advertising materials, so long as you have submitted them to us for approval before your use. We have the right, in our discretion, to require you to submit receipts documenting this marketing activity.

#### 12.5. Cooperatives.

We have the right, in our discretion, to designate any geographic area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”). All franchisees in the designated geographical area must participate in the Cooperative. Cooperative contributions will be credited towards your Local Advertising, Marketing, and Promotional Expenditure, and will not exceed the Local Advertising, Marketing, and Promotional Expenditure unless a majority of the Cooperative’s members vote to spend an amount greater than the Local Advertising, Marketing, and Promotional Expenditure on advertising. Each Cooperative will be organized for the exclusive purpose of administering regional advertising programs and developing, subject to our approval, standardized advertising materials for use by the members in local advertising. No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without our prior approval. All such plans and materials will be submitted to us in accordance with the procedure set forth in Section 12.1 of this Agreement. We may grant to any franchisee, in our sole discretion, an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating reasons supporting such exemption. Our decision concerning such request for exemption will be final.

#### 12.6. Advertising Council

We reserve the right to establish an advertising council (“Advertising Council”). If we establish an Advertising Council, it will serve in an advisory capacity to us with respect to certain advertising expenditures, including providing advice/guidance on how to administer the Advertising and Marketing Fund. At our discretion, the Advertising Council may be comprised of our management representatives, employees, you and/or other franchisees in the System. We will have the right to modify or dissolve an Advertising Council (if created) at any time.

#### 12.7. Grand Opening Advertising

You must pay us \$20,000 to conduct a grand opening advertising campaign on your behalf. You can expend any additional amounts that you wish on a grand opening advertising campaign, and we estimate that you will do so. If this is your first Franchised Restaurant you open with us, then you will be required to spend a total of at least \$20,000 in the four weeks before and the eight weeks after the opening date. We will require you to deposit \$20,000 (or a higher amount if you agree to a higher grand opening budget) with us upon receipt of an invoice from us. We will invoice you approximately sixty days prior to the planned opening date.

### **13. RECORDS AND REPORTS.**

#### 13.1. Bookkeeping and Recordkeeping.

You agree to establish and retain a bookkeeping, recordkeeping, computer and point of sale system conforming to any requirements which may be prescribed by us, relating, without limitation, to the use and retention of daily sales information, counts of bowl types and other approved menu items sold, coupons, purchase orders, purchase invoices, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, checks and credit card sales, journals and general ledgers,

including any comparable electronically generated information or any supporting records or materials we may require or prescribe. You agree to retain all business records and reports (whether paper or electronically generated) relating to the Restaurant in accordance with record retention policies and guidelines prescribed by us, from time to time, and for the time limits required by all applicable laws, ordinances, and regulations. Upon notice to you, you agree that we shall have full access, either on-site or from a remote location, to all of your computer data, equipment and systems containing any and all of the information, records and reports required by this Section 13.1 or any other provision of this Agreement. In addition, you agree to provide us with access to all such data, equipment and systems to facilitate the exchange of information you are required to provide us under this Agreement. Any information provided by you shall be used by us in a lawful manner.

### 13.2. Sales Reports and Financial Statements.

You agree to submit to us, in accordance with requirements prescribed by us from time to time (initially in thirteen four-week reporting periods per year) and in a format which we may designate from time to time:

- (a) at the same time the royalty fee is due, a weekly report of the sales of the Restaurant and all other information and supporting records as we may require or request;
- (b) within sixty (60) days of the end of each calendar quarter;
  - (i) a statement of cash flow and cash on hand, an unaudited balance sheet as of the end of each a calendar quarter and an unaudited quarterly statement of profit and loss and financial condition of the Restaurant prepared on an accrual basis;
  - (ii) if you are a corporation, partnership or other approved entity, a cash flow and cash on hand, an unaudited balance sheet as of the end of the quarter and an unaudited statement of profit and loss of the corporation, partnership or approved entity prepared on an accrual basis; and,
  - (iii) if you have additional Mahana Fresh Restaurants, a consolidated statement of profit and loss for all of your operations, including any additional Mahana Fresh Restaurants which you own and all administrative operations. The statements must be prepared in accordance with generally accepted accounting principles by an accountant in the manner prescribed by us;
- (c) promptly upon our request and within twenty (20) days of the end of the month or period, in the manner as we may prescribe, and continuing for such period of time as we may from time to time designate:
  - (i) a statement of cash flow and cash on hand, an unaudited balance sheet as of the end of the month or period and an unaudited statement of profit and loss of the Restaurant prepared on an accrual basis for each month or period;
  - (ii) if you are a corporation, partnership or other approved entity, a statement of cash flow and cash on hand, an unaudited balance sheet as of the end of the month or period and an unaudited statement of profit and loss of the corporation, partnership or approved entity prepared on an accrual basis for each month or period; and,
  - (iii) a consolidated statement of profit and loss for all of your Mahana Fresh Restaurants for each month or period;
- (d) if you are in default under any of the terms or conditions of this Agreement, statements submitted on a quarterly basis affirming that all federal, state, and local taxes have been paid;
- (e) upon our written request, exact copies of your federal, state, and local business income tax returns and state sales tax or equivalent tax returns for any period; and,

(f) such other information as we may reasonably require or request to determine you and your owners' compliance with this Agreement or to assist you in the operation of the Restaurant or to otherwise evaluate the performance of the Restaurant, including information about the sales and receipts of the Restaurant.

### 13.3. Right to Require Audit.

We reserve the right to audit the sales reports, financial statements, tax returns, information from the Restaurant's computer system, and any other records you are required to retain or submit to us. In the event any audit discloses an understatement of the royalty sales of the Restaurant for any period or periods, you must pay on the amount of such understatement the royalty fee of six percent (6 %), all advertising contributions due under this Agreement and the amount, if any, required to be paid to your local or regional cooperative as provided in this Agreement, plus interest due. Further, in the event such understatement for any period or periods shall be three percent (3%) or more of the royalty sales of the Restaurant or such inspection or audit is made necessary by your failure to furnish reports, supporting records, financial statements or other information required by this Agreement or to furnish these reports, records, information or financial statements on a timely basis, you will be obligated to reimburse us for the cost of the audit, including the charges of any attorney and/or independent certified public accountant used and the travel expenses, room and board and compensation of our employees or anyone we engage to conduct the audit. In the event you dispute the results of any audit conducted by us or our representatives, you will have the right, upon written notice to us within ten (10) days of your receipt of the results of our audit, to have the results verified by an independent certified public accounting firm selected by our outside accounting firm. The expense of this audit shall be borne by you unless this further audit discloses that no deficiency is due in which case we will be obligated to pay for the audit. We will notify you within ten (10) days of our receipt of your notice when the independent audit will commence. You agree to cooperate with all personnel conducting the audit. The results of the independent audit shall be binding upon the parties. You agree to pay any deficiencies within ten (10) days after receipt of our audit or, if applicable, the independent audit requested by you.

## 14. **OPERATING REQUIREMENTS.**

### 14.1. Operating Procedures.

You agree to fully comply with all specifications, standards and operating procedures and rules from time to time prescribed for the operation of a Mahana Fresh Restaurant, including, but not limited to, specifications, standards and operating procedures and rules relating to:

- (a) offering all of and only the approved products and services from your Mahana Fresh Restaurant;
- (b) the safety, maintenance, cleanliness, sanitation, function and appearance of the Restaurant premises and its equipment, (including computer hardware, software, peripheral devices, high speed broadband connectivity, high speed broadband monitoring, and methods and means of encryption and access to our network resources), image, fixtures, furniture, decor and signs;
- (c) qualifications, dress, grooming, general appearance and demeanor of you and your employees;
- (d) quality, taste, portion control and uniformity, and manner of preparation and sale, of all bowls and other authorized food and beverage products sold by the Restaurant and of all ingredients, supplies and materials used in the preparation, packaging and sale of these items;
- (e) methods and procedures relating to accepting customer orders or serving customers;
- (f) the hours during which the Restaurant will be open for business;
- (g) use and illumination of exterior and interior signs, posters, displays, menu boards and similar items;

- (h) the handling of customer complaints;
- (i) advertising on the Internet or other electronic media, including websites, home pages and the use of domain names;
- (j) use and limitations on use of Facebook, Twitter, Instagram, and other social media ("Social Media");
- (k) e-mail capabilities of the Restaurant and other electronic communication methods (including high speed broadband connectivity, high speed broadband monitoring, and methods and means of encryption and access to our network resources) and devices to facilitate communication with us or our offices, including the exchange of information between the Restaurant and us; and
- (l) the methods and manners of payments which will be accepted from customers.

By entering into this Agreement, you agree to abide by these specifications, standards, operating procedures, and rules and to fully adopt and implement them.

#### 14.2. Compliance with Laws and Other Business Practices.

You agree to secure and maintain in force all required licenses, permits, and certificates and to operate the Restaurant in full compliance with all applicable laws, ordinances, and regulations, including without limitation workers' compensation insurance and taxation laws. You also agree to pay when due all amounts payable pursuant to any provision of this Agreement or any other agreement with us or our affiliates or subsidiaries or pursuant to any agreement with any other creditor or supplier of the Restaurant. You shall file all tax returns and pay all taxes before they become delinquent. You agree not to permit any levy or warrant to be issued by any taxing authority or other creditor, (excluding mechanics liens and other immaterial liens), against any of your assets, nor allow any of your assets to be seized or frozen by any taxing authority or other creditor. Furthermore, if you are subject to any withholding taxes on royalty fees or other payments due, you shall provide us with quarterly evidence that such tax has been remitted to the appropriate governmental agency on a quarterly basis.

You agree to abide by the Payment Card Industry Data Security Standards enacted by the applicable Card Associations, as applicable to your business. If you know or suspect a security breach which has or may result in instances of identity theft, data breach or any other theft of information involving your employees or customers of your Restaurant (a "Cyber Event"), you shall immediately notify us. You shall promptly identify and remediate the source of the compromise. You assume all responsibility for providing all notices of breach or compromise and all duties to monitor credit histories and transactions concerning your customers. Without limiting the generality of other provisions of this Agreement, you agree to defend, indemnify and hold us and our affiliates harmless from and against any and all claims, demands, duties, obligations, damages, fines and/or penalties imposed upon you as a result of non-compliance with the Payment Card Industry requirements or any Cyber Event involving your Restaurant.

#### 14.3. Operating Manual.

We will license to you for no charge during the term of the franchise one copy of an operating manual or operational bulletins or similar materials containing mandatory and suggested specifications, standards and operating procedures and rules prescribed from time to time by us and information relative to your other obligations under this Agreement and the operation of the Restaurant (the "Operating Manual"). The entire contents of the Operating Manual will remain confidential and are proprietary to us and our affiliates. We will have the right to add to and otherwise modify the Operating Manual from time to time, if deemed necessary or advisable to improve the standards of service or product quality or the efficient operation of the Restaurant, to protect or maintain the goodwill associated with the Marks, to take advantage of advancements in technology, or to meet competition. No such addition or modification, however, shall alter your fundamental status and rights under this Agreement. The provisions of any Operating Manual as

modified from time to time, including the mandatory specifications, standards and operating procedures and rules prescribed from time to time by us and communicated to you in writing, will constitute provisions of this Agreement as if contained in this Agreement. Additional or replacement copies of the Operating Manual may be licensed for \$250.

#### 14.4. New Concepts.

If you develop any new concept, process or improvement or any slogan in the operation or promotion of the Restaurant, or technology used in connection with the operation of the Restaurant, you agree to promptly notify us and provide us with all necessary information without compensation. You hereby assign to us any such concept, process, improvement or slogan and you acknowledge that they are and shall become our property and that we may utilize or disclose them to our affiliates and other franchisees and that we may patent, trademark or copyright them at our expense.

You agree to assist us in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide us with all necessary documentation for obtaining and enforcing such rights. You will irrevocably designate and appoint us as your agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process, or improvement. In the event that such provisions of this Agreement are found to be invalid or otherwise unenforceable, you and your principals will grant to us a worldwide, perpetual, non-exclusive, fully paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe on your rights to the new concepts.

#### 14.5. Franchisee Must Directly Supervise Restaurant.

You (or the Controlling Person if you are an Approved Entity) are obligated to actively, personally, and frequently monitor and supervise the performance and operation of each Restaurant franchised to you. Each Restaurant must also be under the direct, on-premises supervision of either you directly or of a manager:

- (a) who has been properly trained by you;
- (b) who has been approved by us and whose identity has been disclosed to us; and,
- (c) who shall have executed, upon our request, an agreement in the form provided by us agreeing not to divulge any trade secret or confidential or proprietary information, including without limitation the contents of the Operating Manual, or to engage in or have any interest in any bowls Restaurant business (as "bowls" is defined below in Section 19.1).
- (d) In the event that your Controlling Person resigns or is otherwise terminated, you must hire a replacement approved by us in writing who meets our then current standards for Controlling Person and who is approved by us in writing before hiring, within 30 days after the resignation or termination of the former Controlling Person. You must train the new Controlling Person within 30 days of hiring.
- (e) Your Controlling Person and certain key employees and their spouses will be bound by the confidentiality and non-compete covenants of the Franchise Agreement and will execute the Confidentiality and Restrictive Covenant Agreement attached as Attachment E to this Agreement.

#### 14.6. Insurance.

You shall at all times during the term of the franchise maintain in force at your sole expense:

- (a) property insurance on a replacement cost basis at a minimum limit based on the total value of your assets (including, but not limited to, fire, extended coverage, vandalism, and malicious mischief);



general liability insurance with a minimum limit of \$1,000,000.00 per occurrence (including, but not limited to, coverage for personal injury, products, and contractual liability);

(b) if the franchisee, the Approved Entity, or any of their owners uses any vehicles for business purposes which is owned or leased in whole or in part in the name of your business, automobile liability insurance with a minimum limit of \$500,000.00 per occurrence (including, but not limited to, owned automobiles titled or leased in the name of you or your owners and used at any time, whether principally or occasionally in your business, hired and non-owned coverage). If you or your owners do not use a vehicle owned or leased in the name of you or any of your owners in your business, you must provide written evidence of that fact that is satisfactory to us; and,

(c) workers' compensation insurance (in your name) as required by applicable law. If no such law exists, then you must participate in such other comparable insurance or benefit programs for your employees as required by us. If your state recognizes and permits self-insurer programs, your participation in such a program will satisfy our requirements under this subsection (d). If deductible plans are approved and used in your state, coverage may be purchased on this basis subject to the requirements of your insurance carrier. You agree to comply with applicable state law with respect to workers' compensation reporting and payment and maintenance of workers' compensation taxes and/or insurance premiums.

All liability insurance policies must name us, and any subsidiaries and affiliates which we designate, as additional insureds entitled to the coverage afforded to all named insureds, without regard to any other insurance or self-insured program which we or our affiliates or subsidiaries may have in effect, and also provide that we receive thirty (30) days prior written notice of termination, expiration, cancellation, modification or reduction in coverage or limits of any such policy. The terms and conditions of all such policies, including the amount of any deductibles, shall be consistent with the requirements prescribed from time to time by us. You agree to promptly pay when requested by the insurer the amount of the deductible applicable to, and in the event of, any covered loss.

All insurance policies (excluding workers' compensation policies) must be issued by an insurance carrier rated A- or better by Alfred M. Best & Company, Inc. or meeting such other rating criteria we may establish from time to time. We may also reasonably increase the minimum liability "limit" protection requirement annually and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards in public, product or motor vehicle litigation or other relevant changes in circumstances. You must submit to us annually a copy of the certificate of insurance or evidence of the renewal or extension of each such insurance policy or any modifications to any such insurance policies, which must describe the applicable deductibles for each such policy. If at any time you fail or refuse to maintain in effect any insurance coverage required by us, or to furnish satisfactory evidence of such insurance, we may, at our option and in addition to other rights and remedies we may have, obtain insurance coverage, on your behalf, and you agree to promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us on demand any costs and premiums incurred by us. Your obligation to obtain and maintain the insurance described in this Agreement shall not be limited in any way by reason of any insurance maintained by us.

#### 14.7. Identification as Independent Franchisee.

You agree to exhibit on the Restaurant premises signs of sufficient prominence and wording as we may prescribe from time to time so as to advise the public that the Restaurant is owned, operated, and maintained by you as an independent franchisee. All business cards, letterheads and other business materials shall clearly identify that you are the owner of the Restaurant in accordance with the rules or policies we may establish from time to time in the Operating Manual or otherwise in writing. In addition, subject to rules and policies that may be established from time to time, all local advertising, including yellow page listings and advertisements that are placed by you or on your behalf, and which do not contain phone numbers or addresses that are associated with restaurants that we own or operate, shall either indicate that you are the owner of the restaurant or restaurants in the print material, or that the restaurant or restaurants are locally owned and operated.

#### 14.8. Computer Hardware and Software and Other Technology and Signs.

##### (A) Computer System.

You agree to use in the development and operation of the Restaurant any management system and computer hardware and software and related technology designated by us, including without limitation, features such as high speed broadband connectivity, high speed broadband monitoring, online ordering, mobile apps, methods and means of encryption and access to our network resources, and other internet-based technology and peripheral devices that we specify from time to time (the "Computer System"). You acknowledge that we may modify all aspects and the components of the Computer System from time to time. As part of the Computer System, we may require you to obtain computer hardware and/or software we specify from one or more vendors designated by us and we or our affiliates may be the sole or shared supplier of all or any part of the Computer System. You agree to use only such items and services as we specify in connection with the Computer System. We may require that you enter into a license exclusively with us or our affiliates to use proprietary software developed by or for us. You may also be required to enter into agreements with others for use of third-party software incorporated or used in connection with the Computer System. Our modification of such specifications or components for the Computer System may require you to incur costs to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System during the term of this Agreement. You acknowledge that the cost to you of obtaining the Computer System (including software licenses) (or additions, substitutions, replacements or modifications thereto) may not be fully amortizable over the remaining term of this Agreement. Nonetheless, subject to the provisions of Section 14.8(B) below, you agree to incur such costs in connection with obtaining the computer hardware and software comprising the Computer System (or additions, substitutions, replacements or modifications thereto). You further acknowledge and agree that we have the right to charge reasonable fees for software or systems modifications and enhancements specifically made for us that are licensed to you and other maintenance and support services that we or our affiliates furnish to you related to the Computer System. You may also incur charges from third parties who render services or provide products that we require you to purchase or use. We shall have independent access to data on your Computer System, including sales figures. There are no contractual, legal or implied limitations on our right to access this information and data.

