

## Special Risks to Consider About *This* Franchise

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

- 1. Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Utah. 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 Utah than in your own state.
- 2. Unregistered Trademark.** The primary trademark that you will use in your business is not federally registered. If the franchisor's right to use this trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This change can be expensive and may reduce brand recognition of the products or services you offer.
- 3. 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.
- 4. Sales Performance Required.** You must maintain minimum sales performance levels. Your inability to maintain these levels may result in loss of any territorial rights you are granted, termination of your franchise, and loss of your investment.
- 5. 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.
- 6. Unopened Franchises.** [The franchisor has signed a significant number of franchise agreements \(21\) with franchisees who have not yet opened their outlets. If other franchisees are experiencing delays in opening their outlets, you also may experience delays in opening your own outlet.](#)
- 5.7. Suspended and Infringement of Trademark.** [Several primary trademarks that you will use in your business have been suspended by the Trademark Trial and Appeal Board. The FDD identifies that there have been accusations of infringed uses of the trademark. If the franchisor's right to use this trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This could have a significant financial impact on the franchisee.](#)

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.

**Table No. 4**  
**Status of Company-Owned Outlets<sup>2</sup>**  
**For Years 2021 to 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Arizona	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
	2023	3	2	0	0	0	5
Idaho	2021	0	1	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
Oklahoma	2021	0	2	0	0	0	2
	2022	2	1	0	0	0	3
	2023	3	1	0	0	0	4
Texas	2021	0	0	0	0	0	0
	2022	0	4	0	0	0	4
	2023	4	6	0	0	0	10
Utah	2021	26	5	0	0	0	31
	2022	31	3	0	0	0	34
	2023	34	3	0	0	0	37
Total	2021	29	8	0	0	0	37
	2022	37	8	0	0	0	45
	2023	45	12	0	0	0	57

**Table No. 5**  
**Projected Openings as of December 31, 2023<sup>4</sup>**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet In The Next Fiscal Year	Projected New Company-Owned Outlet In the Next Fiscal Year
Arizona	0	1	1
Arkansas	1	1	0
Florida	1	1	0
Idaho	3	3	0
Indiana	0	3	0
Kansas	3	3	0
Kentucky	0	1	0
Missouri	3	4	0

3.11 Association with Causes; Co-Branding. You cannot, without first receiving Our written approval, in the name of the Franchise Business or in any manner associated with the Marks: (i) donate money, products, or services to any charitable, political, social, religious, or other for-profit or non-profit organization, cause, or position; or (ii) act in support of or against any such organization, cause, or position. You cannot “co-brand” or use the Marks or Your Franchise Business to associate any other business activity in a manner which is likely to cause the public to perceive the activity to be related to or sponsored by the brand or System.

## **ARTICLE IV CONSTRUCTION, COMMENCING OPERATIONS AND LEASE**

4.1 Location of Premises. You must select a site within the designated search area listed on Exhibit “A-1” (“Search Area”). You must have a site approved by Us within six months of signing this Agreement. Site approval or disapproval should be completed by Us within 60 days after You have submitted a proposed site to Us. [If You and We disagree about the Your proposed site, You must locate another acceptable site for Your store and repeat the process.](#) Although We must approve of Your site, We do not warrant or guarantee the success of the site. You must not commit to purchase or lease any real property or commence construction unless and until You have Our written approval of the proposed location. Unless waived by Us in writing, You must hire a local real estate broker to help You locate a site. Your Premises must strictly comply with local zoning and, state and federal laws, rules and regulations.

4.1.1 Site Development Fee. At Your option, We shall assist with real estate selection, site planning, review of construction drawings, review of city submittals, review of contractor selection, budget review, assist with construction management, final lease review, and walk-through review and punch list of the site. The fee for this assistance is listed on Exhibit “A-3” and is due at the time Your Lease is signed.

4.2 Lease. A Lease must be in place within three months from the date We approve Your site. We must approve of Your Lease prior to execution. You must also deliver an executed copy of the Lease to Us within 15 calendar days after execution.

