

Background Information for Franchise Agreement

As you franchise your business, keep in mind that the more carefully you choose your franchisees, the less your agreement will need onerous “weeding out” provisions, such as minimum annual sales quotas, nonexclusive sales territories, short-term franchise agreements, and new contractual provisions upon transfer or renewal.

This questionnaire was designed to help you, as a franchisor, retain just enough control to ensure quality and consistency in the way each franchisee offers your services or products while not economically strangling the franchisee’s ability to make a reasonable profit.

Pay particular attention to establishing initial franchise and royalty fees that are fair and operable. Consider each franchised location as if it were a company-owned location with the franchisee paying the bills. Never sell a franchise to a person that you would not hire for life as a manager of your company-owned operation.

After considering these ideas, you can properly frame a franchise agreement that will be workable for both parties, allowing you to achieve greater success through your franchisees than if your agreement were heavily weighted in your favor.

Attach additional sheets, if needed, for each question.

Franchisor: Person to contact about this questionnaire:

Name: _____ Name: _____

Address: _____ Address: _____

City/State/Zip: _____ City/State/Zip: _____

Telephone: _____ Telephone: _____

Service Marks

Indicate the service marks or trademarks used, as well as their registration dates and registration numbers with the United States Patent and Trademark Office and/or state trademark authorities: _____

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Will you defend a franchise that is sued for using your service mark or trademark by a third party claiming your trademark or service mark is an infringement of its service mark or trademark? Yes No

Territory

Will each franchised territory be exclusive, meaning no other franchise or company units will be located in a territory? Yes No

Describe how your territorial boundaries will be determined (for example, zip code, county, population, number of businesses): _____

Definition of Franchise Business

Give a brief description of the type of business that will be franchised: _____

Internal Franchisee Identification

Set forth any type of prefix or suffix you, as the franchisor, may be required to identify each franchisee in your internal records (for example: “McDonald’s of Oakland” or “McDonald’s #6”): _____

Franchisor Training

Initial Training Prior to Opening

Locations	Number of Trainers	Number of Working Days	Hours per Day

Training at Time of Franchise Opening (Grand Opening)

Locations	Number of Trainers	Number of Working Days	Hours per Day

What additional training will be available to the franchisee throughout the term of the agreement? _____

Will such training will be mandatory? Yes No

Other Franchisor Assistance

Describe any other assistance the franchisor will provide the franchisee. _____

Prior to the Opening

Site selection: _____

Market-area survey: _____

Inventory supplies: _____

Equipment: _____

Financial assistance: _____

Hiring of personnel: _____

Local business licenses: _____

Public relations: _____

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Other: _____

After the Opening

Purchasing assistance: _____

Accounting services: _____

Product updates: _____

Procedure improvements: _____

Public relations: _____

Inspections: _____

Other: _____

Franchisee Fee

Indicate the amount of the initial franchise fee you, as the franchisor, feel you can charge a franchisee. \$ _____

How did you arrive at this fee? _____

Terms of payment of the initial franchise fee:

Down payment \$ _____ Balance payment \$ _____

Monthly Royalty

Percent of gross receipts you expect to receive as a royalty each month: _____ percent

List reasons for estimating this percentage: _____

Would any minimums be desired? Amount of these minimums: \$ _____

(Consideration can also be given to reducing a monthly royalty upon the attainment of a certain amount of gross receipts per month or deferring all or part of the royalty for an initial specified period of time.)

Promotion and Advertisements

Percent of gross receipts or other formula that you desire in establishing a general advertising fee fund: _____ percent

List reasons for arriving at this percentage: _____

What amount must the franchisee spend on local advertising?

Percentage of gross sales: _____ percent or a minimum: \$ _____

Must the franchisee enter into cooperative advertising with fellow franchisees? Yes No

Explain any limits upon such advertising expenditures: _____

Operations Manual

Will a confidential operations manual be provided to the franchisee? Yes No

Describe the areas covered: _____

Day-to-day operations: _____

Marketing: _____

Purchasing: _____

Advertising: _____

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Accounting procedures: _____

Hiring of employees: _____

Training of staff: _____

Public relations: _____

Other: _____

Franchise Operation

Is the franchisee allowed to sell products or render services other than those designated by the franchisor?

Yes No

If so, what are the restrictions on the products or services that the franchisee can sell or render?

Amount of supervisory time that a franchisee or approved manager must render for actual on-premises operation of the franchise: _____ hours per week _____ weeks per year

Insurance

Most franchisors desire public liability insurance in amounts of \$1,000,000 combined single limits for bodily injury and property damage.

Is this satisfactory to your insurance agent for the type of franchise business in question? Yes No

Is a fidelity bond insurance requirement of \$50,000 necessary and satisfactory? Yes No

If not, list the desired policy limits: _____

Non-Competition Provisions

What non-competition restrictions do you desire, if any, including distance from existing franchisees and number of years in which competition is prohibited? _____

Office Management Personnel

Are you agreeable to absentee management? Yes No

Do you wish to require that all franchisees' managers and personnel be trained by your personnel? Yes No

Do you wish to require that any assignee of the franchise who purchases the business also be trained by you?