If and at such time we develop and custom design any software programs for conducting scheduling, accounting, inventory and point-of-sale functions and related activities ("Proprietary Software Program"), you, at your own expense, agree to obtain the computer hardware required to implement the Proprietary Software Program into your Restaurant, and to comply with all specifications and standards prescribed by us regarding the Proprietary Software Program, as provided in the Operating Manual or otherwise in writing. This Proprietary Software Program will be proprietary to us and Confidential Information of ours. It is possible that we might not be able to alter the Proprietary Software Program to accommodate each and every franchisee of the System, and therefore, at such time that we require the implementation of such software, you will only utilize the program as prescribed by us. At such time as we require the implementation of such Proprietary Software Program, we or our designee agree to provide ongoing service and support to you regarding the Proprietary Software Program and will lease such Proprietary Software Program to you at the then current rates published by us. We reserve the right to have independent access to any data you collect electronically. You must install, at your expense, the necessary computer hardware and software to provide us with full and direct electronic access to all of your data, software systems, and related information.

If and at such time that we develop online portals for your use in connection with the development and operation of your Mahana Fresh Restaurant ("Designated Franchise Portal") you and your Principal Owner or any other Owner and/or General Manager must actively use and monitor the Designated Franchise Portal and must log into the Designated Franchise Portal at least once per week.

You acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and

opportunities, you agree that we shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the Mahana Fresh System; and you agree to abide by and fully adopt and implement those reasonable new standards established by us as if this Article 14.8 were periodically revised by it for that purpose.

(B) Aggregate Expenditures for Computer System.

After the time of the initial purchase of an approved or specified computer system and software, the cost of which may exceed this amount, you will not be required to make additional aggregate expenditures for any additions, substitutions, replacements or modifications to the Computer System in excess of one half percent (1/2 %) of the royalty sales of the Restaurant from the date of its opening to the date we require you to make any additions, substitutions, replacements or modifications to the Computer System not to exceed the ten (10) year period prior to the date we require you to make any additions, substitutions, replacements or modifications to the Computer System or, except in connection with a renewal of the franchise, to make any additions, substitutions, replacements or modifications to the Computer System during the last twelve (12) months of the initial term of the franchise. This limitation shall not apply to our right to require that you acquire and install any Mahana Fresh standard Computer System upon execution of this Agreement, nor shall the provisions of any prior franchise agreement governing the operation of the Restaurant restrict our right to require that you acquire and install any Mahana Fresh standard Computer System under the terms of this Agreement.

(C) Mahana Fresh Standard System and Other Computer and Technology Training.

If you (or the Controlling Person if you are an Approved Entity) have not installed and used any Mahana Fresh standard Computer System, or any other computer system or technology that we require, in a Mahana Fresh Restaurant, you (or the Controlling Person) must enroll in and complete all training programs and classes which we may require or request for the operation of any Mahana Fresh standard Computer System, or any other computer system or technology. These training programs and classes will be furnished at such times and places as designated by us or the entity or entities that we approve to provide the training. We may furnish training. The entity furnishing the training (including us) has the right to charge a reasonable training fee for these training programs or classes, which you agree to pay. All training programs and classes must be completed to our satisfaction. You will be responsible for the travel, living expenses and any other costs incurred during these training programs and classes.

(D) Mahana Fresh Sign and Display Standards and Specifications.

We reserve the right to specify and designate by brand, model, size, type and any other relevant standards or specifications the digital and other signs and displays which must be used or displayed in yours and any other Mahana Fresh Restaurant, including the right to require that you purchase any relevant signs or displays from us or from our affiliates. To the extent any training is necessary or helpful with respect to digital or other signs or displays designated or specified by Mahana Fresh, the provisions of Section 14.8(C) of this Agreement shall apply to digital display and sign technology as well.

(E) Websites.

You must have and maintain adequate hardware and software in order to access the Internet at the bit speed we require from time to time. We may, but are not obligated to, establish an Internet website that provides information about the System and the products and services offered by Mahana Fresh Restaurants. In the event we exercise our right to create such a website, we have sole discretion and control over the website (including timing, design, contents and continuation). We may, but are not obligated to, create interior pages on our website(s) that contain information about your Restaurant and other Restaurants. If we do create these pages, we may require you to prepare all or a portion of the page for your Restaurants, at your expense, using a template that we provide. All such information will be subject to our approval prior to posting.

Except as approved in advance in writing by us, you may not establish or maintain a separate website, splash page, profile, or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Restaurants, including any profile on Facebook, Pinterest, Twitter, LinkedIn, Instagram, YouTube, Snapchat or any other social media and/or networking site. If such approval is granted by us, you must: (i) establish and operate such Internet site in accordance with System standards and any other policies we designate in the Operating Manual or otherwise in writing from time to time; and (ii) utilize any templates that we provide to you to create and/or modify such site(s).

We have the right to modify our policies regarding both our and your use of Internet websites as we deem necessary or appropriate for the best interests of the System. You acknowledge that we and/or our affiliates are the lawful, rightful, and sole owner of the Internet domain name www.Mahana Fresh.com, as well as any other Internet domain names registered by us, and you unconditionally disclaim any ownership interest in such domain names and any colorably similar Internet domain names. You agree not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by us or our affiliates or any abbreviation, acronym, phonetic variation, or visual variation of those words.

You are required to participate in any System-wide computer network, intranet system or extranet system that we implement and may be required by us to use such computer network, intranet system, or extranet system to, among other things: (i) submit your reports due under the this Agreement to us online; (ii) view and print portions of or updates to the Operating Manual; (iii) download approved local advertising materials; (iv) communicate with us and other franchisees; and (v) complete training. You agree to use the facilities of any computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that we include in the Operating Manual, including those related to the encryption of confidential information and prohibitions against the transmission of libelous, derogatory, or defamatory statements.

## **15. MARKS.**

### **15.1. Usage.**

You acknowledge that we have the right to sublicense the Marks and that any goodwill relating to your use of the Marks will inure to our benefit and the benefit of our affiliates. You shall use the Marks in full compliance with rules prescribed from time to time by us. You understand and acknowledge that our right to regulate the use of the Marks, includes, without limitation, the right to regulate, restrict or prohibit any use of the Marks in any form of electronic media such as web sites or web pages or as a domain name or electronic media identifier. Any unauthorized use of the Marks will constitute a breach of this Agreement and an infringement of our rights in and to the Marks. You will not use any Mark as part of any corporate name or with any prefix, suffix or other modifying words, terms, designs or symbols or in conjunction or association with any name or symbol used by you in connection with the operation of the Restaurant, nor may you use any Mark in connection with the sale of any unauthorized product or service or in any other manner not explicitly authorized in writing by us. All provisions of this Agreement applicable to the Marks will apply to any additional proprietary trademarks and commercial symbols we hereafter authorize you to use.

### **15.2. Infringements.**

You agree to promptly notify us of any infringement of or challenge to your or our use of any Mark or claim by any person of any rights in any Mark. You agree that you will not communicate with any person other than us and our counsel in connection with any such infringement, challenge, or claim. We will have sole discretion to take such action as we deem appropriate and the right to exclusively control any litigation or Patent and Trademark Office or TTAB proceeding or other proceeding arising out of any infringement, challenge or claim or otherwise relating to any Mark. You agree to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in any such litigation or Patent and Trademark

Office or TTAB proceeding or other proceeding or to otherwise protect and maintain our interest in the Marks.

### 15.3. Modifications or Substitutions

We reserve the right to substitute different Marks for use in identifying the Mahana Fresh System and the businesses operating thereunder. You must discontinue using all Marks which we have notified you, in writing, have been modified or discontinued within 10 days of receiving written notice and must promptly begin using such additional, modified or substituted Marks at your expense.

## 16. **INSPECTIONS.**

We or our designee will have the right at any time during business hours and without prior notice to conduct reasonable inspections of the Restaurant, its operations and its business records, including, but not limited to, information from the Restaurant's computers, and records and documents relating to the ownership and control of the Approved Entity and any other entity that has an interest in the operation of Restaurant, wherever located, and to take a physical inventory of the assets of the Restaurant. Inspections of the Restaurant will be made at our expense, unless we are required to make any additional inspections in connection with your failure to comply with this Agreement. In such event, we will have the right to charge you for the costs of making all additional inspections in connection with your failure to comply, including without limitation the travel expenses, room and board and compensation of our employees or the employees of our designee.

## 17. **TERMINATION AND EXPIRATION.**

### 17.1. Termination By Franchisee.

If you are in compliance with this Agreement and we materially breach this Agreement and fail to cure any breach within thirty (30) days after written notice is delivered to us, you may terminate this Agreement and the franchise effective ten (10) days after delivery of notice to us. A termination of this Agreement and the franchise by you without complying with these requirements or for any reason other than our material breach of this Agreement and our failure to cure the breach within thirty (30) days after receipt of written notice from you shall be deemed a termination by you without cause and a breach of this Agreement.

### 17.2. Immediate Termination By Mahana Fresh - Upon Written Notice.

We shall have the right to terminate this Agreement effective upon delivery of notice of termination to you, if:

- (a) you or any of your owners have made any material misrepresentation on any record or report required by us under this Agreement or on your application for the franchise, or in any other application submitted to us;
- (b) you do not open the Restaurant within nine (9) months from the date of this Agreement;
- (c) you are judged a bankrupt or file a bankruptcy petition, become cash flow, or balance sheet insolvent, make an assignment for the benefit of creditors, are unable to pay your debts as they become due in the ordinary course of business, or a petition under any bankruptcy law is filed by or against you, or a receiver or custodian is appointed for a substantial part of the assets of the Restaurant;
- (d) you abandon or fail to continuously and actively operate the Restaurant, or, without our prior written consent, permit any person other than a qualified employee designated by you, whose identity has been disclosed to us, to operate the Restaurant in your absence;
- (e) the lease or sublease for the Restaurant is terminated or cancelled or you are unable to renew or



extend the lease or sublease or you fail to maintain possession of the Restaurant premises unless you are permitted to relocate the Restaurant under Section 6.2 of this Agreement;

(f) you or any of your owners is convicted of a felony, or a crime which substantially impairs the goodwill associated with the Marks or you or any of your owners engages in any conduct which, in our judgment, adversely affects the reputation of the Restaurant or the goodwill associated with the Marks or involves dishonesty, fraud, deceit, or misrepresentation;

(g) you intentionally, recklessly, or with gross negligence under-report the royalty sales of the Restaurant for any period or periods;

(h) you or any of your owners violates any of the restrictions contained in Articles 19 or 20 of this Agreement;

(i) you intentionally or on more than one occasion during the term of this Agreement, violate any Child Labor Laws in connection with your operation of the Restaurant;

(j) an audit by us discloses an understatement of royalty sales and you fail to pay to us the applicable royalty fee and advertising contribution and interest due within ten (10) days after receipt of the final audit report;

(k) the interest of a deceased or permanently disabled person is not disposed of in accordance with the terms of this Agreement;

(l) you or any of your owners fail on three (3) or more occasions during any twelve (12) month period to comply with any one or more provisions of this Agreement, including without limitation, your obligation to submit when due sales reports or financial statements, to pay when due the royalty fees, advertising contributions or other payments due to us or our affiliates or subsidiaries or any other creditors or suppliers of the Restaurant, whether or not such failure to comply is corrected after notice is delivered to you;

(m) any of your assets or items used in the operation of the Restaurant are seized or you are otherwise denied the use of the property or access to the Restaurant because of your failure to pay any taxing authority or any amount due a creditor of the Restaurant, or because of any other act or omission of you or any of your owners; or, you fail to notify us of tax levy or delinquency; or,

(n) you fail to cease operating the Restaurant, or fail to correct the conditions in the Restaurant causing a present threat of imminent danger to public health or safety, after notice to you as provided in Section 17.4 of this Agreement.

### 17.3. Termination By Mahana Fresh - After Opportunity to Cure.

We shall have the further right to terminate this Agreement effective upon delivery of notice to you, if:

(a) you fail to obtain or maintain insurance required by us and you do not correct this failure within forty-eight (48) hours after written notice is delivered to you; provided, however, that we shall not exercise our right to terminate this Agreement if you immediately cease operating the Restaurant and obtain all such insurance within ten (10) days after written notice is delivered to you;

(b) you fail to comply with any provision of this Agreement or any specification, standard or operating procedure or rule prescribed by us which relates to the use of any Mark, safety and security, or the quality of bowls or other authorized food products or any beverage sold by you, or the cleanliness and sanitation of the Restaurant and you do not correct this failure within seven (7) calendar days after written notice is delivered to you;

(c) you fail to pay when due any amount owed to us, our affiliates or subsidiaries, or any creditor or supplier of the Restaurant or any taxing authority for federal state or local taxes (other than amounts being disputed through appropriate proceedings and subject to a good faith, bona fide dispute) and you do not correct such failure within ten (10) calendar days after written notice is delivered to you; or

(d) you or any of your owners fails to comply with any other provision of this Agreement or any specification, standard or operating procedure and fail to correct this failure within thirty (30) calendar days after written notice is delivered to you.

#### 17.4. Immediate Cessation of Operations.

In the event that the conditions of the Restaurant or operations at the Restaurant, in our judgment, present a threat of imminent danger to public health or safety, we may require the immediate cessation of operations at the Restaurant upon delivery of a notice to you. The notice shall contain the reason we believe immediate cessation of operations is required. The parties shall address the conditions and develop a plan to correct all deficiencies within seven (7) days of the delivery of notice.

#### 17.5. Obligations Upon Termination or Expiration.

Upon termination or expiration of this Agreement, you agree to:

(a) immediately return to us all copies of the Operating Manual;

(b) take such action as may be required to cancel all assumed name or equivalent registrations relating to the use of any Mark;

(c) notify the telephone company, postal service, and all listing agencies in writing of the termination or expiration of your right to use all telephone numbers, post office boxes, and all classified and other directory listings relating to the Restaurant and to authorize in writing the transfer of these to us or our franchisee or designee. You acknowledge that we have the sole rights to and interest in all telephone numbers, post office boxes, and directory listings relating to any Mark, and you authorize us to direct the telephone company, the postal service, and all listing agencies to transfer all telephone numbers, post office boxes, and directory listings to us, our franchisee or designee and if you fail or refuse to do so, the telephone company, postal service, and all listing agencies may accept our direction as evidence of our exclusive rights in the telephone numbers, post office boxes, and directory listings and our authority to direct the transfer. Upon execution of this Agreement or at any time thereafter, you agree to execute any written authorizations or pre-approved authorizations in the form prescribed by us directing the telephone company, postal service (including the conditional assignment of telephone numbers attached to this Agreement as Attachment F) and any listing agencies to transfer all telephone numbers, post office boxes, and directory listing to us, our franchisee or designee upon the occurrence of any such termination or expiration;

(d) immediately pay all royalty fees, advertising contributions and other charges which are due and owing under this Agreement;

(e) immediately cease identifying yourself as a Mahana Fresh Restaurant or as being associated with the Mahana Fresh System, including, without limitation, disabling and ceasing to permit the continued operation of any website relating to the Restaurant or the Mahana Fresh System or which utilizes the Marks and removing the Mahana Fresh Marks from Twitter, Facebook, Instagram, and other social media and stop identifying yourself as being associated with the Mahana Fresh System in all Social Media;

(f) if you retain possession of the Restaurant premises, at your expense, make such reasonable modifications to the exterior and interior of the Restaurant (including signage, menu boards, job aids, product photos and the like) as we require to fully eliminate its identification and appearance as a Mahana Fresh Restaurant. If you fail or refuse to fully de-identify the Restaurant to the extent and in the manner required by this Agreement, we may, at our option and in addition to other rights and remedies we may

have, make the modifications that are contemplated by this Agreement on your behalf and you agree to promptly pay and reimburse us on demand for any costs incurred by us or our designee including, without limitation, the proportionate compensation of our employees or our designee's employees who devote time and render services in the de-identification of the Restaurant; and

(g) make the Restaurant accessible and available for us to operate pursuant to Section 18.7 of this Agreement if we elect to do so.

#### 17.6. Statutory Limitations.

If the state in which the franchisee's relevant Restaurant is located has enacted a franchise relationship law or statute restricting Mahana Fresh's right to terminate or non-renew this Agreement beyond the limitations set forth in this Agreement, then that law shall supersede the provisions of this Agreement only when and to the extent that the relevant franchise relationship law is in effect, applies to the relationship and location covered by this Agreement, has not been validly waived by the franchisee, and has not been deemed invalid or unenforceable by a court of competent jurisdiction.

### 18. **OPTION TO PURCHASE RESTAURANT.**

#### 18.1. Option.

Upon the termination or expiration of this Agreement, except termination by you for cause, we shall have the exclusive option, but not the obligation, to purchase the assets of the Restaurant. For purposes of this section, the term "assets" shall mean the equipment, inventory, leasehold interests and improvements and favorable rights and covenants of the Restaurant, but exclusive of any vehicles other than trucks for serving bowls as defined in Paragraph 19.1. Our option shall commence upon expiration of this Agreement or on the date of termination as applicable, and shall continue for thirty (30) days thereafter, subject to extension as provided in this Section. You agree that if the termination is stayed, either by us or by judicial proceedings, or if we are not permitted to manage the Restaurant pursuant to Section 18.7, we will not be able to exercise our option within the 30 day period and you also agree that under those circumstances our option to purchase shall be extended, without further notice to you, for an additional time which shall include the entire time we are unable to exercise our option.

#### 18.2. Purchase Price Under This Option.

The purchase price for these assets and the covenants shall be equal to fifty percent (50%) of royalty sales ("Base Amount") of the Restaurant during the fifty-two (52) full weeks immediately preceding the date of termination or expiration. The purchase price shall be allocated among the assets and covenants in the manner prescribed by us.