4.2.1 Assignment of Lease. You hereby assign and transfer all rights and interest in and to the Lease to Us to be effective upon Our election when this Agreement Terminates. In such an event, We will have the right, but not the obligation, to accept the assignment and assume the Lease or execute a lease with You as provided below. We also have the right to assign the Lease to another franchisee or an affiliate of Ours. If You own the Premises, You hereby agree to lease the facilities to Us upon Termination of this Agreement at a rate not to exceed its fair market rental value, and on commercially reasonable terms and conditions. Your Lease must include a provision allowing the assignment of the Lease to Us or Our nominee, at Our option, in the event this Agreement is Terminated for any reason, and You are required to have Your landlord sign the attached Landlord’s consent to an assignment of the Lease before the Lease is signed. The Landlord’s consent is attached hereto as Exhibit “A-6.” You and Your Landlord are also required to complete and sign the lease rider attached as Schedule “A-6.1” to Exhibit “A-6.”

4.2.2 Assumption of Lease. We will have 45 days from the date of Termination of this Agreement, to exercise Our right and option to take and assume the Lease for the Premises. If the

Business conforms to all applicable System standards; 4) We have inspected and approved the Franchise Business, which may be done virtually, at Our discretion; 5) You have hired sufficient employees; 6) the required personnel have completed all Our required pre-opening trainings and certifications; and 7) We have given You Our written approval to open, which will not be unreasonably withheld.

4.5 Relocation of Premises. You are not allowed to relocate Your Premises without Our prior written approval. Approval to relocate will be based upon the same criteria used in approving a new franchisee's proposed site. You must demonstrate the financial ability to relocate as part of Our approval process. Additionally, You must pay Us a Site Development Fee, if You wish to receive Our assistance for a new location. See Exhibit "A-3." We have the right to deny a request for relocation in Our sole discretion.

4.6 Failure to Meet Deadlines. If You fail to meet a deadline, [including Our disapproval of a proposed site location, or if We cannot agree on a site](#), and fail to cure, this Agreement is subject to Termination by Us, at Our option.

## **ARTICLE V FEES AND REPORTS**

5.1 Initial Franchise Fee. You shall pay Us the initial franchise fee listed in Exhibit "A-3" in one lump sum at the time of execution of this Agreement. The initial franchise fee must be paid by wire transfer or certified check. The initial franchise fee is fully earned by Us and is non-refundable. No rights or privileges under this Agreement exist until the initial franchise fee is paid in full.

5.2 Royalty. You shall pay Us a non-refundable, on-going royalty as listed in Exhibit "A-3." The royalty is in consideration of Your right to use Our Intellectual Property and certain Confidential Information in accordance with this Agreement and not in exchange for any specific services We render.

5.2.1 Change in Law. In the event there is a change in the law or a discovery of a law affecting the collection of payments to Us, You agree to allow Us to modify the definition of "Net Sales" and the calculation of other Fees due to Us in order to comply with the law. However, in no event will the modification of the term "Net Sales" or the calculation of other Fees due to Us result in Your payment in excess of the Fees listed in Exhibit "A-3."

5.3 Marketing Fees.

5.3.1 Marketing Fund. You shall pay Us the Marketing fee listed in Exhibit "A-3" for Our Marketing programs as further described in Section 10.1 below. This fee is payable on the same terms as the royalty.

5.3.2 Grand Opening Marketing Fee. You are required to pay Us a grand opening Marketing Fee. See Exhibit "A-3." We will use this fee to run Social Media ads in Your area to promote Your opening. This fee is due 60 days prior to Your opening.



(v) Online Ordering and Delivery. You must participate in any online ordering program for takeout or delivery, whether provided by Us or one or more third parties designated by Us. You shall not participate in any third party delivery platform unless approved by Us. You must use all required software or other equipment required by Us or any such third party necessary to provide the services as designated and as may be updated, supplemented or changed. You shall also provide Us with any login information necessary to access any third-party delivery provider accounts, and You agree that We will have unrestricted access to review the information in such accounts at any time. Any such software or equipment must be purchased by You at Your cost. You understand and acknowledge that any third party providers may also charge fees or commissions for their services, and You shall pay all such costs or fees [\(see Exhibit "A-3"\)](#).

6.2.3 Interim Management. If We give You notice of default and You fail to cure (or as set forth in Section 14.10), We have the right at Our sole discretion (but not the obligation) to step in to manage Your Franchise Business for up to six months, as We deem advisable for a Fee. See Exhibit "A-3." This Fee reflects the estimated fair market value of Our services. You shall also pay all travel, lodging, food and other expenses for Our representative(s) and other expenses that may be incurred by Us to perform such services, plus royalties, advertising fees and other applicable fees.