Yes No

Term and Transfers

Do you desire to have the franchise agreement last for an infinite amount of time, with the only contingency being that any transfer to third parties, heirs, or relatives be made with the approval of the franchisor as to financial ability and suitability? Yes No

If not, do you desire a length of franchise term in number of years, such as 10, 20, or 30? State your suggested term and renewal terms, if any: _____

Do you want a transfer fee payable to the franchisor when a franchisee sells his or her business and transfers it to another party with your approval? Yes No

If yes, what transfer fee amount would you like? \$ _____

What renewal fee amount? \$ _____

Franchisee's Initial Investment

As best you can, provide the projected amount a franchisee would have to pay to start up a franchise of yours, in each of the following categories:

Category	Amount
Leasehold improvements	\$
Equipment	\$
Decor	\$
Furnishings	\$
Signs	\$
Rent* (first and last months)	\$
Cash registers	\$
Uniforms	\$
Opening inventory for three months	\$
Working capital necessary to commence or continue operation for one month	\$

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Deposits	Amount
Rental	\$
Telephone	\$
Electricity	\$
Insurance	\$
Auto	\$
Errors and omissions	\$
Fidelity bond	\$
Liability	\$
Other	\$
	\$
Total	\$

*Average square footage of your franchise premises buildings is _____ sq. ft.

**Obligation of Franchisee to Purchase from Franchisor
or from Franchisor’s Designated Supplier**

Describe any obligations of the franchisee to purchase goods or services from you or from your designated supplier. (If the franchisee is required to purchase from a designated supplier, also give the name and address of the supplier, the reason for requiring the purchase from a designated supplier, and a brief description of what must be purchased.) _____

If the franchisee is obligated to purchase goods or services from you or from your designated supplier, will you receive any profit or revenue from such sales? Yes No

If such purchases are required, what percent of the franchisee’s total requirements of that service or product will constitute purchases from you or your designated supplier? _____ percent

Financing Arrangement

Will you take back promissory notes or carry some paper from the franchisee? Yes No

If so, please describe: _____

Will you assist the franchisee in securing financing from independent third parties? Yes No

If yes, please explain: _____

Services the Franchisor May Provide

Describe any services you may provide although not legally obligated to do so under the franchise agreement. _____

Periodic visits by representatives: _____

Telephone consultation (describe limits on hours of such): _____

Suggested advertising: _____

Other advisory services: _____

Patents and Copyrights

Describe any patents or copyrights you may offer to the franchisee: _____

Public Figures

Will you provide public figures in promotion of the franchise? Yes No

If yes, please explain, providing the names of the public figures, basic arrangement with the public figures, including compensation, duration of the agreement, and general description of the services of the public figure to the franchisee.

Public Figure	Compensation	Duration	Services

Actual Average, Projected, or Forecasted Franchise Sales, Profits, or Earnings

Do you wish to provide average, projected, or forecasted franchise sales to potential franchisees? Yes No

(If so, your projections must be based on figures, data, and information that is documented and may need to be submitted to the state officials so that the appropriate state agency can determine the feasibility of your forecast.)

If yes, provide a written substantiation showing that such projections will be valid for your franchisees operating in other locations: _____

Provision for Legal Fees

Reasonable Attorney Fee to Prevailing Party

In some states, it is permissible to insert a clause to the effect that if there is a dispute and the matter is brought to arbitration or trial, the prevailing party would be entitled to reasonable attorney fees. This clause on its face seems desirable. However, the downside of the clause is that it may encourage franchisees to bring action since they feel that they will win and that the franchisor will have to pay their attorney fees. In some cases, an attorney may take the franchisee's lawsuit on a contingency basis, figuring that if he or she wins, the franchisor will pay his or her fees. In addition, the courts do not always award all of the attorney fees to the prevailing party. In some cases, the court will order payment of an amount less than the actual amount billed, on the grounds that this is what the courts feel is reasonable, not what the attorney charged.

As a franchisor, do you wish to have a clause inserted which would provide that the prevailing party in any law action or arbitration would have a right to an award for reasonable attorney fees? Yes No

Arbitration

More and more franchisors are utilizing arbitration to resolve problems between franchisees and franchisors. Arbitration allows the parties to pick knowledgeable arbitrators; this is far less costly and takes considerably less time. An arbitration award cannot be appealed, for all practical purposes, but it can eliminate many of the costly preliminary procedures, such as depositions, interrogatories, motions, etc. Some franchisors prefer not to include arbitration clauses, because they feel that if the franchisee were to go to court, he or she would eventually run out of money because of high court costs and attorney fees for court appearances. However, by the same token, if the franchisor were to have any appreciable number of lawsuits, he or she would also run out of money.

The disadvantage of an arbitration clause is that it is not appealable. However, as a practical matter, appeals are extremely expensive and time-consuming, and only the more financially endowed franchisee can make use of this procedure. In addition, in the majority of appeals, the original decision is upheld.

Do you want to have an arbitration clause in your agreement with your franchisees? Yes No

Maximum Multiple Franchise Locations for One Franchisee

If a franchisee has the right to purchase more than one franchise, what total number of franchise locations will you allow a franchisee to open in one area? _____

(Some businesses, such as fine restaurants, require almost all of the time and attention of the franchisee and, therefore, allowing additional locations could cause the franchisee to fail. Take this into consideration when answering this question.)

Considerations: _____

Other Desired Clauses

List your thoughts regarding additional clauses that are of particular importance to you and the business you are franchising: _____

The undersigned has prepared the responses to this questionnaire and compiled the above material on behalf of the franchisor.

_____ Date

_____ Signature of party answering questionnaire

_____ Printed or typed name and title of party answering questionnaire