If the Restaurant has been in operation less than fifty-two (52) full weeks, the option price shall be the cost of the Restaurant plus twenty percent (20%). The term "cost" shall be defined as your documented expenditures for the equipment and leasehold improvements of the Restaurant.

#### 18.3. Deductions From Purchase Price.

In the event we elect to purchase the assets of the Restaurant, the purchase price will be reduced by:

- (a) the total current and long-term liabilities of the Restaurant assumed by us as described below;
- (b) the amount necessary to upgrade and renovate the Restaurant to meet our then current standards for a Mahana Fresh Restaurant; and,
- (c) our reasonable attorneys' fees and litigation costs and expenses, including without limitation expert witness fees, incurred in connection with enforcing this Agreement or in securing possession of the Mahana Fresh, LLC



Restaurant.

We will assume all current and long-term liabilities, whether or not included on your financial statements up to the amount of the purchase price subject, however, to all defenses available to you. Further, the amount we charge for upgrading and renovating the Restaurant will not exceed one percent (1%) of the royalty sales of the Restaurant from the date of opening to the date of termination or expiration reduced by an amount equal to the total expenditures made by you for renovation and upgrading of the Restaurant at our request up to the date of termination or expiration.

18.4. Payment of Purchase Price.

The balance of the purchase price, after deductions described above will be payable as follows: twenty percent (20%) of the balance at the time of closing and the remainder in sixty (60) equal monthly installments of principal plus interest at a rate of interest per annum equal to the prime lending rate charged by Branch Banking & Trust of Winston-Salem North Carolina (or other bank or financial institution we may designate) determined as of the closing date with annual adjustments based on the prime rate charged on each anniversary date. The first payment will be due on the first day of the second succeeding calendar month following closing and the remaining payments on the first day of each month thereafter. On the first payment date, interest from the date of closing shall also be paid. If we elect to pay the entire purchase price at closing, we shall have the right to escrow such portion of the purchase price as we deem appropriate for a period of six (6) months to cover liabilities of the Restaurant. We shall notify you of claims asserted by creditors of the Restaurant against the escrow monies. You shall have forty-eight (48) hours to settle any claim with such creditor prior to disbursement of funds from the escrow. If there is a bona fide good faith dispute between you and a creditor of the Restaurant, you shall have thirty (30) days to reach a settlement with any such creditor as to the amount owed before we will disburse any escrow monies to such creditor. If you are unable to resolve the discrepancy with the creditor within the thirty (30) day period, we shall have the right to use the escrow monies to satisfy the claim of any such creditor. At the end of such six (6) month period, any remaining purchase price shall be remitted to you along with a statement prepared by us indicating the manner in which these funds were expended.

18.5. Real Property.

(a) In the event you or your owners own the real property on which the Restaurant is located, and such property is not a multi-tenant unit, we will also have the exclusive option to purchase this property. We shall exercise this option within the same period of time as provided in Section 18.1, as that time may be extended. The purchase price will be the fair market value as determined by an independent appraiser selected by both of us. If we cannot agree on an independent appraiser, we each shall select an independent appraiser who shall select a third independent appraiser. The independent appraiser selected by our appraisers shall determine the fair market value of the real property and his determination shall be final and binding on the parties. The purchase price will be payable in full at the closing minus customary pro-rations including the pay-off of existing mortgage liens.

(b) If we do not elect to purchase the real property, or if the property is in a multi-tenant unit, we or our designee will have the option to enter into a lease for a term of not less than five (5) years with an option by us or our designee to extend the term of the lease for two additional terms of five (5) years each. The lease shall contain the terms and conditions contained in the form of lease then used by us or our affiliates in connection with Mahana Fresh Restaurants owned and operated by us or our affiliates. The rental under the lease for the initial five (5) year term shall be the fair rental value of the property as determined by an independent appraiser selected in the manner described above. The rental shall be increased during the second five (5) year option term by the percentage that the National Consumer Price Index for Urban Wage Earnings and Clerical Workers as determined by the United States Department of Labor for the region in which the Restaurant is located (or a comparable index if such Index is not then being issued) has increased from the commencement date of the initial term until the last day of the initial term of the lease.

## 18.6. Closing.

The closing shall occur within thirty (30) days after we exercise our option to purchase the assets and/or real property or such later date as may be necessary to comply with applicable bulk sales or similar laws. At the closing, we both agree to execute and deliver all documents necessary to vest title in the purchased assets and/or real property in us free and clear of all liens and encumbrances, except those assumed by us and/or to effectuate the lease of the Restaurant premises. You also agree to provide us with all information necessary to close the transaction. We reserve the right to assign our option to purchase the Restaurant (and the real property to the extent applicable) or designate a substitute purchaser for the Restaurant. We agree, however, to be responsible for and shall guarantee payment of any deferred portion of the purchase price as provided in Section 18.4 of this Agreement in the event we designate a substitute purchaser of the assets of the Restaurant. If you do not execute and deliver any documents required, by execution of this Agreement, you irrevocably appoint us as your lawful attorney-in-fact with full power and authority to execute and deliver in your name all these documents. You also agree to ratify and confirm all of our acts as your lawful attorney-in-fact and to indemnify us and hold us harmless from all claims, liabilities, losses or damages suffered by us in so doing.

## 18.7. Operation During Option Period.

We will have the right, upon written notice to you, to manage, or designate one of our affiliates to manage, the Restaurant during the period in which we have the option to purchase the Restaurant as provided in Section 18.1 and for the period following the exercise of our option and prior to the closing, on the same terms and conditions as described in Section 20.7.

## 19. **RESTRICTIVE COVENANTS.**

### 19.1. In-Term Covenant.

You agree that, during the term of this Agreement, you will not, directly or indirectly for the benefit of you or your owners, or through or on behalf of or in conjunction with any other person, partnership or corporation, own, engage in, be employed in sales management or purchasing by, advise, assist, invest in, franchise, make loans to, or have any other interest, whether financial or otherwise, in in any other bowl restaurant business or restaurant business which offers products and services that are the same or substantially similar to the approved products and services that you and our franchisees are authorized to provide, now or in the future, at Restaurant locations (except for other Mahana Fresh Restaurants operated under franchise agreements entered into with us or other Mahana Fresh Restaurants in which you or your owners have an ownership interest) (a "Competing Business"). "Bowls" as used throughout this Agreement means and includes dishes that are comprised of: (i) a base element such as rice, vegetable rice, cruciferous vegetables, salad greens, noodles, or other carbohydrate base; and (ii) a protein component such as fish, steak, chicken, egg, pork, or any plant-based protein alternatives (e.g. tofu, soy protein, seitan, "Beyond Meat", "Impossible", etc.).

### 19.2. Post-Term Covenant.

You agree that, for a period of one (1) year after termination or expiration of this Agreement, or the date on which you cease to operate the Restaurant or use the Marks, whichever is later, you will not, directly or indirectly for the benefit of you or your owners, or through or on behalf of or in conjunction with any other person, partnership or corporation, own, engage in, be employed by, advise, assist, invest in, franchise, make loans to, or have any other interest, whether financial or otherwise, in any bowl Restaurant Business located or regularly selling at the premises of the Restaurant or through mobile points of service (e.g., food trucks, kiosks or tents) or from another restaurant or fixed location within ten (10) miles of the premises of the Restaurant (except for other Mahana Fresh Restaurants operated under franchise agreements with us or other Mahana Fresh Restaurants in which you or your owners shall have an ownership interest) or within five miles of any Mahana Fresh Restaurant in any state in which you owned a Mahana Fresh Restaurant, excluding ownership of less than ten percent of the stock of shares in any corporation whose stock is Mahana Fresh, LLC

publicly traded. The covenant contained in this section shall not be deemed to impair, modify or change any covenant not to compete contained in any agreement for the purchase and sale of the Restaurant. "Bowl Restaurant Business" means any business, person or entity involved in selling bowls as a majority of its food sales or advertising itself as selling or serving primarily bowls, using the word "Fresh" in its trade name.

### 19.3. Ownership of Public Companies.

The covenants contained in this Article 19 shall not apply to ownership of less than a ten percent (10%) beneficial interest in the outstanding equity securities of any corporation whose stock is publicly traded.

### 19.4. Solicitation of Employees.

You agree that during the term of this Agreement you will not, directly or indirectly, solicit or employ any person who is employed by us, by any entity controlled by or affiliated with us or by any other of our franchisees if that solicitation or employment results in that person terminating his or her present employment and working for you, or if that solicitation or employment results in that person working in or for or operating a competing Restaurant Business Restaurant, chain, or franchised business.

### 19.5. Confidential Information and Trade Secrets; New Processes, Concepts, Improvements.

You agree to maintain the absolute confidentiality of the Operating Manual and all other information concerning the Mahana Fresh System, whether provided by us or a third party, during and after the term of the franchise, disclosing this information to the other employees of the Restaurant only to the extent necessary for the operation of the Restaurant in accordance with this Agreement, and that you will not use the Operating Manual or such other information in any other businesses or in any manner not specifically authorized or approved by us in writing. All historical data relating to the sale of all food and beverage products at the Restaurant (the "Confidential Information") also shall be deemed confidential and (a) you shall not use the Confidential Information in any other business or capacity; and (b) you shall maintain the absolute secrecy and confidentiality of the Confidential Information.

Ownership of all copyrights, patents, trade secrets, confidential business information, and business methods developed or paid for by us or our affiliates relating to the Mahana Fresh System (the "Mahana Fresh Proprietary Materials") will remain with us or our affiliates. Ownership of all copyrights, patents, trade secrets, confidential business information, and business methods developed by you, any Controlling Person, or any owner of more than 19.9 percent of the stock of any Approved Entity relating to the Mahana Fresh System or products (also "Mahana Fresh Proprietary Materials") will belong and be assigned to us or our affiliates.

You acknowledge and agree that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, customer service purchasing histories, (iv) rates charged to customers, and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute the trade secrets and Confidential Information of us. You may divulge such Confidential Information only to your employees who must have access to it in order to perform their employment obligations. You must require your Controlling Person and any personnel having access to any of our Confidential Information to sign an agreement stating that they will maintain the confidentiality of information they receive in connection with their employment and restricting their right to work for a competitor while they are employed by you. Such agreement, which will be in a form that we prescribe, will identify us as a third party beneficiary to the agreement and will give us independent enforcement rights.

Nothing contained herein shall prevent you from discussing with potential franchisees your experience as a Mahana Fresh franchisee provided that you do not reveal or discuss Confidential Information or Mahana Fresh Proprietary Materials.

19.6. Owners of Approved Entity.

If you are an Approved Entity, then each owner, by executing this Agreement, shall be bound by the provisions contained in this Agreement, including the restrictions set forth in this Article 19. Further, a violation of any of the provisions of this Agreement, including the covenants contained in this Article 19, by any owner shall also constitute a violation by you of your obligations under this Agreement, because you represent and warrant each of these Owners' compliance with this Agreement.

19.7. Distribution of Products Related to the Mahana Fresh System.

During and after the term of this Agreement, you and your owners agree not to sell or otherwise distribute any products or items bearing any of the Marks or which are used at any time in connection with any advertising, promotional or operational program other than to customers of your Restaurant in the ordinary course of business or to another Mahana Fresh franchisee in good standing at the time of any proposed transfer approved by us.

19.8. Ownership Structure.

You agree to fully comply with all rules, policies, and procedures from time to time prescribed by us relating to the ownership structure of an Approved Entity. If you are an Approved Entity, you agree that the Controlling Person who has been approved by us will at all times during the term of this Agreement own and control forty percent (40%) or more and the largest share of the absolute voting and ownership interests of the Approved Entity and own the largest percentage equity interest therein, unless the Controlling Person obtains our prior written approval for a different ownership structure. You also agree to submit to us for our review and approval any proposed change in ownership structure or percentages before attempting any change in the ownership or control of the Approved Entity. In the interest of preventing stalemates and disputes, neither the franchisee nor the Approved Entity may be owned or controlled under any arrangement whereby the ownership, control or voting rights are owned or controlled by two persons or entities, or one person and one entity, on a 50/50 basis.

**20. ASSIGNMENT.**

20.1. By Mahana Fresh.

This Agreement is fully assignable by us and the assignee or other legal successor to our interests will be entitled to all of the benefits of this Agreement.

20.2. By Franchisee.

This Agreement is personal to you and your owners (if you are an Approved Entity). Accordingly, neither you nor any of your owners may assign or transfer this Agreement, any interest in this Agreement or, if you are an Approved Entity, any interest in an Approved Entity except as specifically authorized under this Agreement. A transfer of ownership of the Restaurant (or its assets) may only be made in conjunction with a transfer of this Agreement. Any attempted assignment or transfer not in accordance with this Agreement shall have no effect and shall constitute a material breach of this Agreement.

20.3. Assignment to an Approved Entity.

We will allow you to assign this Agreement and the Restaurant (and its assets) to an Approved Entity for the convenience of ownership of the Restaurant, provided that:

- (a) the Approved Entity conducts no business other than the operation of the Restaurant or other Mahana Fresh Restaurants (or other related activities authorized under this Agreement);
- (b) the Approved Entity is actively managed by you;

(c) the person designated as the Controlling Person owns and controls not less than forty percent (40%) and the largest share of such partnership, the equity and voting power of all classes of issued and outstanding capital stock of such corporation, the membership interest in the limited liability company or the voting and ownership interests of such entity; and

(d) all owners meet our requirements as established from time to time by us and agree to guarantee the obligations of the Approved Entity under this Agreement and to be bound by the terms of this Agreement in the manner prescribed by us.

If you are an Approved Entity or if this Agreement is assigned to an Approved Entity, you must comply with the requirements set forth in this Section 20.3 throughout the term of this Agreement. The organization documents of any Approved Entity owning the franchise, including all stock certificates, shall recite that they are subject to all restrictions contained in this Agreement. We shall also have the right to require, as a condition of any assignment of this Agreement to an Approved Entity or the operation of the franchise by an Approved Entity, that the owners enter into a buy/sell agreement among themselves in a form and containing such terms as we prescribe for transfers of ownership interests in such Approved Entity. You shall provide us with all documents to be executed in connection with any such assignment and we shall use our reasonable efforts to approve or disapprove these within thirty (30) days after receipt.

#### 20.4. Assignment or Transfer to Others.

We will permit sales, transfers or assignments of this Agreement or, if you are an Approved Entity, of an ownership interest in the Approved Entity to others provided:

(a) you (and your owners) are not in default under this Agreement or any other agreement with us or our subsidiaries or affiliates or any other creditor or supplier of the Restaurant;

(b) the proposed transferee or assignee (and its Controlling Person and all other owners if it is an Approved Entity) meets our then-applicable standards for franchisees or owners;

(c) the proposed transferee or assignee (and its owners) is not engaged in any other Restaurant Business business activity without our prior written consent, except other Mahana Fresh Restaurants;

(d) the proposed transferee or assignee (and its owners if it is an Approved Entity) must sign our then-current form of standard franchise agreement for a term equal to the remaining term of this Agreement or, at our election, the then-current term if longer;

(e) the proposed transferee or assignee (or the person designated by us) must complete all required training to the extent required by us;

(f) at our request, the proposed transferee or assignee refurbishes the Restaurant in the manner and subject to the provisions prescribed in Articles 8 and 14;

(g) the proposed transferee or assignee pays us a transfer fee of equal to the greater of: (A) \$4,000.00, or (B) ten percent (10%) of the then-applicable single Restaurant initial franchise fee (whichever is higher); and,

(h) this Agreement is terminated according to the terms of our customary form of mutual termination agreement.

You must provide us with all documents to be executed by you and/or your owners and the proposed purchasers in connection with any transfer or assignment at least thirty (30) days prior to signing.



#### 20.5. Death or Permanent Disability.

Upon your death or permanent disability or the death or permanent disability of the Controlling Person, this Agreement or the ownership interest of such deceased or permanently disabled Controlling Person must be transferred to, a party approved by us. Any transfer, including, without limitation, transfers by devise or inheritance or trust provisions, shall be subject to the same conditions for transfers which are contained in this Agreement. Except as otherwise prescribed by us in writing, your personal representative or the personal representative of such Controlling Person shall submit to us a proposal meeting the requirements for transfer of this Agreement or such ownership interest within one hundred and twenty days (120) days of your death or permanent disability or the death or permanent disability of such Controlling Person. We agree to communicate our approval or disapproval of any such proposal within fifteen (15) days of receipt. We will not unreasonably withhold our consent to the transfer of this Agreement or such ownership interest to your spouse, heirs or relatives or to the spouse, heirs or relatives of such deceased or permanently disabled Controlling Person, provided the requirements of Section 20.4 are satisfied. We agree to make our primary members and executive team (or their successors or equivalents) available during such one hundred and twenty (120) day period to evaluate any proposal regarding transfer of this Agreement or such ownership interest, including any request that we consider purchasing the franchise or such ownership interest. Your personal representative or the personal representative of such deceased or permanently disabled Controlling Person shall complete the transfer of this Agreement or such ownership interest within sixty (60) days from the date of our approval of any such proposal. Upon the death of any other owner, the interest of such owner shall be transferred within a reasonable time to a person meeting our requirements. All such transfers must also comply with Section 20.4 of this Agreement. Your or any of your owners' failure to transfer the interest in accordance with the provisions of this Section or attempted a transfer a violation of this Agreement, shall be considered a material breach of this Agreement.

#### 20.6. Definition of Permanent Disability.

You or your Controlling Person, will be deemed to have a "permanent disability" if you or your Controlling Person's usual, active participation in the Restaurant as contemplated by this Agreement is for any reason curtailed or prevented for a substantially continuous period of six (6) months, or if you become imprisoned, hospitalized, a resident of a mental institution, or in a persistent vegetative state for a substantially continuous period of six months.