(i) Operations, Access to Information and Operating Account. During the Interim Management Period, You hereby grant Us authority to assist You in managing any or all aspects of Your Franchise Business. We will work directly with Your Operating Principal and Your manager, and We may require additional training for Your Operating Principal, Your manager, employees, and other contracted personnel. You shall cooperate to provide Us with all pertinent information regarding Your Franchise Business and access to the applicable operating accounts to enable Us to efficiently assist with management operations. All accounts must remain in Your name during the Interim Management Period, but You shall add Us or Our representative as a co-signer on certain accounts. You shall cooperate with Us in communicating with all vendors and suppliers related to Our interim management. You hereby grant Us permission to speak directly with Your landlord, suppliers, banks, IRS, state agencies, creditors, etc., regarding Your Franchise Business, and You shall cooperate with Us to facilitate such communication. We may require You to establish a new bank account for Your Franchise Business during the Interim Management Period into which all operating income will be deposited. You and We (at Our option) will have authority over this account, and You or We will make payments on Your accounts payable as cash is available, but only with Your prior authorization and direction when possible. You are ultimately responsible for all operating costs both before and during the Interim Management Period. You shall provide Us with a list of all accounts payable with direction on which accounts are to be paid, but with the understanding that all taxing authorities will be paid first. Any excess funds in the Operating Account or any new account after all applicable costs and Fees have been paid and after an additional amount has been set aside sufficient for the Franchise Business to fulfill its business purposes as determined by Us, will be transferred to You monthly. We may provide monthly internal profit and loss statements to You. We have no obligation to infuse capital into Your Franchise Business, but if We do, such amounts will be treated as a loan, which must be repaid within an agreed upon time and bear market interest as agreed. We have the right to direct Your employees and contract personnel during the Interim Management Period. Both You and We agree that in no way does Our interim management create a relationship of trustee, beneficiary or any type of fiduciary relationship over or in relationship to Your Franchise Business.

Q. Failure to Obtain or Maintain Insurance. You fail to obtain or maintain all required insurance.

15-Day Cure Period:

R. Failure to Pay. You fail to pay any Fee or an amount due to Us, any of Our affiliates, or other designated, approved, or other suppliers or assigns, within the time specified for such payments by this Agreement, the Manuals or an agreement specifying the payment concerned.

S. Failure to Accurately Report. You fail to accurately report or fail to submit any reports or records required under this Agreement or the Manuals.

T. Default Notice of Lease Agreement. You receive a notice of default under Your Lease.

U. Act in Contravention. You perform or undertake any action to undermine or circumvent this Agreement, the System, or Us.

30-Day Cure Period:

V. Other Breaches. Except as otherwise provided herein, You fail to comply with any other provision of this Agreement or the Manuals.

11.1.1 Adequate Assurance. When reasonable grounds for insecurity arise with respect to the performance of Your obligations under this Agreement, We may demand adequate assurance of due performance, and, until We receive such assurance, We may reasonably suspend any performance of Our obligations. Failure to provide Us with adequate assurances within 30 days, when properly demanded, will be considered a default of this Agreement for which no additional cure period will be granted.

11.2 Event of Default. In the event of any default by You, We will give You written notice of default specifying the default(s) and, if curable, state what You must do to cure the specific default(s) within the cure period. Notwithstanding anything to the contrary herein, We have the right, to be exercised in Our sole discretion, to grant You an extended period of time to cure. Any such extension will not be construed as a waiver of Our rights in the future.

11.3 Failure to Cure. If You fail to cure any default within the time allotted, We may proceed to enforce any or all of the following non-exclusive remedies in accordance with this Agreement, and the pursuit of any one remedy will not be deemed an election or waiver by Us to pursue additional remedies:

11.3.1 Actionable Claim. Bring an action or claim for the balance of any monies due hereunder, including penalties and interest as provided for in this Agreement and for all other damages sustained by Us as a result of Your breach of this Agreement. As part of any such action, We may accelerate and bring an action for the balance of any outstanding installment obligation due hereunder.