#### 20.7. Operation by Mahana Fresh After Death or Permanent Disability.

We shall have the right to appoint a manager for the Restaurant if in our judgment the Restaurant is not being managed properly after your death or permanent disability or the death or permanent disability of the Controlling Person. Our right to appoint a manager for the Restaurant includes the right to temporarily or permanently cease operations at the Restaurant, if in our reasonable judgment continued operation of the Restaurant will adversely affect the Marks, the long-term reputation of the Restaurant or the Mahana Fresh System, or present a risk to public health, welfare and safety, including the well-being of the employees of the Restaurant. All funds from the operation of the Restaurant during the management by our appointed manager will be kept in a separate fund, and all expenses of the Restaurant including compensation, other costs, and travel and living expenses of our manager will be charged to this fund. The royalty fee and advertising contributions payable under this Agreement and all other financial contributions owed under this Agreement shall continue during the period in which the Restaurant is managed on your behalf. In managing the Restaurant, our obligation will be to use commercially reasonable efforts in our reasonable business judgment to ensure the Restaurant is properly managed, and neither we nor our affiliates will be liable for any debts, losses, or obligations of the Restaurant, to any of your creditors for any products, materials, supplies, or services purchased by the Restaurant prior to during the time of management by our appointed manager. If the separate fund that is established is insufficient to pay the expenses of the Restaurant, we will notify you or your executor, administrator, conservator or other personal representative and this person must deposit in the fund within five (5) business days, any amount required by us to attain a reasonable balance in the fund.

## 20.8. Right of First Refusal of Mahana Fresh.

If you or your owners propose to sell all or any part of the Restaurant (or its assets) or, if you are an Approved Entity, any ownership interest in an Approved Entity, or you or your owners obtain a bona fide, executed written offer to purchase this interest, you or your owners are obligated to properly notify us and deliver a copy of any bona fide offer to us along with all documents to be executed by you or your owners and the proposed assignee or transferee. Our right of first refusal shall commence upon the date of our receipt of the following: (i) the bona fide, executed written offer to purchase; (ii) all documents to be executed by you or your owners and the proposed assignee or transferee; (iii) all documents related to the operation of the Restaurant which you are required to provide us, including, but not limited to a current copy of the lease for the Restaurant and such financial statements as are required of you under Section 13.2 of this Agreement; and (iv) your notice that you are specifically submitting the documents to give us the right to exercise our right of first refusal, and shall continue for a period of thirty (30) days thereafter. Failure to submit any one or more of the items, including the notice of the purpose of the submission, shall result in our right of first refusal being extended until 30 days after we receive all of the required documents and the notice. We shall exercise the right to purchase the Restaurant (or its assets) or such ownership interest for the price and on the terms and conditions contained in the offer by giving written notice to you or your owners. We may substitute equivalent cash for any form of payment proposed in such offer or designate a substitute purchaser for the Restaurant (or the assets) or the ownership interest being offered, provided that we will assume responsibility for the performance of any other purchaser we may designate. If the offer is to purchase the interest of a Controlling Person and is for less than all of the outstanding interests of the Approved Entity, we shall also have the right, during the same period of time described above and upon written notice to the other owners, to purchase the remaining shares of capital stock, partnership interest or membership interest at a per share or per unit or interest price equivalent to the price being offered under the bona fide offer to the Controlling Person. If we do not exercise this right of first refusal, the offer may be accepted by you or your owners, subject to our prior written approval as provided in this Agreement. If the offer is not accepted by you or your owners, within sixty (60) days, we will again have the right of first refusal to purchase the Restaurant as described above. This section will not apply to transfers made in accordance with Section 20.3 of this Agreement.

## 21. **CONTRACT INTERPRETATION AND ENFORCEMENT.**

### 21.1. Effect of Waivers.

No waiver by us of any breach or a series of breaches of this Agreement shall constitute a waiver of any subsequent breach or waiver of the performance of any of your other obligations under this Agreement. Our acceptance of any payment from you or the failure, refusal or neglect by us or you to exercise any right under this Agreement or to insist upon full compliance with our or your 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. Mahana Fresh cannot waive any default, breach, or condition of this Agreement except through a signed writing signed by duly authorized officer of both Mahana Fresh and by the Franchisee.

### 21.2. Cost of Enforcement.

If any legal or equitable action is commenced, either to challenge, interpret, or to secure or protect our rights under or to enforce the terms of this Agreement, in addition to any judgment entered in our favor, we shall be entitled to recover such reasonable attorneys' fees, costs, expenses and expert witness fees as we or anyone acting on our behalf may have incurred together with court costs and expenses of litigation.

### 21.3. Indemnification of Mahana Fresh.

If we or any of our subsidiary or affiliated companies or any of our or their agents or employees are required to produce records or testify at trial or in deposition or are subjected to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding brought by any person or persons

(including your employee or prior employee) or any other person or entity by reason of any claimed act or omission by you, your employees or agents, or by reason of any act or omission occurring on the Restaurant premises, or in your territory or primary area of responsibility, or while on the way to or from the Restaurant, by reason of an act or omission with respect to the business or operation of the Restaurant, including but not limited to acts or omissions arising out of the maintenance or use of a motor vehicle, you shall defend and indemnify and hold us, our subsidiary and affiliated companies, or any of our or their agents or employees, harmless against all judgments, settlements, penalties, and expenses, including attorney's fees, expert witness fees, court costs and other expenses of litigation, arbitration or administrative proceedings, incurred by or imposed on us, our subsidiary and affiliated companies, or any of our or their agents or employees, in connection with the testimony, production, investigation or defense relating to such claim or litigation, arbitration or administrative proceedings. Your indemnification obligations described above will continue in full force and effect after, and notwithstanding, the expiration or termination of this Agreement.

#### 21.4. Construction and Severability.

All references in this Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice-versa. If any part of this Agreement for any reason shall be declared invalid, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. If any applicable law or rule requires a greater prior notice of the termination of or election not to renew this Agreement, or the taking of some other action than is required under this Agreement, the prior notice or other requirements required by this law or rule shall be substituted for the requirements of this Agreement while and to the extent those laws or rules remain in effect and applicable to the Restaurant and its territory or primary area of responsibility and have not been effectively waived by the franchisee or declared invalid or inapplicable by any court of competent jurisdiction. If any covenant in this Agreement which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable by reducing any part or all thereof, the parties agree that same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

#### 21.5. Scope and Modification of Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral or written agreements or understandings of the parties regarding the subject matter of this Agreement for the Restaurant at issue. No modification, amendment or waiver of this Agreement or any of its terms or provisions shall be valid or binding unless it is set forth in a writing signed by the party to be charged with surrendering rights or benefits of incurring additional obligations. No modification, waiver, termination, rescission, discharge or cancellation of this Agreement shall affect the right of any party to enforce any claim or right under this Agreement, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation. Nothing contained in this Agreement or in any related agreement is intended to disclaim any representation made by Mahana Fresh in any franchise disclosure documents.

#### 21.6. Dispute Resolution, Mandatory Mediation, Arbitration and Governing Law.

(a) Choice of Law. The terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of Florida, excluding its choice of law rules, and excluding the Florida Retail Franchising Act as to any Restaurant not physically located in Florida.

(b) Mediation and Arbitration. Any and all disputes arising from or relating to the parties' relationship, or this Agreement shall be subject to mandatory mediation which shall be conducted and completed in Sarasota, Florida within thirty (30) days of written demand therefore. Any disputes not resolved by mandatory mediation shall be resolved by binding arbitration within 120 days of the initial written demand, therefore. The arbitration hearing shall be held in Sarasota County, Florida pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration award shall be reviewable only by state or federal courts in or having jurisdiction over Sarasota, Florida only for clear error of fact or law.



and on any additional statutory grounds for vacationing or reversing an arbitration award. Franchisor shall be entitled to recover its reasonable attorneys' fees and litigation costs and expenses including expert witness fees if it is the substantially prevailing party in any arbitration or litigation relating to this Agreement or the parties' relationship. Nothing contained herein shall preclude any party from commencing a suit in court for temporary or preliminary injunctive relief to prevent irreparable harm pending the arbitration decision, provided that any such suit for temporary or preliminary injunctive relief shall be commenced and maintained exclusively in state or federal courts in or having jurisdiction over Sarasota County, Florida.

(c) Third-Party Beneficiaries. Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of this Agreement and the mediation and other dispute resolution provisions contained herein, each having authority to specifically enforce the right to mediate and litigate claims asserted against such person(s) by Franchisee.

(d) Injunctive Relief. Nothing in this Agreement will prevent Franchisor from seeking to obtain injunctive relief, without posting a bond, against threatened conduct that will cause Franchisor loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary and permanent injunctions. If injunctive relief is granted, Franchisee's only remedy will be court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Franchisee expressly waives all claims for damages Franchisee incurred as a result of the wrongful issuance.

(e) JURY TRIAL AND CLASS ACTION WAIVER. THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER SHALL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR FRANCHISEE'S PURCHASE FROM FRANCHISOR OF THE FRANCHISE AND/OR ANY GOODS OR SERVICES. THE PARTIES AGREE THAT ALL PROCEEDINGS, WHETHER LITIGATION OR MEDIATION, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE AND FRANCHISEE'S PRINCIPALS AND YOU, AND FRANCHISOR OR ITS AFFILIATES OR EMPLOYEES, MAY NOT BE CONSOLIDATE WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER PERSON OR ENTITY.

(f) Limitation on Action. Franchisee further agrees that no cause of action arising out of or under this Agreement may be maintained by Franchisee unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one (1) year after the Franchisee becomes aware of facts or circumstances reasonably indicating that such Franchisee may have a claim against the Franchisor, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense or set-off.

(g) Franchisee Waiver. Franchisee hereby waives the right to obtain any remedy based on alleged fraud, misrepresentation, or deceit by Franchisor, including, without limitation, rescission of this Agreement, in any mediation, judicial, or other adjudicatory proceeding arising hereunder, except upon a ground expressly provided in this Agreement, or pursuant to any right expressly granted by any applicable statute expressly regulating the sale of franchises, or any regulation or rules promulgated thereunder.

(h) Waiver of Punitive Damages. Franchisee waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which it may have against Franchisor, arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that Franchisee's recovery shall be limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, Franchisee's waiver of any right to claim any consequential damages.

21.7. Costs and Attorney's Fees. If Franchisee is in breach or default of any monetary or non-monetary material obligation under this Agreement or any related agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Franchisee must pay all reasonable attorneys' fees, court costs and litigation expenses Franchisor incurs. If Franchisee institutes any legal action to interpret or enforce the terms of this Agreement, and Franchisee's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

21.8. Notices.

All written notices permitted or required to be delivered by the provisions of this Agreement or of the Operating Manual shall be deemed so delivered when delivered to you by hand, three (3) days after having been placed in the United States Mail by Registered or Certified Mail, one (1) day after being placed in the hands of a commercial courier service for next day delivery, one (1) day after transmission by facsimile or other electronic system (including electronic mail), and addressed to us at our most current principal business address or to you at the most current principal business address or home address of which we have been notified in writing.

You must maintain and keep us informed of a valid e-mail address for the franchisee and any Controlling Person throughout the term of this Agreement.

21.9. Independent Contractors.

The parties to this Agreement are independent contractors and no training, assistance, or supervision which we may give or offer to you shall be deemed to negate such independence or create a legal duty on our part. Neither we nor any of our affiliates shall be liable for any damages to any person or property arising directly or indirectly out of the operation of the Restaurant, including but not limited to those damages which may occur while your employees are performing or returning from errands or work. Nor shall we or any of our affiliates have any liability for any taxes levied upon you, your business, or the Restaurant. The parties further acknowledge and agree the relationship created by this Agreement and the relationship between us is one of independent contractors at arm's length, and not a fiduciary relationship nor one of principal and agent. Furthermore, neither we nor our affiliates have any relationship with your employees and have no rights, duties, or responsibilities with regard to their employment by you. You acknowledge and agree that you do not have the authority to act for us or on our behalf or to contractually bind us or our affiliates to any agreement. No party to this Agreement shall have any authority to assume any liability for the acts of the other, or to alter the legal relationships of the other. Only the named parties to this Agreement shall have rights hereunder and you shall not have any rights under any other franchise agreement to which you are not a party.

21.10. Acknowledgment.

You acknowledge and agree that this Agreement may not be modified, amended, or changed, and that Mahana Fresh's rights may not be waived, except by a writing signed by all parties.

21.11. Authority and Binding Effect.

You, your Approved Entity, your Controlling Person, and each of your Owners represent and warrant that you and each and all of them have the legal right with respect to one another and third parties to enter into this Agreement and into the Covenants of Owners and to be involved in the ownership and operation of the franchised Restaurant and Restaurant Business, that doing so will not violate any contractual or legal obligations or duties to one another nor to any third party, and that you will not use any trade secrets, confidential business information, copyrighted or patented materials, or other proprietary materials or information of any third party in establishing or operating the franchised business without a written license

to do so. This Agreement is binding upon the parties and their heirs, approved assigns and successors in interest.

21.12. Effective Date of this Agreement.

This Agreement shall become effective upon the date of its acceptance and execution by us.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED EFFECTIVE AS OF THE DATE LISTED IN ATTACHMENT A.

**FRANCHISEE:**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**ATTACHMENT A**

**FRANCHISEE SPECIFIC TERMS**

**Effective Date:**

**Franchise Fee:**

**Franchisee Name:**

**Ownership of Franchise:**

Owner Name	Ownership Percentage
	%
	%
	%

**Franchisee Address:**

**Franchisee Phone:**

**Franchisee Email:**

**Principal Executive:**

**Designated Representative:**

**Protected Territory:**

*[Attach map or list of distinguishing territory features such as list of zip codes]*

**FRANCHISEE:**

[FRANCHISEE]

**Signature:**

**Name:**

**Title:**

**FRANCHISOR:**

MAHANA FRESH, LLC

**Signature:**

**Name:**

**Title:**

**SCHEDULE 1 TO ATTACHMENT A**

**LOCATION ACCEPTANCE LETTER**

*(to be completed after site selection and acceptance)*

**Date:**

1. **Preservation of Agreement.** Except as specifically set forth in this letter, the Franchise Agreement shall remain in full force and effect in accordance with its terms and conditions. This letter is attached to and upon execution becomes an integral part of the Franchise Agreement.

2. **Authorized Location.** The Authorized Location shall be the following:

---

3. **Protected Territory.** Pursuant to the Franchise Agreement, Franchisee's Protected Territory will be defined as follows (if identified on a map, please attach map and reference attachment below):

---

**FRANCHISOR:**

MAHANA FRESH, LLC

**Signature:**

**Name:**

**Title:**

## ATTACHMENT B

### COVENANTS OF OWNERS

The undersigned individuals (the "Owners") represent and warrant to Mahana Fresh that they are all of the owners of Franchisee and all or the persons who otherwise have a direct or indirect interest in the success of Franchisee and that the person designated below as the Controlling Person is the Controlling Person of the Approved Entity under this Agreement. Further, to induce Mahana Fresh to enter into this Agreement and grant the franchise to Franchisee, each of the Owners hereby jointly and severally unconditionally guarantees the payment and performance by Franchisee of all of its obligations, indebtedness, and liabilities of Franchisee to Franchisor, direct or indirect, absolute or contingent, of every kind and nature, whether now existing or incurred from time to time hereafter under the Franchise Agreement and agrees to be bound by all of the provisions of this Agreement, including, without limitation, the restrictions contained in Articles 18, 19 and 20 of this Agreement.

The Owners waive presentment, demand, notice of dishonor, protest, and all other notices whatsoever, including without limitation notices of acceptance hereof, of the existence or creation of any liabilities of Franchisee, of the amounts and terms thereof, of all defaults, disputes, or controversies between Franchisor and Franchisee and of the settlement, compromise, or adjustment thereof. This guarantee is primary and not secondary, and will be enforceable without Franchisor having to proceed first against Franchisee or against any or all of the Owners or against any other security for the liabilities of Franchisee. This guarantee will be effective regardless of the insolvency of Franchisee by operation of law, any reorganization, merger, or consolidation of Franchisee, or any change in the ownership of Franchisee.

Each Owner also acknowledges and agrees that:

The Approved Entity shall be managed solely by the Controlling Person and that the Controlling Person may not be removed by any action of the Approved Entity or its Owners without the prior written consent of Mahana Fresh;

The Controlling Person shall at all times during the continuation of this Agreement have not less than forty percent (40%) and the largest share of the equity and voting power and/or interests in the Approved Entity and any provision or term in the governing or establishing documents for the Approved Entity or any agreement between the Owners to the contrary is and shall be void for all purposes;

The establishing or governing documents for the Approved Entity do not provide for a "supermajority" or other voting structure that would require the Controlling Person to have more than 51% of the equity and voting structure in order to maintain control over the Approved Entity and that no Owner(s) has any type of "veto" rights and that no voting trusts have been established which would restrict or limit the voting control of the Controlling Person. If such provision or term exists in the establishing or governing documents or other agreements, the Owners agree that it shall be void for all purposes;

The Controlling Person has, as of the date of execution of this Agreement, the option, but not the obligation, exercisable on thirty (30) days' notice, to purchase any or all of the equity and voting interest owned by the other Owners for a sum certain which has been determined prior to the execution of this Covenant of Owners (which may be modified by the Owners). If for any reason all Owners have not agreed upon a purchase price, the undersigned Owner(s) agree that the purchase price for their interest shall be calculated by determining the formula price in this Agreement for all of the Mahana Fresh Restaurants which the Approved Entity operates and subtracting from such formula price all of the current and long-term liabilities of Franchisee. The result of such computation shall be multiplied by the ratio that the Owner's interest bears to all outstanding ownership interests in the Approved Entity. Upon tendering the purchase price for each Owner's interest, the Owners hereby agree to convey such interest and such commitment shall be subject to enforcement by any court of competent jurisdiction through specific performance;

If the Controlling. Person receives a bona-fide offer and desires to sell the franchise, the Franchisee can require the other Owners to sell his/her interest in accordance with the terms of the bona-fide offer.

None of the Owners has made, provided, received or taken any security interest in this Agreement or any pledge of any equity or interest in the Approved Entity and no such security interest or pledge shall be made, provided, received or taken during the continuation of this Agreement.

Neither the Franchisee nor the Approved Entity are or will be owned or controlled under any arrangement whereby the ownership, control or voting rights are owned or controlled by two persons or entities, or one person and one entity, on a 50/50 basis.

These Covenants of Owners are intended to modify and supersede any provisions of the establishing or governing documents for the Approved Entity or other agreement between the Owners which are inconsistent with its terms. In the event of any inconsistency between these Covenants of Owners and any other agreement or governing or establishing document, these Covenants of Owners shall control. The undersigned acknowledge that the execution of these Covenants of Owners are conditions to approval by Mahana Fresh of assignment or entry of this Agreement with Mahana Fresh, and Mahana Fresh shall be entitled to refuse to acknowledge or recognize any provisions of the governing or establishing documents of the Approved Entity which are inconsistent with the terms of these Covenants of Owners or this Agreement. Each of the Owner(s) agrees that in the event that any of the governing or establishing documents for the Approved Entity are inconsistent with the provisions of these Covenants of Owners, the Controlling Person is granted the authority and power to modify or amend such provision and each Owner agrees to cast any necessary vote in favor of the amendment of such document or to execute such agreement as will reconcile these Covenants of Owners and the applicable document or agreement. The undersigned further agree that the governing and establishing documents of the Approved Entity shall not be amended, modified, deleted, novated, or otherwise changed in any manner without the prior written consent of Mahana Fresh.

The governing law, dispute resolution, and all other provisions set forth in Section 21.6 of the Franchise Agreement shall apply to any and all disputes arising out of or in connection with this Covenant of Owners as if set forth fully herein.

This Covenant of Owners will be binding upon the Owners and their respective heirs, executors, successors, and assigns, and will inure to the benefit of Franchisor and its successors and assigns.

ACKNOWLEDGED:

CONTROLLING PERSON AND OWNERSHIP %

*(list additional owners and their respective % stake, as necessary)*

Signed:

Name:

Ownership %:

Date:



## ATTACHMENT C

### LEASE RIDER

THIS RIDER TO LEASE (the "Rider") is made as of the date signed below by and between [TENANT/FRANCHISEE] ("Tenant") and [LANDLORD] ("Landlord").

WHEREAS, concurrently with the execution of this Rider, Tenant, a franchisee of Mahana Fresh, LLC ("Franchisor"), and Landlord have entered into a lease for the premises of Tenant's Mahana Fresh Restaurant located at: [FRANCHISE LOCATION] (the "Lease").

WHEREAS, as a condition to Franchisor's grant of a franchise to a franchisee, Franchisor requires that certain provisions be contained in the Lease entered into by its franchisees.

WHEREAS, to evidence Landlord's and Tenant's agreement to these terms, the parties hereby enter into this Rider to Lease.

NOW, THEREFORE, the parties agree as follows:

1. Inconsistency between Lease and Rider. In the event of any inconsistency between the terms of the Lease and this Rider, the terms of this Rider shall prevail.
2. Use and Occupancy. Tenant may use the leased premises (the "Premises") as a Restaurant for the preparation, consumption and carry-out of freshly prepared bowls and other food products, side dishes, non-alcoholic beverages for on-premises and off-premises consumption and beer and wine and those items customarily sold, either now or at an applicable time in the future, in a Mahana Fresh Restaurant or other similar enterprise or establishment so long as such future use does not conflict with any applicable governmental laws, rules and regulations or any exclusive use granted prior to the date of this Lease to other tenants within the shopping center. Any retail food or beverage establishment with which Tenant or Franchisor enters into a co-branding agreement or relationship shall be deemed a "similar enterprise" for purposes of this paragraph.
3. Assignment of Lease. Anything contained in the Lease to the contrary notwithstanding, Landlord agrees that the Lease and the right, title and interest of the Tenant and any subsequent or successor Tenant thereunder, may and shall be assigned, at the sole and exclusive option of Franchisor, to Franchisor or an approved franchisee of Franchisor (each, a "Successor Tenant") provided Landlord receives notice of such assignment, and further provided, that the assignee shall execute such documents evidencing its agreement to thereafter keep and perform all of the obligations of Tenant arising under the Lease from and after the time of such assignment. If the Lease is assigned to Franchisor and Franchisor subsequently assigns it to an approved franchisee of Franchisor, then in that case Franchisor shall be released from any liability under the Lease from that date forward. Further, Successor Tenant shall have no responsibility for prior defaults under the Lease and Landlord shall not terminate the Lease upon assignment.
4. Notice of Default. Landlord shall give written notice via USPS Certified Mail to Franchisor at P.O. Box 3566, Sarasota, Florida 34230, Attn: Franchise Services, of any default by Tenant under the Lease and Franchisor may cure such default at its sole option. Franchisor shall have an additional ten days after the Tenant's cure period to cure any default, but in no case less than ten days after receipt of notice.
5. Adequate Parking. Tenant and its employees, customers, and invitees shall have the right to use a minimum of twenty (20) spaces of the parking lot adjoining the Premises either reserved for Tenant or in common with other tenants.
6. Outdoor Seating. Tenant shall be entitled to have and maintain at least five (5) tables or benches seating at least four (4) people each outdoors in front of or beside the leased Premises at no additional cost or rent.

7. Standard Signage. Tenant has the right to install the customary and usual Mahana Fresh display signs on and adjacent to the Premises and on any pole type or tenant shared sign, subject to Landlord's approval, which will not be unreasonably withheld, and subject to applicable zoning ordinances and restrictive covenants.

8. Exclusivity. Landlord covenants and agrees that no other competitive business, enterprise, restaurant, kiosk, or operation currently exists, and that Landlord will not directly or indirectly permit any competitive business, enterprise, restaurant, kiosk, or operation to open or operate, in the same mall or shopping center as the leased Premises, or within five hundred feet of the leased Premises in any building, mall or shopping center owned, leased, managed or controlled by Landlord. A "competitive business" shall mean and include any business, enterprise, restaurant, kiosk, or operation selling primarily bowls, or having over half of its sales consisting of any of the foregoing items individually or in combination.

9. Adjoining Uses. Landlord covenants and agrees that no tattoo parlor, adult bookstore, or adult theater currently exists, and that Landlord shall not permit, directly or indirectly, any tattoo parlor, adult bookstore, or adult theater to be operated within five hundred (500) feet of the leased Premises in any building or shopping center owned, leased, managed, or controlled by Landlord. As a guideline for determining what is an "adult bookstore" or "adult theater" the parties agree that any commercial establishment that frequently shows or has a significant portion of its business in display, sale, rental, or viewing of publications, books, films, videos or other visual representations or reproductions that are rated X, XX or XXX, or which are characterized by an emphasis on the exposure, depiction, or description of breasts, genitalia or private parts, or on the conduct or simulation of sexual activities, shall not be permitted as an Adjoining Use under this section.

10. Payment of Rent. Notwithstanding anything in the Lease to the contrary, Tenant and Landlord acknowledge that Tenant's rent or lease obligations shall not be determined based upon Tenant's sales.

11. No Radius or Relocation Clauses. Any restrictions on other Mahana Fresh Restaurant or franchise locations and any relocation of Premises provisions in the Lease permitting Landlord to unilaterally move or relocate Tenant's restaurant or business are hereby deleted.

12. Alterations. Tenant shall have the right to close for up to thirty (30) days once every five years to refurbish and redecorate the Premises. Landlord's approval for this shall not be required if the work is all to the interior of the Premises.

13. Co-Tenancy. If the space currently occupied by (insert name of major or anchor tenant or state Not Applicable) is not open for business to the public and continuously operating, fully staffed, stocked and fixtured, in at least ninety percent (90%) of the space which it occupies in the Shopping Center as of the date hereof, or less than fifty percent (50%) of the leasable square footage in the Shopping Center is open for business to the public (either event being referred to herein as a "Co-Tenancy Failure"), then the minimum and additional rent payable by Tenant under the Lease shall abate from the date of any such Co-Tenancy Failure until the date that the Major Tenant is open for business to the public in at least ninety percent (90%) of its current premises in the Shopping Center and at least fifty percent (50%) of leasable square footage in the Shopping Center is open for business to the public (the "Co-Tenancy Requirement"). Further, if a Co-Tenancy Failure continues for one (1) year or more, then Tenant shall have the right to terminate the Lease upon thirty days written notice to Landlord at any time prior to the satisfaction of the Co-Tenancy Requirement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have executed this Rider on or as of the Effective Date signed below.

**LANDLORD:**

[LANDLORD ENTITY]

**Signature:**

**Name:**

**Title:**

**Date:**

**TENANT:**

[FRANCHISEE ENTITY]

**Signature:**

**Name:**

**Title:**

**Date:**

**FRANCHISOR:**

MAHANA FRESH, LLC

**Signature:**

**Name:**

**Title:**

**Date:**

**ATTACHMENT D**

**ELECTRONIC FUNDS TRANSFER AUTHORIZATION**

**ELECTRONIC FUNDS TRANSFER AUTHORIZATION FORM**

**Bank Name:**

**ABA# :**

**Acct. No.:**

**Acct. Name:**

Effective as of the date of the Franchisee signature below, [FRANCHISEE ENTITY] (the “Franchisee”) hereby authorizes Mahana Fresh, LLC (the “Company”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to cover the following payments that are due and owing Company or its affiliates under the franchise agreement dated [FA DATE] (the “Franchise Agreement”) for the franchised business located at: [FRANCHISE LOCATION] (the “Franchised Business”): (i) all Royalty Fees; (ii) Fund Contributions; (iii) any amounts due and owing the Company or its affiliates in connection with marketing materials or other supplies or inventory that is provided by Company or its affiliates; and (iv) all other fees and amounts due and owing to Company or its affiliates under the Franchise Agreement. Franchisee acknowledges each of the fees described above may be collected by the Company (or its designee) as set forth in the Franchise Agreement.

The parties further agree that all capitalized terms not specifically defined herein will be afforded the definition they are given in the Franchise Agreement.

Such withdrawals shall occur on a weekly basis, or on such other schedule as Company shall specify in writing. This authorization shall remain in full force and effect until terminated in writing by Company. [FRANCHISEE ENTITY] shall provide Company, in conjunction with this authorization, a voided check from the above-referenced account.

**FRANCHISEE**  
[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR APPROVAL**  
MAHANA FRESH, LLC

By:

Name:

Title:

## ATTACHMENT E

### **CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT** *(for trained employees, officers, directors, general partners, members, Controlling Person(s) and any other management personnel of Franchisee)*

In consideration of my being a [TITLE/ROLE WITH FRANCHISEE] of [FRANCHISEE] (the “Franchisee”), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I (the undersigned) hereby acknowledge and agree that Franchisee has acquired the right from Mahana Fresh, LLC (the “Company”) to: (i) establish and operate a Mahana Fresh restaurant franchised business (the “Franchised Business”); and (ii) use in the operation of the Franchised Business the Company’s trade names, trademarks and service marks (collectively, the “Marks”) and the Company’s unique and distinctive format and system relating to the establishment and operation of Mahana Fresh restaurant businesses (the “System”), as they may be changed, improved and further developed from time to time in the Company’s sole discretion, only at the following authorized and approved location: [FRANCHISE LOCATION] (the “Premises”).

1. The Company possesses certain proprietary and confidential information relating to the operation of the Franchised Business and System generally, including without limitation: Company’s proprietary and confidential Operations Manual and other manuals providing guidelines, standards and specifications related to the establishment and operation of the Franchised Business (collectively, the “Manual”); Franchisor’s proprietary training materials and programs, as well as proprietary marketing methods and other instructional materials, trade secrets; information related to any other proprietary methodology or aspects of the System or the establishment and continued operation of the Franchised Business; financial information; any and all customer lists, contracts and other customer information obtained through the operation of the Franchised Business and other Mahana Fresh restaurant businesses; any information related to any type of proprietary software that may be developed and/or used in the operation of with the Franchised Business; and any techniques, methods and know-how related to the operation of Mahana Fresh restaurant business or otherwise used in connection with the System, which includes certain trade secrets, copyrighted materials, methods and other techniques and know-how (collectively, the “Confidential Information”).

2. Any other information, knowledge, know-how, and techniques which the Company specifically designates as confidential will also be deemed to be Confidential Information for purposes of this Agreement.

3. As [INSERT TITLE WITH RESPECT TO FRANCHISEE] of the Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, the Manual, and other general assistance during the term of this Agreement.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term hereof, and the use or duplication of the Confidential Information, in whole or in part, for any use outside the System would constitute an unfair method of competition.

5. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as [INSERT TITLE] of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

6. I will surrender any material containing some or all of the Confidential Information to the Company,

upon request, or upon conclusion of the use for which the information or material may have been furnished.

7. Except as otherwise approved in writing by the Company, I shall not, while in my position with the Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in any other business involved in selling bowls as a majority of its food sales or advertising itself as selling or serving primarily bowls, or using the word "Fresh" in its trade name (collectively, a "Competing Business"). I also agree that I will not undertake any action to divert business from the Franchised Business to any Competing Business, or solicit any of the former customers or employees of Franchisee for any competitive business purpose.

7.1 *Post-Term Restrictive Covenant for Controlling Person of Franchised Business or Manager/Officers/Directors of Franchisee.* In the event I am a manager of the Franchised Business, or an officer/director/manager/partner of Franchisee that has not already executed a personal guaranty agreeing to be bound by the terms of the Franchise Agreement, then I further agree that I will not be involved in a Competing Business of any kind for a period of one year after the expiration or termination of my employment with Franchisee for any reason: (i) at or within a 10-mile radius of the Premises; or (ii) within a 5-mile radius of any other Mahana Fresh restaurant business that exists at the time my employment with Franchisee ceases through the date of my involvement with the Competing Business. I also agree that I will not be involved in the franchising or licensing of any Competing Business at any location, or undertake any action to divert business from the Franchised Business to any Competing Business or solicit any of the former customers or employees of Franchisee for any competitive business purpose, during this one-year period following the termination or expiration of my employment with the Franchisee.

8. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

9. I understand and acknowledge that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

10. The Company is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or the Company may apply for the issuance of a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security. I agree to pay the Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees, and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against the Franchisee, or the Company, is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

11. I shall not at any time, directly or indirectly, do any act that would or would likely be injurious or prejudicial to the goodwill associated with the Confidential Information and the System.

12. Franchisee shall make all commercially reasonable efforts to ensure that I act as required by this Agreement.

13. Any failure by Franchisor to object to or take action with respect to any breach of this Agreement by me shall not operate or be construed as a waiver of or consent to that breach or any subsequent breach by

me.

14. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA AND MYSELF HEREBY IRREVOCABLY SUBMITS HIMSELF TO THE JURISDICTION OF THE STATE COURT CLOSEST TO FRANCHISOR'S THEN-CURRENT HEADQUARTERS OR, IF APPROPRIATE, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT FOR FLORIDA. I HEREBY WAIVE ALL QUESTIONS OF PERSONAL JURISDICTION OR VENUE FOR THE PURPOSE OF CARRYING OUT THIS PROVISION. I HEREBY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON ME IN ANY PROCEEDING RELATING TO OR ARISING UNDER THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS ALLOWED BY FLORIDA OR FEDERAL LAW. I FURTHER AGREE THAT VENUE FOR ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE ONE OF THE COURTS DESCRIBED ABOVE IN THIS SECTION; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION WHICH INCLUDES INJUNCTIVE RELIEF OR OTHER EXTRAORDINARY RELIEF, FRANCHISOR MAY BRING SUCH ACTION IN ANY COURT IN ANY STATE WHICH HAS JURISDICTION.

15. The parties acknowledge and agree that each of the covenants contained in this Agreement are reasonable limitations as to time, geographical area, and scope of activity to be restrained and do not impose a greater restraint than is necessary to protect the goodwill or other business interests of Franchisor. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in any unappealed final decision to which Franchisor is a part, I expressly agree to be bound by any lesser covenant subsumed within the terms of the covenant that imposes the maximum duty permitted by law as if the resulting covenant were separately stated in and made a part of this Agreement.

16. This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement. This Agreement may be modified only by a duly authorized writing executed by all parties.

17. All notices and demands required to be given must be in writing and sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, facsimile or electronic mail, (provided that the sender confirms the facsimile or electronic mail, by sending an original confirmation copy by certified or registered mail or expedited delivery service within three (3) business days after transmission), to the respective party at the following address unless and until a different address has been designated by written notice.

The notice shall be addressed to: Mahana Fresh, LLC Attn: David A. Wood, 650 Golden Gate Point, Suite 401, Sarasota, Florida 34236.

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by facsimile or electronic mail shall be deemed given upon transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service or registered or certified mail shall be deemed given three (3) business days after the time of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other parties. Business day for the purpose of this Agreement excludes Saturday, Sunday, and the following national holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

18. The rights and remedies of Franchisor under this Agreement are fully assignable and transferable and inure to the benefit of its respective parent, successor and assigns.

**[SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, this Agreement is made and entered into by the undersigned parties as of the Effective Date.

**UNDERSIGNED**

Signature:

Name:

Address:

Title:

Date Signed:

**ACKNOWLEDGED BY FRANCHISEE**

[FRANCHISEE]

Signature:

Name:

Title:

Effective Date:

**ATTACHMENT F**

**CONDITIONAL ASSIGNMENT OF FRANCHISEE'S  
TELEPHONE NUMBERS, FACSIMILE NUMBERS, AND DOMAIN NAMES**

**CONDITIONAL ASSIGNMENT OF FRANCHISEE’S  
TELEPHONE NUMBERS, FACSIMILE NUMBERS, AND DOMAIN NAMES**

1. The person listed below as the assignor (“Assignor”), in exchange for valuable consideration provided by Mahana Fresh, LLC (“Assignee”), receipt of which is hereby acknowledged, hereby conditionally assign to Assignee all telephone numbers, facsimile numbers, domain names, as well as any listings associated therewith, utilized by Assignor in the operation of its Mahana Fresh business specified in the franchise agreement (the “Assigned Property”), entered into by and between Assignor and Assignee (the “Franchise Agreement”). The Assigned Property includes the following:

Telephone Number(s):

Facsimile Number(s):

Domain Name(s) (as permitted by Franchisor under the Franchise Agreement):

2. The conditional agreement will become effective automatically upon termination, expiration, or transfer of the Franchise Agreement. Upon the occurrence of that condition, Assignor must do all things required by the telephone company and/or domain name registrar to assure the effectiveness of the assignment of Assigned Property as if the Assignee had been originally issued such Assigned Property and the usage thereof.