**EXHIBIT "A-3"**  
**TO THE FRANCHISE AGREEMENT**

**FEE CHART<sup>1</sup>**

The following Fees are more fully described in the Franchise Agreement.

Type of Fee	Amount	Notes
Successor Franchise Fee	20% of Our then-current initial franchise fee	See Paragraph 2.2.4
Site Development Fee <sup>1</sup> (Optional)	\$35,000	See Paragraph 4.1.1 and Section 4.5
Relocation Fee	\$35,000	See Section 4.5
Initial Franchise Fee	\$39,500	See Section 5.1
Royalty	7% of Net Sales	See Section 5.2
Marketing Fund Fee	2% of Net Sales	See Section 5.3.1
Grand Opening Marketing Fee	\$10,000	See Section 5.3.2
Late Fees <sup>1</sup>	\$25 per day for each late fee or report (up to a maximum of 2x the total amount owing per instance per late payment and up to \$500 per late report)	See Paragraph 5.4.43
Non-Sufficient Funds Fee <sup>1</sup>	\$50 per bounced check or draft, or the maximum allowed by state law	See Paragraph 5.4.3
Interest Fees on Late Fees and Reports	18% interest or maximum rate permitted by state law, whichever is less	See Paragraph 5.4.54
Sales or Use Tax	Sum equal to tax imposed	See Paragraph 5.4.65
Audit Charge	Cost of audit	See Paragraph 5.5.2
System Non-Compliance Fines and Charges <sup>1</sup>	\$250 for the first violation; \$500 for the second violation; and \$750 for the third and subsequent violations	See Section 5.9
Technology Fee	Currently, \$400 per month	See Section 5.10
Additional Trainees at Initial Training <sup>1</sup>	\$2,500 per attendee	See Paragraph 6.1.4
New Operating Principal and Manager Training <sup>1</sup>	\$2,500 per person	See Paragraph 6.1.4(i)
Additional In-Person Training <sup>1</sup>	\$300 per person, per day	See Paragraph 6.1.4(ii) and Section 7.3
Rescheduling Fee <sup>1</sup>	\$1,500	See Paragraph 6.1.4(iv)
Insurance Reimbursement Fee <sup>1</sup>	Varies, plus an administration fee of \$50 per man-hour	See Paragraph 6.1.9
PCI and DSS Audit Reimbursement Fee	Reasonable costs of the audit	See Paragraph 6.1.132(iv)
Conference or Seminar Fee <sup>1</sup>	\$250 to \$1,000 per attendee	See Paragraph 6.1.14

<a href="#">Online Ordering and Delivery</a>	<a href="#">Currently, 15% of the order price</a>	<a href="#">See Paragraph 6.2.2(v)</a>
Interim Management Fee	15% of Net Sales	See Paragraph 6.2.3 and Section 14.10
Opening Assistance Fee	\$10,000	See Section 7.35
Supplier Evaluation Fee	Our costs and expenses of testing and evaluation	See Section 8.3
Additional Copies of Marketing Materials	Our reasonable costs, not to exceed 10% for shipping and handling	See Section 10.3
Fees on Default	Our costs associated with Your default	You must pay Us Our costs to enforce Your obligations under this Agreement. See Sec. 11.2
Post-Termination Fees and Damages	Varies	See Section 12.1
Early Termination Liquidated Damages	Average royalty from the previous 12 months multiplied by 24 months or the remaining term of the Franchise Agreement, whichever is less.	See Section 12.54
Transfer Fee	\$20,000	See Section 14.5
Minority Interest Transfer Fee	Legal and corporate fees and costs incurred	See Section 14.6
Transferee Training Fee <sup>1</sup>	\$10,000	See Paragraph 14.8.5
Indemnification	Varies	See Section 15.2
Non-Compete Violations <sup>1</sup>	\$1,000 per day for each competing business	See Section 16.8
Dispute Resolution Fees	Varies	See Section 17.2 and Section 19.3

<sup>1</sup> We may increase this Fee by up to an amount equal to the Consumer Price Index for each year during the term of the Franchise Agreement (cumulative) to adjust to increased costs and other inflation related factors. Costs charged by third parties are subject to change at any time and do not have an annual cap.

- (a) Representations made by the franchisor or its personnel or agents to a prospective franchisee.
- (b) Reliance by a franchisee on any representations made by the franchisor or its personnel or agents.
- (c) Reliance by a franchisee on the franchise disclosure document, including any exhibit thereto.
- (d) Violations of any provision of this division.

11. Franchisees owning 5% or greater must sign a personal guaranty, making you and your spouse individually liable for your financial obligations under the agreement if you are married. The guaranty will place your and your spouse's marital and personal assets at risk, perhaps including your house, if your franchise fails.

12. Paragraph 4.1 is amended to remove the following language, "Although We must approve of Your site, We do not warrant or guarantee the success of the site."

13. Late Fees in Exhibit "A-3" is amended to include the following: "The highest interest rate allowed in California is 10% annually."

14. California's Franchise Investment Law (Corporations Code section 31512 and 31512.1) states that any provision of a franchise agreement or related document requiring the franchisee to waive specific provisions of the law is contrary to public policy and is void and unenforceable. The law also prohibits a franchisor from disclaiming or denying (i) representations it, its employees, or its agents make to you, (ii) your ability to rely on any representations it makes to you, or (iii) any violations of the law.

15. Paragraph 20.10 is amended to remove the following language, "You represent and acknowledge that no agreements, representations, negotiations, promises, commitments, inducements, assurances, terms, conditions, or covenants of any nature exist between You and Us except as specifically set forth in this Agreement, whether pertaining to this Agreement or to any future, further or additional rights of either You or Us."

16. Paragraphs 20.14 and 20.18 are not enforceable in the state of California.

17. For franchisees operating outlets located in California, the California Franchise Investment Law and the California Franchise Relations Act will apply regardless of the choice of law or dispute resolution venue stated elsewhere. Any language in the Franchise Agreement or any amendment thereto or any agreement to the contrary is superseded by this condition.



**Washington Addendum to the  
Franchise Agreement,  
and Related Agreements**

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 the 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.

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.



Article XIII of the franchise agreement will be interpreted in accordance with RCW 19.100.180.

The time limitations to initiate a claim as set forth in Section 17.2.3(iii) of the franchise agreement are hereby amended and extended to the time limits allowed under RCW 19.100.

Section 17.2.3(viii) of the franchise agreement is here by amended as follows:

Federal Arbitration Act. You and We mutually agree that all issues relating to arbitrability are governed exclusively by the Federal Arbitration Act and the federal common law of arbitration to the exclusion of any state statutes or common law and will be decided by the arbitrator. All provisions of this Agreement pertaining to venue, choice-of-laws, dispute avoidance and resolution will be strictly enforced (subject to state law).

Section 20.14 of the franchise agreement is not enforceable in Washington.

Section 2 of the Form General Release Agreement (Exhibit "H" to the franchise disclosure document) is hereby omitted and not applicable in the state of Washington.

The undersigned does hereby acknowledge receipt of this addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

FRANCHISOR:  
Swig Franchising, LLC

FRANCHISEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_ (Signature)

By: \_\_\_\_\_  
\_\_\_\_\_ (Signature)

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

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

INDIVIDUALS:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_



“Termination” Includes expiration, non-renewal, repurchase of Your rights, transfer, or any other means by which this Agreement is no longer in effect, or wherein You are no longer an area developer for the Swig™ brand.

## **Article 2 – Area Development Rights**

2.1 Rights. Subject to the terms and conditions of this Agreement and the continuing faithful performance by You of Your obligations hereunder, during the term of this Agreement, You have the right and obligation to Develop Swig™ Franchise Businesses in the Development Area in accordance with the Development Schedule set forth on Exhibit “B.”

2.2 Character of Rights. The rights and privileges granted to You under this Agreement are personal in nature. You represent and We rely upon Your representations in entering into this Agreement that the individuals listed on Exhibit “C” are the owners of and sole holders of a legal and beneficial interest in Your Development Business. The rights set forth herein are territorial only and do not grant or imply any license for You to use the Marks or System in any manner. Any such rights are granted only through Our Franchise Agreement.

**[Alt -1: If the developer commits to open the number of Units We have designated to be opened in the Development Area.**

2.3 Exclusive Development. Other than as set forth herein, You have the exclusive rights to develop traditional Swig™ Franchise Businesses in the Development Area, and other than any corporate locations already in operation or development as of the date of this Agreement, We will not establish or sell traditional Swig™ businesses within the Development Area while this Agreement is in effect.]