3. Assignor agrees to pay the telephone company and/or domain name registrar, on or before the effective date of assignment, all amounts owed for the use of the Assigned Property up to the date this Assignment becomes effective. Assignor further agrees to indemnify Assignee for any sums Assignee must pay the telephone company to effectuate this Assignment and agrees to fully cooperate with the telephone company and/or domain name registrar, as well as the Assignee, in effectuating this assignment.

**ASSIGNOR:**

**[FRANCHISEE]**

By:

Name:

Title:

Date:

**ASSIGNEE:**

**MAHANA FRESH, LLC**

By:

Name:

Title:

Date:

**EXHIBIT D**

**AREA DEVELOPMENT AGREEMENT**



**AREA DEVELOPMENT AGREEMENT**

**BETWEEN**

**MAHANA FRESH, LLC**

**AND**

---

**AREA DEVELOPER**

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**MAHANA FRESH, LLC**

**DEVELOPMENT AGREEMENT**

This Development Agreement (this “**Agreement**”) is between Mahana Fresh, LLC, a Florida limited liability company (“**we**”, “**Mahana Fresh**” or “**us**” in this Agreement), and (“**you**” or “**Developer**” in this Agreement). If you are a corporation, partnership, limited liability company or other entity approved by us (the “**Approved Entity**”), the term “owners” in this Agreement refers to the shareholders, partners, members, or other interest holders. This Agreement is effective as of the date signed by Mahana Fresh or Developer, whichever is later (the “**Effective Date**”). Unless otherwise approved by Mahana Fresh, the term “Controlling Person” refers to the person who owns forty percent (40%) or more and the largest share of the general partnership interest of such partnership, equity and voting power of all classes of issued and outstanding capital stock of such corporation, the membership interest of such limited liability company or the voting and ownership interests of such other entity.

NOW, THEREFORE, THE PARTIES AGREE:

This Agreement sets forth the understanding of Mahana Fresh and Developer with respect to your development of Mahana Fresh bowl restaurants ("**Restaurant**" or "**Restaurants**") in the area described in Section 1 of this Agreement, which is as follows:

1. Grant of Development Rights. Subject to the terms of this Agreement, Mahana Fresh grants to you the exclusive right to develop Restaurants within the area described in Exhibit A to this Agreement (the "**Development Area**"). Enclosed malls, institutions (such as hospitals), colleges, universities, train stations, bus stations, airports, parks (including theme parks), sports arenas, convention centers and other facilities or venues where events are scheduled are excluded from the Development Area.
2. Territorial Protection. Subject to our reservation of rights in Articles 4.2 of the Franchise Agreement, during the Term, we agree that neither we nor our affiliates will operate (directly or indirectly) or grant a franchise for the operation of a Restaurant to anyone else in the Development Area, provided that you: (a) timely meet the development obligations set forth in Section 4 of this Agreement; and (b) otherwise comply with the provisions of this Agreement.
3. Term of Agreement. The Term of this Agreement shall be for a period of \_\_\_\_ years and \_\_\_\_ months beginning on \_\_\_\_\_ and ending on \_\_\_\_\_ (the “**Term**”).
4. Development Requirements. You agree to open the following number of Restaurants during the Term by the dates set forth below:

<b>By the Following Dates:</b>	<b>Total Number of Units to be open and Operating</b>

5. Grant of Franchises. We will grant you a franchise for the operation of a Restaurant at a proposed site within the Development Area upon our approval of a completed application submitted by you in the form prescribed by us, provided that we determine in our sole and absolute discretion that:

- a. you and your owners have the financial capacity and necessary skills and experience to develop and operate the Restaurant based upon criteria established by us from time to time;
  - b. the site which you have proposed for the Restaurant within the Development Area is a suitable site for a Restaurant based upon criteria established by us from time to time (or we, in our sole discretion, agree to permit the site to be selected after the franchise agreement is signed);
  - c. you and your owners are in compliance with this Agreement and all Mahana Fresh Franchise Agreements; and
  - d. you and your owners have furnished all information we may reasonably require in evaluating your application.
6. Agreements to be Executed. You and your owners agree to execute our then-current form of franchise agreement (the "**Franchise Agreement**"), which may have terms that differ from the Franchise Agreement for your first Restaurant, (which you must execute contemporaneously with this Agreement), for each Restaurant developed pursuant to this Agreement.
7. Payments. You agree to pay a Development Fee of \$ \_\_\_\_\_, which is for \_\_\_\_\_ Restaurants in the Development Area. You will not be required to pay any additional initial franchise fee when the Franchise Agreement for each individual Restaurant is signed, as long as each Franchise Agreement is signed while this Development Agreement is still in full force and effect. If you are permitted, in our sole discretion, to develop more Restaurants in the Development Area than are initially provided for in this Agreement, then the per Restaurant franchise fee shall be \$ \_\_\_\_\_ per additional Franchise Agreement which is signed while this Agreement is still in full force and effect. All franchise fees and development fees are earned when paid, are not refundable under any circumstances, and are not merely deposits on future franchise fees.
8. Management and/ or Supervision of Restaurants. You must actively and frequently manage and supervise Restaurants within the Development Area. If you are an Approved Entity, the Controlling Person must actively and frequently supervise Restaurants within the Development Area.
9. Termination.
- a. Mutual Termination. This Agreement and all rights and obligations of the parties may be terminated at any time by the mutual agreement of the parties.
  - b. By Mahana Fresh. We may terminate this Agreement effective upon delivery of written notice to you if:
    - i. you fail to meet the Development Requirements set forth in Section 4 hereof;
    - ii. you or your owners fail to comply with any other provision of this Agreement;
    - iii. you or your owner fail to comply with any Mahana Fresh Development Agreement or Franchise Agreement or any such agreement with any entity that you or your Controlling Person directly or indirectly owns in whole or in part, is terminated by us in accordance with its terms;
    - iv. you and your owners fail to maintain the financial capacity and necessary skills and experience to meet the Development Requirements and timely develop and operate the Restaurants required to be opened and operated under this Agreement based upon criteria established by us from time to time; or
    - v. the Controlling Person of the Developer under this Agreement is not at any time the Controlling Person of all approved entities operating Restaurants in the Development Area.



10. Trade Secrets of Mahana Fresh. You agree that you will maintain the absolute confidentiality of all non-public or confidential information and methods provided by us with respect to the operation of a Restaurant and will not use any such information in any other business or in any manner not specifically authorized or approved in writing by Mahana Fresh.

11. Conflicting Business Interests. Neither you nor any of your owners may engage in any activity which may impair your ability to fulfill your obligations during the Term without our prior written consent, which may be withheld in our sole and absolute discretion. You represent and warrant that you, your Controlling Person, your Approved Entity, and each of your owners have the legal right with respect to one another and third parties to enter into this Agreement and into the Covenants of Owners and to be involved in the ownership and operation of the Restaurant, that doing so will not violate any contractual or legal obligations or duties to one another nor to any third party, and that you will not use any trade secrets, confidential business information, copyrighted or patented materials, or other proprietary materials or information of any third party in establishing or operating the Restaurant, without a written license to do so.

12. Assignment by Developer. This Agreement and the development rights contained in this Agreement are personal to you and your owners and may not be voluntarily, involuntarily, directly or indirectly, assigned or otherwise transferred or encumbered by you or your owners. For purposes of this paragraph, a sale, assignment, or transfer of the interests of any owner shall be deemed an assignment or transfer of this Agreement.

13. Assignment by Mahana Fresh. This Agreement is fully assignable by us and the assignee or other legal successor to Mahana Fresh's interests will be entitled to receive all of the benefits of this Agreement.

14. Notices. All written notices permitted or required to be delivered shall be deemed so delivered when delivered by hand, three (3) days after having been placed in the United States Mail by Registered or Certified Mail, one (1) day after being placed in the hands of a commercial courier service for next day delivery, one (1) day after transmission by telecopy or other electronic system, and addressed to us at our most current principal business address or to you at the most current principal business address or home address of which we have been notified in writing

15. Miscellaneous. This Agreement is binding on the parties to this Agreement and their heirs, assigns and successors in interest. By accepting this Agreement, you and your owners will be jointly and severally liable for the performance of the obligations set forth herein. Further, there are no other oral or written understandings or agreements between the parties regarding the subject matter of this Agreement, provided that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in any franchise disclosure document we delivered to you in connection with this Agreement. To the extent that this Agreement is inconsistent with any provision of any Franchise Agreement executed by you in connection with the operation of a Restaurant, the terms of this Agreement shall govern.

16. Dispute Resolution, Arbitration and Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of Florida, excluding its choice of law rules and excluding the Florida Franchise Act.

Any and all disputes arising from or relating to the parties' relationship, or this Agreement shall be subject to mandatory mediation which shall be conducted and completed within thirty (30) days of written demand therefore. Any disputes not resolved by mandatory mediation shall be resolved by binding arbitration within 120 days of the initial written demand therefore. The arbitration hearing shall be held in Sarasota County, Florida or in the City of Sarasota, Florida pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration award shall be reviewable only by state or federal courts in or over Sarasota, Florida and only for clear error of fact or law and on any additional statutory grounds for vacating or reversing an arbitration award.

Mahana Fresh shall be entitled to recover its reasonable attorneys' fees and litigation costs and expenses including expert witness fees if it is the substantially prevailing party in any arbitration or litigation relating to this Agreement or the parties' relationship.

Nothing contained herein shall preclude any party from commencing a suit in court for temporary or preliminary injunctive relief to prevent irreparable harm pending the arbitration decision, provided that any such suit for temporary or preliminary injunctive relief shall be commenced and maintained exclusively in state or federal courts in or having jurisdiction over Sarasota County, Florida.

17. Effective Date of This Agreement. This Agreement shall take effect upon the date of its acceptance and execution by us.

18. I HAVE READ THE ABOVE AGREEMENT AND UNDERSTAND ITS TERMS. I WOULD NOT SIGN THIS AGREEMENT IF I DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.

**AREA DEVELOPER:**  
[AREA DEVELOPER ENTITY]

By:

Name:

Title:

Date:

**FRANCHISOR:**  
MAHANA FRESH, LLC

By:

Name:

Title:

Date:

**EXHIBIT A**

**DEVELOPMENT AREA**

**AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS  
(DIRECT DEBITS)**

The undersigned franchisee/depositor (“**Depositor**”) hereby (1) authorizes Mahana Fresh, LLC and its Affiliates (“**Franchisor**”) to initiate debit entries and/or credit correction entries to the undersigned’s checking and/or savings account indicated below, and (2) authorizes the depository designated below (“**Depository**”) to debit such account pursuant to Franchisor’s instructions.

**Depository:**

**Branch:**

**City, State Zip:**

**Bank Transit /ABA Number:**

**Account Number:**

This authority is to remain in full force and effect until Depository has received joint written notification from Franchisor and Depositor of the Depositor’s termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity to act on it. Notwithstanding the foregoing, Depository shall provide Franchisor and Depositor with thirty (30) days’ prior written notice of the termination of this authority. If an erroneous debit entry is initiated to Depositor’s account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or forty-five (45) days after posting, whichever comes first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error, and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws. Depositor shall be responsible for all charges assessed by Depository to process all debit entries and/or credit corrections entries to the undersigned’s checking and/or savings account initiated by Franchisor. Franchisor will credit Depositor for fees if error is deemed to be caused by Franchisor.

**DEPOSITOR:**  
[PRINT NAME]

By:

Name:

Title:

Date:

**DEPOSITORY:**  
[PRINT NAME]

By:

Name:

Title:

Date:

**EXHIBIT E**

**FINANCIAL STATEMENTS**



**Mahana Fresh LLC**  
**Financial Statements**  
**For the years ended**  
**December 31, 2022 and 2021**





**Mahana Fresh LLC**

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## Independent Auditor's Report

The Members and Managers  
Mahana Fresh LLC  
Sarasota, Florida

### Opinion

We have audited the accompanying financial statements of Mahana Fresh LLC (the "Company"), a Florida corporation, which comprise the balance sheets as of December 31, 2022 and 2021, and the related statements of income, changes in members' equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Mahana Fresh LLC as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Mahana Fresh LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Mahana Fresh LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.







- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Mahana Fresh LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Mahana Fresh LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Davidson Doyle & Hillier, PC*

Lynchburg, Virginia  
March 1, 2023





Mahana Fresh LLC  
Balance Sheets  
December 31, 2022 and 2021

	Assets	
	<u>2022</u>	<u>2021</u>
<b>Current Assets</b>		
Cash and cash equivalents	\$ 7,399	\$ 141,092
Accounts receivable	167,455	146,031
Prepaid expenses	368,468	410,407
Total current assets	<u>543,322</u>	<u>697,530</u>
<b>Fixed assets</b>		
Property and equipment	25,265	25,265
Accumulated depreciation	( 21,568 )	( 17,771 )
	<u>3,697</u>	<u>7,494</u>
<b>Other Assets</b>		
Start up costs, net of accumulated amortization of \$54,200 and \$42,465	<u>4,472</u>	<u>16,207</u>
Total Assets	\$ <u>551,491</u>	\$ <u>721,231</u>
<b>Liabilities and Members' Equity</b>		
<b>Current Liabilities</b>		
Accrued expenses	\$ 12,169	\$ 29,497
Due to member	105,566	23,325
Deferred Revenue, current	242,828	280,500
Total current liabilities	<u>360,563</u>	<u>333,322</u>
Deferred revenue	<u>1,136,782</u>	<u>1,325,079</u>
Total liabilities	1,497,345	1,658,401
<b>Members' Equity</b>		
Members' paid in capital	700,000	700,000
Retained earnings	( 1,645,854 )	( 1,637,170 )
Total members' equity	( 945,854 )	( 937,170 )
Total Liabilities and Members' Equity	\$ <u>551,491</u>	\$ <u>721,231</u>

See notes to financial statements.





**Mahana Fresh LLC**  
**Statements of Income**  
**Years ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>Income</b>		
Franchise and area representative fees	\$ 315,417	\$ 346,308
Advertising and royalty income	368,011	321,586
Other income	<u>317</u>	<u>22,592</u>
<b>Total income</b>	<u>683,745</u>	<u>690,486</u>
<b>Expenses</b>		
Salaries and wages	318,850	383,247
Consulting	100,000	100,000
Commissions	63,625	66,944
Travel	54,160	71,025
Advertising	44,463	101,426
Professional fees	37,070	48,514
Payroll taxes	23,263	29,474
General and administrative	21,312	38,248
Depreciation and amortization	15,532	15,564
Insurance	10,195	21,687
Fees and licenses	2,988	9,073
Uniforms	851	-
Bad debt	<u>120</u>	<u>75,950</u>
<b>Total expenses</b>	<u>692,429</u>	<u>961,152</u>
<b>Net operating loss</b>	( 8,684 )	( 270,666 )
Loan forgiveness	-	119,429
CARES Act tax rebates	<u>-</u>	<u>124,462</u>
<b>Net loss</b>	\$ ( <u>8,684</u> )	\$ ( <u>26,775</u> )

See notes to financial statements.





**Mahana Fresh LLC**  
**Statements of Changes in Members' Equity**  
**Years ended December 31, 2022 and 2021**

	<u>Members Paid in Capital</u>	<u>Retained Earnings</u>	<u>Members' Total Equity</u>
Balance at January 1, 2021	700,000	( 1,610,395 )	( 910,395 )
Net Loss	<u>-</u>	( <u>26,775</u> )	( <u>26,775</u> )
Balance at January 1, 2022	\$ 700,000	\$ ( 1,637,170 )	\$ ( 937,170 )
Net Loss	<u>-</u>	( <u>8,684</u> )	( <u>8,684</u> )
Balance at December 31, 2022	\$ <u>700,000</u>	\$ ( <u>1,645,854</u> )	\$ ( <u>945,854</u> )

See notes to financial statements.





**Mahana Fresh LLC**  
**Statements of Cash Flows**  
**Years ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>Cash flows from operating activities</b>		
Net loss	\$ ( 8,684 )	\$ ( 26,775 )
Adjustments to reconcile net income to net cash provided by (used in) operating activities		
Depreciation and amortization expense	15,532	15,564
PPP loan forgiveness	( - )	( 119,429 )
Bad debt expense	120	75,950
Changes in:		
Accounts receivable	( 21,544 )	286,054
Prepaid expenses	41,939	11,780
Accrued expenses	( 17,328 )	( 42,471 )
Due to member	82,241	15,000
Deferred revenue	( 225,969 )	( 245,111 )
<b>Net cash used in operating activities</b>	( 133,693 )	( 29,438 )
<b>Cash flows from investing activities</b>		
Purchase of fixed assets	-	( 3,500 )
<b>Net cash used in investing activities</b>	-	( 3,500 )
<b>Cash flows from financing activities</b>		
Proceeds from PPP loan	-	119,429
<b>Net cash provided by financing activities</b>	-	119,429
<b>Net increase (decrease) in cash and cash equivalents</b>	( 133,693 )	86,491
<b>Cash and cash equivalents at beginning of year</b>	141,092	54,601
<b>Cash and cash equivalents at end of year</b>	\$ 7,399	\$ 141,092

See notes to financial statements.





**Mahana Fresh LLC**  
**Notes to Financial Statements**  
**December 31, 2022 and 2021**

**Note 1 – Nature of operations**

Mahana Fresh LLC (“the Company”) is a Florida limited liability company. The Company is located and operates out of its offices located in Sarasota, Florida. The Company was formed on March 21, 2018 for the purpose of franchise sales and lead generation, development and marketing services, and the management of restaurant brands and such brands’ franchises. The Company changed its name from Mahana Poke LLC to Mahana Fresh LLC effective March 14, 2019.

**Note 2 – Summary of significant accounting policies**

**Basis of presentation**

The Company uses the accrual basis of accounting in accordance with generally accepted accounting principles.

**Cash and cash equivalents**

For the purpose of the statement of cash flows, the Company considers all short-term debt securities purchased with an original maturity of three months or less and all cash balances or deficits to be cash equivalents. Accounts at each institution are insured by the Federal Deposit Corporation (FDIC) up to \$250,000. From time to time, balances maintained may exceed the maximum amount insured by the FDIC. Management does not believe there is a risk of loss with these accounts.

**Accounts receivable**

Accounts receivable are stated at the amount the Company expects to collect. The Company considers accounts receivable to be fully collectible; accordingly, no allowance for doubtful accounts is required.

**Start up costs**

The Company capitalizes costs incurred in the initial organization of the Company. These costs are amortized over time.

**Revenue recognition**

The Company derives its revenues primarily from franchise and area representative fees. The revenue is recognized over the term of the respective contract. Some fees are paid in a lump sum while others are paid over time. The Company does not have any significant financing components as payment is received as invoiced. Related commissions on these contracts are deferred over the term of the contracts.

**Performance obligation**

For performance obligations related to franchise and area representative fees, control transfers to the franchisee or developer at different times over the contract period. Revenue is recognized based on the terms and deliverables agreed to in the contract. The Company recognizes revenue from fees as each performance obligation is met and over the term of the contract. Franchise and area representative fees collected but not earned based on the deliverables or timing of payment or contract are included in deferred revenue.

**Franchise agreements**

Initial franchise fees and developer fees are due upon granting of the franchise and are deferred and recognized as revenue when all material services and conditions required to be performed by the Company have been substantially completed. Commissions paid on franchise sales are due upon signing of the franchise agreement per the contracts and the expenses are recognized over the term of the franchise agreement.







**Mahana Fresh LLC**  
**Notes to Financial Statements**  
**December 31, 2022 and 2021**

**Note 2 – Summary of significant accounting policies (continued)**

**Adoption of new accounting standards**

In January 2021, FASB issued ASU 2021-02, *Franchisors – Revenue from Contracts with Customers (Subtopic 952-606)*. The standard is effective for annual periods beginning after December 15, 2020. The update is intended to reduce the cost and complexity applying ASU-2014-09 Topic 606 to pre-opening services for franchisors that are not public business entities. The Company adopted the new standard effective January 1, 2021, the first day of the Company’s fiscal year using the modified retrospective approach. The adoption did not have an impact on beginning retained earnings.

In February 2016, FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard is effective for annual financial statements issued for fiscal years beginning after December 15, 2021. Early application of the amendments in the ASU is permitted. The update is intended to increase transparency and comparability among Companies by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements.

**Income taxes**

The Company files partnership returns for the federal and state taxing jurisdictions. The Company does not pay income taxes; instead earnings and losses are reported at the member level for federal and state income tax purposes. Accordingly, the financial statements do not include a provision for income taxes.

The Financial Accounting Standards Board has issued ASC 740-10, *Accounting for Uncertainty in Income Taxes*, which prescribed a comprehensive model for how a company should measure, recognize, present, and disclose in its financial statements uncertain tax positions that an organization has taken or expects to take on a tax return. The Company has analyzed tax positions taken for filing with the Internal Revenue Service and all state jurisdictions where it operates. The Company believes that income tax filing positions will be sustained upon examination and does not anticipate any adjustments that would result in a material adverse affect on the Company’s financial condition, results of operations or cash flows. Accordingly, the Company has not recorded any reserves, or related accruals for interest and penalties for uncertain income tax positions at December 31, 2022 and 2021. Fiscal years ending on or after December 31, 2019 remain subject to examination by federal and state tax authorities as this is the first year of operations.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported amounts of revenues and expenses. Actual results could differ from those estimates.

**Advertising**

Advertising costs are expensed as incurred.

**Impairment Charges**

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Asset*, losses related to the impairment of a long-lived asset are recognized when expected future cash flows are less than the asset’s carrying value. When facts and circumstances indicate that the carrying values of long-lived assets may be impaired, the Company makes an evaluation of recoverability by comparing the carrying values of the assets to projected future cash flows, in addition to other quantitative and qualitative analyses.

When stores close, the Company records a liability for future related costs, net of estimated cost recoveries that may be achieved through bankruptcy proceedings or other collection efforts. Three stores closed during 2022 but none in 2021.





Mahana Fresh LLC  
Notes to Financial Statements  
December 31, 2022 and 2021

**Note 3 – Paycheck protection program**

The Company received a loan of \$106,379 on May 6, 2020 under the Paycheck Protection Program of the CARES Act. It has an interest rate of 1% and matures on May 6, 2022 with all loan proceeds and accrued interest due. The loan forgiveness was applied for and recognized as of December 31, 2020 and the loan was forgiven in 2021. The Company received a second loan of \$119,429 under the Paycheck Protection Program of the CARES Act. It has an interest rate of 1% and matures on February 10, 2026. The loan forgiveness was applied for and approved on November 23, 2021 and recognized as of December 31, 2021.

**Note 4 – Members’ capital accounts**

Initial capital contributions are accounted for within individual member equity accounts. Separate withdrawal accounts are also maintained. Members may not request withdrawals of ownership interest.

Currently, there is one member. The majority member owns 100% of the Company.

Income and losses from operations and for tax purposes are allocated in accordance with the member’s equity ownership. As of December 31, 2022 and 2021, the capital balances are as follows:

	<u>2022</u>	<u>2021</u>
Majority member	\$ ( 945,854 )	\$ ( 937,170 )
Minority members	<u>-</u>	<u>-</u>
Total members’ equity	\$ ( <u>945,854</u> )	\$ ( <u>937,170</u> )

**Note 5 – Franchise Activity**

The Company signed three franchise agreements in 2022 and three franchise agreements in 2021. There was one restaurant opened during 2022 and two restaurants opened during the 2021. Under the franchise agreements, the Company will provide guidance, advice, and management assistance to the franchisees. The Company also agrees to pay certain costs of store refurbishing, advertising, and technology costs. In addition to the initial fee to open a franchise, the franchise agreements provide for royalties of approximately 6% and advertising income of 1% to 2% to be paid to the Company based on weekly sales. Franchise revenues will be recognized over the term of the franchise agreements. At December 31, 2022 and 2021, \$472,706 and \$477,575 remained in deferred revenue.

Commissions on the opening of these franchises are prepaid upon store opening and recognized over the term of the related franchise or developer agreement.

**Note 6 – Area Development Affiliations**

The Company has entered into development agreements with area developers and various individuals to develop stores in certain geographic regions or venues. These agreements generally stipulate that a certain number of stores are to be developed over a period of time. There were no developer (area representative) agreements signed during 2022 to open multiple new franchises and two developer agreements were signed in 2021. The Company recognizes revenue as each of the stores under the agreement are opened. A total of \$1,730,784 has been collected on these agreements with \$145,912 receivable on those agreements at December 31, 2022 and 2021. The revenue will be recognized over the term of the agreements. During 2022 and 2021, \$221,100 and \$292,271 was recognized as revenue under the agreements, with \$906,904 and 1,128,004 remaining in deferred revenue at December 31, 2022 and 2021.







Mahana Fresh LLC  
Notes to Financial Statements  
December 31, 2022 and 2021

Note 7 – Disaggregation of revenue

The following table disaggregates the Company’s revenue for the year ended December 31, 2022 and 2021:

	<u>2022</u>	<u>2019</u>
Royalty income	\$ 233,906	\$ 145,716
Area representative (developer) revenue	221,100	292,271
Advertising income	88,118	64,636
Franchise revenue	94,317	54,038
Rebate income	32,670	-
Grand opening training fees	10,000	90,000
License fee income	1,938	5,908
Social media income	1,379	15,326
Other income	317	22,591
<b>Total</b>	<b>\$ <u>683,745</u></b>	<b>\$ <u>690,486</u></b>

Note 8 – Deferred revenue

The following table presents changes in the Company’s deferred revenues for the years ended December 31, 2022 and 2021:

	<u>2022</u>	<u>2021</u>
Deferred franchise fees:		
Balance at January 1	\$ 477,575	\$ 383,112
Cash received in advance	89,448	148,501
Revenue recognized during the period	( 94,317 )	( 54,038 )
Balance at December 31	<u>\$ 472,706</u>	<u>\$ 477,575</u>
Deferred area rep fees:		
Balance at January 1	\$ 1,128,004	\$ 1,467,579
Payments due on contracts	-	201,000
Revenue recognized during the period	( 221,100 )	( 292,271 )
Balance at December 31	<u>\$ 906,904</u>	<u>\$ 1,128,004</u>
Current	<u>\$ 242,828</u>	<u>\$ 280,500</u>
Long-term	<u>1,136,782</u>	<u>1,325,079</u>
<b>Total</b>	<b>\$ <u>1,379,610</u></b>	<b>\$ <u>1,605,579</u></b>

Note 9 – Subsequent Events

Subsequent events have been reviewed by management as of March 1, 2023, the date the audit report was made available. No events requiring disclosure have been noted.





**Mahana Fresh LLC**  
**Financial Statements**  
**For the years ended**  
**December 31, 2021 and 2020**





## Mahana Fresh LLC

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**DAVIDSON, DOYLE & HILTON**  
CERTIFIED PUBLIC ACCOUNTANTS

## Independent Auditor's Report

The Members and Managers  
Mahana Fresh LLC  
Sarasota, Florida

### Opinion

We have audited the accompanying financial statements of Mahana Fresh LLC (the "Company"), a Florida corporation, which comprise the balance sheets as of December 31, 2021 and 2020, and the related statements of income, changes in members' equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Mahana Fresh LLC as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Mahana Fresh LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Mahana Fresh LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted accounting standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.





- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Mahana Fresh LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Mahana Fresh LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*David W. Doyle & Hittor, LLP*

Lynchburg, Virginia  
February 7, 2022





**Mahana Fresh LLC  
Balance Sheets  
December 31, 2021 and 2020**

	<b>Assets</b>	
	<u>2021</u>	<u>2020</u>
<b>Current Assets</b>		
Cash and cash equivalents	\$ 141,092	\$ 54,601
Accounts receivable	146,031	432,085
Due from franchisee	-	75,950
Prepaid expenses	410,407	422,187
Total current assets	<u>697,530</u>	<u>984,823</u>
<b>Fixed assets</b>		
Property and equipment	25,265	21,765
Accumulated depreciation	( 17,771 )	( 13,942 )
	<u>7,494</u>	<u>7,823</u>
<b>Other Assets</b>		
Start up costs, net of accumulated amortization of \$42,465	<u>16,207</u>	<u>27,943</u>
Total Assets	<u>\$ 721,231</u>	<u>\$ 1,020,589</u>
<b>Liabilities and Members' Equity</b>		
<b>Current Liabilities</b>		
Accrued expenses	\$ 29,497	\$ 71,968
Due to member	23,325	8,325
Deferred Revenue, current	280,500	286,950
Total current liabilities	<u>333,322</u>	<u>367,243</u>
Deferred revenue	<u>1,325,079</u>	<u>1,563,741</u>
Total liabilities	1,658,401	1,930,984
<b>Members' Equity</b>		
Members' paid in capital	700,000	700,000
Retained earnings	( 1,637,170 )	( 1,610,395 )
Total members' equity	( 937,170 )	( 910,395 )
Total Liabilities and Members' Equity	<u>\$ 721,231</u>	<u>\$ 1,020,589</u>

See notes to financial statements.







Mahana Fresh LLC  
Statements of Income  
Years ended December 31, 2021 and 2020

	<u>2021</u>	<u>2020</u>
<b>Income</b>		
Franchise and area representative fees	\$ 346,308	\$ 282,100
Advertising and royalty income	321,586	120,403
Other income	<u>22,592</u>	<u>6,840</u>
<b>Total income</b>	<u>690,486</u>	<u>409,343</u>
<b>Expenses</b>		
Salaries and wages	383,247	358,900
Advertising	101,426	180,487
Consulting	100,000	149,127
Bad debt	75,950	-
Travel	71,025	110,959
Commissions	66,944	55,900
Professional fees	48,514	32,395
General and administrative	38,248	57,151
Payroll taxes	29,474	29,900
Insurance	21,687	16,076
Depreciation and amortization	15,564	16,088
Fees and licenses	9,073	6,960
Uniforms	-	585
Repairs and maintenance	<u>-</u>	<u>250</u>
<b>Total expenses</b>	<u>961,152</u>	<u>1,014,778</u>
<b>Net operating loss</b>	( 270,666 )	( 605,435 )
Loan forgiveness	119,429	106,379
CARES Act tax rebates	<u>124,462</u>	<u>-</u>
<b>Net loss</b>	\$ ( <u>26,775</u> )	\$ ( <u>499,056</u> )

See notes to financial statements.





Mahana Fresh LLC  
Statements of Changes in Members' Equity  
Years ended December 31, 2021 and 2020

	<u>Members Paid in Capital</u>	<u>Retained Earnings</u>	<u>Members' Total Equity</u>
Balance at January 1, 2020	320,000	( 1,111,339 )	( 791,339 )
Capital Contributions	380,000	-	380,000
Net Loss	<u>-</u>	( <u>499,056</u> )	( <u>499,056</u> )
Balance at January 1, 2021	\$ 700,000	\$ ( 1,610,395 )	\$ ( 910,395 )
Net Loss	<u>                    </u>	( <u>26,775</u> )	( <u>26,775</u> )
Balance at December 31, 2021	\$ <u>700,000</u>	\$ ( <u>1,637,170</u> )	\$ ( <u>937,170</u> )

See notes to financial statements.







**Mahana Fresh LLC**  
**Statements of Cash Flows**  
**Years ended December 31, 2021 and 2020**

	<u>2021</u>	<u>2020</u>
<b>Cash flows from operating activities</b>		
Net loss	\$ ( 26,775 )	\$ ( 499,056 )
Adjustments to reconcile net income to net cash provided by (used in) operating activities		
Depreciation and amortization expense	15,564	16,088
PPP loan forgiveness	( 119,429 )	( 106,379 )
Bad debt expense	75,950	-
Changes in:		
Accounts receivable	286,054	172,219
Due from franchisee	-	( 75,950 )
Prepaid expenses	11,780	( 12,604 )
Accrued expenses	( 42,471 )	( 18,327 )
Due to owner	15,000	8,325
Deferred revenue	( 245,111 )	( 133,601 )
<b>Net cash used in operating activities</b>	( 29,438 )	( 649,285 )
<b>Cash flows from investing activities</b>		
Purchase of fixed assets	( 3,500 )	( 2,587 )
<b>Net cash used in investing activities</b>	( 3,500 )	( 2,587 )
<b>Cash flows from financing activities</b>		
Member contributions	-	380,000
Proceeds from PPP loan	119,429	106,379
<b>Net cash provided by financing activities</b>	119,429	486,379
<b>Net increase (decrease) in cash and cash equivalents</b>	86,491	( 165,493 )
<b>Cash and cash equivalents at beginning of year</b>	54,601	220,094
<b>Cash and cash equivalents at end of year</b>	\$ <u>141,092</u>	\$ <u>54,601</u>

See notes to financial statements.





**Mahana Fresh LLC  
Notes to Financial Statements  
December 31, 2021 and 2020**

**Note 1 – Nature of operations**

Mahana Fresh LLC (“the Company”) is a Florida limited liability company. The Company is located and operates out of its offices located in Sarasota, Florida. The Company was formed on March 21, 2018 for the purpose of franchise sales and lead generation, development and marketing services, and the management of restaurant brands and such brands’ franchises. The Company changed its name from Mahana Poke LLC to Mahana Fresh LLC effective March 14, 2019.

**Note 2 – Summary of significant accounting policies**

**Basis of presentation**

The Company uses the accrual basis of accounting in accordance with generally accepted accounting principles.

**Cash and cash equivalents**

For the purpose of the statement of cash flows, the Company considers all short-term debt securities purchased with an original maturity of three months or less and all cash balances or deficits to be cash equivalents. Accounts at each institution are insured by the Federal Deposit Corporation (FDIC) up to \$250,000. From time to time, balances maintained may exceed the maximum amount insured by the FDIC. Management does not believe there is a risk of loss with these accounts.

**Accounts receivable**

Accounts receivable are stated at the amount the Company expects to collect. The Company considers accounts receivable to be fully collectible; accordingly, no allowance for doubtful accounts is required.

**Revenue recognition**

The Company derives its revenues primarily from franchise and area representative fees. The revenue is recognized over the term of the respective contract. Some fees are paid in a lump sum while others are paid over time. The Company does not have any significant financing components as payment is received as invoiced. Related commissions on these contracts are deferred over the term of the contracts.

**Performance obligation**

For performance obligations related to franchise and area representative fees, control transfers to the franchisee or developer at different times over the contract period. Revenue is recognized based on the terms and deliverables agreed to in the contract. The Company recognizes revenue from fees as each performance obligation is met and over the term of the contract. Franchise and area representative fees collected but not earned based on the deliverables or timing of payment or contract are included in deferred revenue.

**Franchise agreements**

Initial franchise fees and developer fees are due upon granting of the franchise and are deferred and recognized as revenue when all material services and conditions required to be performed by the Company have been substantially completed. Commissions paid on franchise sales are due upon signing of the franchise agreement per the contracts and the expenses are recognized over the term of the franchise agreement.

**Adoption of new accounting standards**

In January 2021, FASB issued ASU 2021-02, *Franchisors – Revenue from Contracts with Customers (Subtopic 952-606)*. The standard is effective for annual periods beginning after December 15, 2020. The update is intended to reduce the cost and complexity applying ASU-2014-09 Topic 606 to pre-opening services for franchisors that are not public business entities. The Company adopted the new standard effective January 1, 2021, the first day of the Company’s fiscal year using the modified retrospective approach. The adoption did not have an impact on beginning retained earnings.