**[Alt-2: If the developer does not commit to open the number of Units We have designated to be opened in the Development Area.**

2.3 Exclusive Development Period. Other than as otherwise set forth herein, so long as You comply with the Development Schedule, for the first two years from the date of this Agreement, You have the exclusive rights to develop Swig™ Franchise Businesses in the Development Area (“Exclusive Development Period”). After the Exclusive Development Period ends, Your development rights become non-exclusive, but You are granted a right of first refusal in the Development Area as discussed in Section 2.4 below.

2.4 Right of First Refusal in the Development Area. After the Exclusive Development Period ends and so long as You comply with the Development Schedule, You are granted a right of first refusal in the Development Area (“Right of First Refusal Period”). If at any time during the Right of First Refusal Period We receive notice from a prospective franchisee that has interest to purchase one or more Swig™ franchises within the Development Area, or We or an affiliate desire to open one or more Swig™ units within the Development Area, We will provide You written notice of the proposed general vicinity of the potential location or the general area within the Development Area for developing multiple Units, the number of Units to be developed, and the proposed development schedule to develop the Units. After receiving such notice, You will then have 15 days to give Us notice that You intend to exercise Your right of first refusal to open the proposed Unit(s) within the Development Area.

**ADDENDUM TO THE AREA DEVELOPMENT AGREEMENT  
FOR THE STATE OF CALIFORNIA**

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.**

1. The California Franchise Relations Act, Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. If the area development agreement contains a provision that is inconsistent with California law, California law controls.

2. The area development 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 area development agreement contains a covenant not to compete which extends beyond the termination of the franchise. A contract that restrains a former franchisee from engaging in a lawful trade or business is to that extent void under California Business and Professions Code Section 16600.](#) ~~The area development agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.~~

4. The area development agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

5. The area development agreement requires binding arbitration. The arbitration will occur at Salt Lake City, Utah with the costs being borne by you for travel to, and lodging in, Salt Lake City, Utah and other costs associated with arbitration. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and Federal laws (this or these as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 128a, and the Federal Arbitration Act) to any provisions of an area development agreement restricting venue to a forum outside the State of California.

6. The area development agreement requires application of the laws of Utah. This provision may not be enforceable under California law. You may want to consult an attorney to understand the impact of out-of-state governing law on the franchise agreement.

7. You must sign a general release if you transfer, renew or terminate your franchise. California Corporations Code 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code 20000 through 20043).

8. The area development agreement provides for waiver of a jury trial. This may not be enforceable in California.

9. Section 31512.1 Franchise Agreement Provisions Void as Contrary to Public Policy. Any provision of a franchise agreement, franchise disclosure document, acknowledgement, questionnaire, or other writing, including any exhibit thereto, disclaiming or denying any of the following shall be deemed contrary to public policy and shall be void and unenforceable:

(a) Representations made by the franchisor or its personnel or agents to a prospective franchisee.

(b) Reliance by a franchisee on any representations made by the franchisor or its personnel or agents.

(c) Reliance by a franchisee on the franchise disclosure document, including any exhibit thereto.

(d) Violations of any provision of this division.

10. Area Development Agreement owners owning 5% or greater must sign a personal guaranty, making you and your spouse individually liable for your financial obligations under the agreement if you are married. The guaranty will place your and your spouse's marital and personal assets at risk, perhaps including your house, if your franchise fails.

11. Late Fees is amended to include the following: "The highest interest rate allowed in California is 10% annually."

12. California's Franchise Investment Law (Corporations Code section 31512 and 31512.1) states that any provision of a franchise agreement or related document requiring the franchisee to waive specific provisions of the law is contrary to public policy and is void and unenforceable. The law also prohibits a franchisor from disclaiming or denying (i) representations it, its employees, or its agents make to you, (ii) your ability to rely on any representations it makes to you, or (iii) any violations of the law.

[13. For franchisees operating outlets located in California, the California Franchise Investment Law and the California Franchise Relations Act will apply regardless of the choice of law or dispute resolution venue stated elsewhere. Any language in the Franchise Agreement or any amendment thereto or any agreement to the contrary superseded by this condition.](#)