**Mahana Fresh LLC**  
**Notes to Financial Statements**  
**December 31, 2021 and 2020**

**Note 2 – Summary of significant accounting policies (continued)**

**Adoption of new accounting standards**

In February 2016, FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard is effective for annual financial statements issued for fiscal years beginning after December 15, 2021. Early application of the amendments in the ASU is permitted. The update is intended to increase transparency and comparability among Companies by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. The Company has not adopted the new ASU to date.

**Income taxes**

The Company files partnership returns for the federal and state taxing jurisdictions. The Company does not pay income taxes; instead earnings and losses are reported at the member level for federal and state income tax purposes. Accordingly, the financial statements do not include a provision for income taxes.

The Financial Accounting Standards Board has issued ASC 740-10, *Accounting for Uncertainty in Income Taxes*, which prescribed a comprehensive model for how a company should measure, recognize, present, and disclose in its financial statements uncertain tax positions that an organization has taken or expects to take on a tax return. The Company has analyzed tax positions taken for filing with the Internal Revenue Service and all state jurisdictions where it operates. The Company believes that income tax filing positions will be sustained upon examination and does not anticipate any adjustments that would result in a material adverse affect on the Company's financial condition, results of operations or cash flows. Accordingly, the Company has not recorded any reserves, or related accruals for interest and penalties for uncertain income tax positions at December 31, 2021 and 2020. Fiscal years ending on or after December 31, 2018 remain subject to examination by federal and state tax authorities as this is the first year of operations.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported amounts of revenues and expenses. Actual results could differ from those estimates.

**Advertising**

Advertising costs are expensed as incurred.

**Impairment Charges**

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Asset*, losses related to the impairment of a long-lived asset are recognized when expected future cash flows are less than the asset's carrying value. When facts and circumstances indicate that the carrying values of long-lived assets may be impaired, the Company makes an evaluation of recoverability by comparing the carrying values of the assets to projected future cash flows, in addition to other quantitative and qualitative analyses.

When stores close, the Company records a liability for future related costs, net of estimated cost recoveries that may be achieved through bankruptcy proceedings or other collection efforts. During 2020, one store closed.







Mahana Fresh LLC  
Notes to Financial Statements  
December 31, 2021 and 2020

**Note 3 – Paycheck protection program**

The Company received a loan of \$106,379 on May 6, 2020 under the Paycheck Protection Program of the CARES Act. It has an interest rate of 1% and matures on May 6, 2022 with all loan proceeds and accrued interest due. The loan forgiveness was applied for and recognized as of December 31, 2020 and the loan was forgiven in 2021. The Company received a second loan of \$119,429 under the Paycheck Protection Program of the CARES Act. It has an interest rate of 1% and matures on February 10, 2026. The loan forgiveness was applied for and approved on November 23, 2021 and recognized as of December 31, 2021.

**Note 4 – Members’ capital accounts**

Initial capital contributions are accounted for within individual member equity accounts. Separate withdrawal accounts are also maintained. Members may not request withdrawals of ownership interest.

Currently, there is one member. The majority member owns 100% of the Company.

Income and losses from operations and for tax purposes are allocated in accordance with the member’s equity ownership. As of December 31, 2021 and 2020, the capital balances are as follows:

	<u>2021</u>	<u>2020</u>
Majority member	\$ ( 937,171 )	\$ ( 910,395 )
Minority members	<u>-</u>	<u>-</u>
Total members’ equity	\$ ( <u>937,171</u> )	\$ ( <u>910,395</u> )

**Note 5 – Franchise Activity**

The Company signed three franchise agreements in 2021 and four franchise agreements in 2020. There were two restaurants opened during 2021 and five restaurants opened during the 2020. Under the franchise agreements, the Company will provide guidance, advice, and management assistance to the franchisees. The Company also agrees to pay certain costs of store refurbishing, advertising, and technology costs. In addition to the initial fee to open a franchise, the franchise agreements provide for royalties of approximately 6% and advertising income of 1% to 2% to be paid to the Company based on weekly sales. Franchise revenues will be recognized over the term of the franchise agreements. At December 31, 2021 and 2020, \$477,575 and \$383,112 remained in deferred revenue.

Commissions on the opening of these franchises are prepaid upon store opening and recognized over the term of the related franchise or developer agreement.

**Note 6 – Area Development Affiliations**

The Company has entered into development agreements with area developers and various individuals to develop stores in certain geographic regions or venues. These agreements generally stipulate that a certain number of stores are to be developed over a period of time. There were two developer (area representative) agreements signed during 2021 to open multiple new franchises but no developer agreements were signed in 2020. The Company recognizes revenue as each of the stores under the agreement are opened. A total of \$1,730,784 has been collected on these agreements with \$145,912 and \$432,085 receivable on those agreements at December 31, 2021 and 2020. The revenue will be recognized over the term of the agreements. During 2021 and 2020, \$292,271 and \$242,400 was recognized as revenue under the agreements, with \$1,128,004 and 1,467,579 remaining in deferred revenue at December 31, 2021 and 2020.





**Mahana Fresh LLC**  
**Notes to Financial Statements**  
**December 31, 2021 and 2020**

**Note 7 – Disaggregation of revenue**

The following table disaggregates the Company's revenue for the year ended December 31, 2021 and 2020:

	<u>2021</u>	<u>2019</u>
Area representative (developer) revenue	\$ 292,271	\$ 242,400
Royalty income	145,716	29,153
Grand opening training fees	90,000	70,000
Advertising income	64,636	19,435
Franchise revenue	54,038	39,700
Other income	22,591	6,840
Social media income	15,326	1,815
License fee income	<u>5,908</u>	<u>-</u>
Total	<u>\$ 645,540</u>	<u>\$ 409,343</u>

**Note 8 – Deferred revenue**

The following table presents changes in the Company's deferred revenues for the years ended December 31, 2021 and 2020:

	<u>2021</u>	<u>2020</u>
Deferred franchise fees:		
Balance at January 1	\$ 383,112	\$ 274,313
Cash received in advance	148,501	148,500
Revenue recognized during the period	( <u>54,038</u> )	( <u>39,701</u> )
Balance at December 31	<u>\$ 477,575</u>	<u>\$ 383,112</u>
Deferred area rep fees:		
Balance at January 1	\$ 1,467,579	\$ 1,709,979
Payments due on contracts	201,000	-
Revenue recognized during the period	( <u>292,271</u> )	( <u>242,400</u> )
Balance at December 31	<u>\$ 1,128,004</u>	<u>\$ 1,467,579</u>

**Note 9 – COVID-19 impacts**

The Company's operations may be affected by the recent and ongoing outbreak of the coronavirus disease 2019 (COVID-19) which was declared a pandemic by the World Health Organization in March 2020. The ultimate disruption which may be caused by the outbreak is uncertain; however, it may result in an adverse impact on the Company's financial position, operations, and cash flows. Possible side effects may include, but are not limited to, disruption to the Company's customers and revenue, absenteeism in the Company's labor workforce, unavailability of products or services used in operations, and a decline in the value of assets held by the Company, including accounts receivables. The Company waived royalty fees for six months from some franchisees in 2021 and 2020. The Company continues to monitor developments, including government requirements and recommendations at the national, state, and local level to evaluate business decisions. Management is confident that the resources, business experience, and leadership team in place will successfully navigate this period of uncertainty.

**Note 10 – Subsequent Events**

Subsequent events have been reviewed by management as of February 7, 2022, the date the audit report was made available. No events requiring disclosure have been noted.



**EXHIBIT F**

**OPERATIONS MANUAL TABLE OF CONTENTS**



# Operating Manual

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**EXHIBIT G****LIST OF CURRENT AND FORMER FRANCHISEES**

<b>List of currently operating franchisees as of December 31, 2022</b>					
<b>Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Postal</b>	<b>Telephone #:</b>
Aleksandra Sumenkova	5780 NW 120 <sup>th</sup> Avenue	Coral Springs	FL	33076	385-347-1152
Heather Bradshaw	1255 So 65th W.	Idaho Falls	ID	83402	208-403-6670
Keith DuPont	14815 Ballantyne Village Way	Charlotte	NC	28277	215-760-6782
Cooper Wahlo	7725 Firefly Lane	Horace	ND	58047	701-809-4078
Ed Bush	2 NJ-37	Toms River	NJ	08753	732-779-5115

<b>Franchisees signed, but not yet operational as of December 31, 2021</b>					
<b>Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Postal</b>	<b>Telephone #:</b>
LJ Bryant	361 SW Dr. #137	Jonesboro	AR	72401	870-910-5900
Carlos Cano	6938 Brier Creek Ct	Lakewood Ranch	FL	34202	717-460-3615
Dave Fetter	362 SW Kestor Dr	Port St Lucie	FL	34953	772-529-2380
Ryan Mortti	17512 Dona Michelle Dr.	Tampa	FL	33647	813-449-0608
Annie Cruz	3180 Martha Court	Douglasville	GA	30135	917-417-8184
Bhavin Patel	6201 Brookridge Dr.	Flowery Branch	GA	30542	770-530-1026
Melanie Cipolla	11885 N. Haggerty Road	Plymouth	MI	48170	734-277-3535
Victor Ramirez	6908 Daisybee Ct	Charlotte	NC	28216	704-662-2221
Rick Monroig	473 Timber Lake Dr.	Fuquay Varina	NC	27526	954-579-6560
Cooper Wahlo	7725 Firefly Lane	Horace	ND	58047	701-809-4078
Ed Bush	2 NJ-37	Toms River	NJ	08753	732-779-5115
Hein Tran	4218 Pebblestone Trail	Round Rock	TX	75665	408-828-5841

<b>List of franchisees who have left the System or who have not communicated with us within the 10-week period immediately preceding the effective date of this Disclosure Document.</b>			
<b>Name</b>	<b>City</b>	<b>State</b>	<b>Telephone #</b>
Allison Crouder	Englewood	CO	970-309-0921
Mike Kosmowski	Bradenton	FL	941-421-2790
Logan Hand	Clearwater	FL	727-261-0208
Joseph Rahael	Coral Springs	FL	305-593-0595
Byron Harris	Charlottesville	VA	434-227-9077

*[Remainder of page intentionally left blank. Exhibit G continues next page]*

## AREA REPRESENTATIVE INFORMATION

### LIST OF CURRENT AND FORMER AREA REPRESENTATIVES

Name	Address	City	State	Postal	Telephone #
Joseph Rahael	2900 N. University Drive	Coral Springs	FL	33065	305-593-0595
Bhavin Patel	6201 Brookridge Dr.	Flowery Branch	GA	30542	770-530-1026
Keith DuPont	14815 Ballantyne Village Way	Charlotte	NC	28277	215-760-6782
Ed Bush	2 NJ-37	Toms River	NJ	08753	732-779-5115
Hein Tran	4218 Pebblestone Trail	Round Rock	TX	75665	408-828-5841

**List of Area Representatives who have left the System or who have not communicated with us within the 10-week period immediately preceding the effective date of this Disclosure Document.**

Name	City	State	Telephone #
Logan Hand	Clearwater	FL	727-261-0208

### ITEM 2 BUSINESS EXPERIENCE

We have appointed Area Representatives in certain geographic areas to recruit and support franchisee in a designated area. The following includes information about our Area Representatives and certain of their personnel and management that may exercise management responsibility relating to the sale and operation of Mahana Fresh Restaurants.

#### **Joseph Rahael: Area Representative**

Joseph Rahael has been an Area Representative with Mahana Fresh since 2018. Since 2017 Joseph has also been a real estate developer and consultant with JORA Real Estate Development Services in Trinidad and Tobago. From 2000 to 2017 Joseph was the Managing Director for Amera Caribbean Development LTD.

#### **Gary Jordan: Area Representative**

Gary Jordan has been an Area Representative with Mahana Fresh since 2018. Since 2007, Gary has been running his own company, Gary Jordan Photography, which specializes in photography and marketing.

#### **Keith DuPont: Area Representative**

Keith DuPont has been an Area Representative with Mahana Fresh since February 2019. Since February of 2019 Keith has been president of KGD Enterprises Inc, a private equity business focused on the restaurant industry. Prior to starting KGD Enterprises, Keith served as the President of Performance Materials at Coats Group PLC from 2018 to 2019 in Charlotte NC. From 2015 to 2017 Keith served as the President and CEO at Handy & Hartman LTD in Camden, DE.

#### **Gail DuPont: Area Representative**

Gail DuPont has been an Area Representative with Mahana Fresh since February 2019. Since February of 2019, Gail has been a managing partner of KGD Enterprises Inc, a private equity business focused on the restaurant industry. From 2018 to 2019 Gail worked as a substitute teacher in Union County NC. Prior to 2018 she was not in the workforce.

**Hein Tran: Area Representative**

Hien Tran (HT) has been an Area Representative with Mahana Fresh since 2018. From 2017 to present, HT is the Executive Chairman Emeritus of Anvil Builders Inc, a civil engineering firm conduction State and Federal projects based in San Francisco, CA. From 2010 to 2017, HT was the CEO and President of Anvil Builders Inc.

**Colin Reilly: Area Representative**

Colin Reilly has been an Area Representative with Mahana Fresh since 2018. From 2015 until 2018 Colin was a licensed commercial insurance Agent/Broker with Garland Sturges & Quirk in San Jose ,CA.

**Ed Bush: Area Representative**

Ed Bush has been an Area Representative with Mahana Fresh since 2021. Ed has owned and operated Jersey Shore Sports, LLC since 2000.

**Bhavin Patel: Area Representative**

Bhavin Patel has been an Area Representative with Mahana Fresh since 2021. From 2021 to present Bhavin has served as the owner of KAA Fresh, LLC. Prior to owning KAA Fresh, Bhavin was self-employed as a Realtor, Insurance Adjuster, and Life Insurance Agent.

**ITEM 3  
LITIGATION**

No litigation is required to be disclosed in this Item for Area Representatives

**ITEM 4  
BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item for Area Representatives

**EXHIBIT H**

**SAMPLE GENERAL RELEASE**

## GENERAL RELEASE AGREEMENT

### WAIVER AND RELEASE OF CLAIMS

This Waiver and Release of Claims (“Release”) is made as of the date signed below, by the party identified below as the franchisee (“Franchisee”), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, “Releasor”) in favor of Mahana Fresh, LLC (“Franchisor,” and together with Releasor, the “Parties”).

**WHEREAS**, Franchisor and Franchisee have entered into a Franchise Agreement (“Agreement”) pursuant to which Franchisee was granted the right to own and operate a Mahana Fresh business;

**WHEREAS**, [Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a successor franchise agreement/amend the Agreement] OR [the Agreement is being terminated/or indicate other reason for the requirement of this waiver and release], and Franchisor has consented to such [transfer] [successor franchise agreement] [amendment] [termination] [other reason]; and

**WHEREAS**, as a condition to Franchisor’s consent to [transfer the Agreement] [enter into a successor franchise agreement] [amend the Agreement] [terminate the Agreement] [other reason], Releasor has agreed to execute this Release upon the terms and conditions stated below.

**NOW, THEREFORE**, in consideration of Franchisor’s consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasor hereby agrees as follows:

1. **Representations and Warranties**. Releasor represents and warrants that it is duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.
2. **Release**. Releasor and its subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of its affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the “Released Parties”), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasor may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages, expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third party claim.
3. **Non-disparagement**. Releasor expressly covenants and agrees not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.
4. **Confidentiality**. Releasor agrees to hold in strictest confidence and not disclose, publish, or use the existence of, or any details relating to, this Agreement to any third party without Franchisor’s express

written consent, except as required by law.

5. Miscellaneous

a. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the state of Florida.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof. This Release may not be modified except in a writing signed by all the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.

**[SIGNATURE PAGE FOLLOWS]**

**SIGNATURE PAGE TO GENERAL RELEASE FORM**

IN WITNESS WHEREOF, Releasor has executed this Release as of the date signed below.

**FRANCHISEE:**

[FRANCHISEE ENTITY]

By:

Name:

Title:

Date:

**FRANCHISEE'S OWNERS:**

*(add more lines as necessary)*

Signature:

Name:

Date:

**EXHIBIT I**

**STATE EFFECTIVE DATES**

The following States require that the Franchise Disclosure Document be registered or filed with the State, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed or registered as of the Effective Date stated below:

State	Effective Date
California	
Hawaii	
Illinois	
Indiana	
Maryland	
Michigan	
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	
Virginia	
Washington	
Wisconsin	

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.



**EXHIBIT J**

**RECEIPTS**

## RECEIPT (OUR COPY)

This disclosure document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Mahana Fresh LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.**

If Mahana Fresh LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state administrator identified in Exhibit B of this Franchise Disclosure Document. A list of franchisor's agents registered to receive service of process is listed as Exhibit B to this Franchise Disclosure Document.

Effective dates for this Franchise Disclosure Document in the registration states are listed on the State Effective Dates Page.

Issuance date: March 31, 2023

I received a Franchise Disclosure Document that included the following Exhibits:

A – State Specific Addenda	F – Operating Manual Table of Contents
B – List of State Administrators and Agents for Service	G – List of Current and Former Franchisees
C – Franchise Agreement	H – Form of General Release
D – Development Agreement	I – State Effective Dates
E – Financial Statements	J – Receipts

The franchise seller for this offering is: Dave Wood, P.O. Box 3566, Sarasota, Florida 34230, Phone Number (941) 257-3663; Joseph Rahael, 2900 N. University Drive, Coral Springs FL, 33065, (305) 593-0595; Keith DuPont, 14185 Ballantyne Village Way, Charlotte, NC 28277, (215) 760-6782; Hein Tran, 4218 Pebblestone Trail, Round Rock, TX 75665, (408) 828-5841; Ed Bush, 2 NJ-37, Toms River, NJ 08753, (732) 779-5115; Bhavin Patel, 6201 Brookridge Dr., Flowery Branch, GA 30542, (770) 530-1026.

Date Received:

### PROSPECTIVE FRANCHISEE:

By:

Name:

Title:

Entity Name (if applicable):

## RECEIPT (YOUR COPY)

This disclosure document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Mahana Fresh LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.**

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Date Received:

### PROSPECTIVE FRANCHISEE:

By:

Name:

Title:

Entity Name (if applicable):