

## Preliminary Due Diligence Request List of Franchise Related Documents

**Disclaimer:** *This is an abbreviated, sample due diligence request list for franchise law due diligence. It is prepared with a Canadian franchisor in mind. Each transaction is unique, and this request list is only intended to be used as a starting point for preparing a deal specific list. Some requests may be superfluous for some deals, and others may be missing. This list should not be considered as legal advice.*

Please provide the documents and lists described below with respect to each franchise program which currently exists or which may have existed. Certain documents may be responsive to more than one request below. In order to avoid duplication of effort, please cross-reference previous or subsequent responses.

### I. FRANCHISE DOCUMENTS AND FILES

#### A. Franchise Agreements

1. Copies of all Franchise Agreements (including Amending Agreements and Addenda) identifying franchise locations:
  - a) in operation (with original owners);
  - b) executed, but not yet in operation;
  - c) transferred but still in operation with date of transfer;
  - d) terminated [**in the last 3 years**]; or
  - e) reacquired [**in the last 3 years**].
2. A description of details regarding any changes or amendments to the form(s) of Company's Franchise Agreement used during the past 10 years.
3. All executed guarantees to Franchise Agreements, including copies of all signed Alberta *Guarantees Acknowledgment Act* certificates.
4. If a franchisee association exists, full particulars along with any correspondence with such franchisee association and its counsel.

#### B. Current Franchisees

1. List of Franchise Agreements, including the following information:
  - a) franchisee and guarantor,
  - b) store address,
  - c) effective date of current governing agreement,
  - d) term,

- e) whether the Franchise Agreement includes a *Guarantees Acknowledgment Act* certification (for Alberta agreements only),
- f) franchise disclosure document receipt date,
- g) the dates and types of any amendments or addenda to the Franchise Agreement that were entered into, and
- h) any other material information.

2. All files that the Company maintains in respect of franchisees and/or franchised locations.

3. Details regarding any franchises sold as a going concern by the Company or any related entities.

4. Copy of franchisee sales by franchisee for each of the past 3 years and evidence of payment history and arrears.

5. Copies of all provincial franchise disclosure documents and statement of material changes (collectively, "Disclosure Documents") delivered to franchisees **[in the last 3 years]**, along with proof of compliant delivery and receipt of all Disclosure Documents.

C. Development Agreements, Option Agreements, and Other Agreements

1. Copies of all other significant contracts, licenses, agreements or guarantees made by the Company, other than above, that relate to the business including any Area Development, Master Franchise or Agency Agreements showing:

- a) whether still in effect or terminated; and
- b) if in effect:
  - (1) the territory(ies) covered by the agreement;
  - (2) the number of outlets subject to the agreement;
  - (3) the number of outlets developed versus the number to be developed;
  - (4) whether the developer is meeting its development schedule; and
  - (5) the date of expiration.

D. Former (Terminated, Nonrenewed, Transferred, Default) Franchisees

1. Copies of all correspondence between the Company and franchisees, and/or their respective counsel, including but not limited to, all default notices, demand letters, claims, side letters and/or amending or settlement agreements.

2. Copies of all notices of rescission delivered by franchisees pursuant to any relevant franchise legislation or otherwise.

E. Disclosure Exemptions

1. Any particulars regarding the exemption from having to provide a Disclosure Document under any relevant franchise legislation, and the basis for relying upon such exemption.

II. FINANCIAL PERFORMANCE REPRESENTATIONS

- A. Form of financial report regularly submitted to the Company by franchisees.
- B. Provide the names and contact information regarding any brokers or third-party sales agents used to conduct franchise sales in the past 3 years.
- C. Copies of any agreements entered into with any brokers or sales agents.
- D. Instructions to franchise sales staff or franchise broker(s) regarding the making of representations regarding financial performance.
- E. Copies or descriptions of all financial performance representations, earnings claims, or other earnings, revenue, profit, or financial statements or projections made or provided to prospective franchisees not in the FDD.

III. SYSTEM OPERATIONS (MANUALS, ETC.)

- A. Copy of the Franchise Operations Manual(s), Area Representative Operations Manual(s) and Unit Franchisee Operations Manual(s).
- B. Copies of all store operational audits conducted by the Company in the past 3 years.
- C. Details of any “mystery shopper” programs used by the Company.
- D. If a “mystery shopper” programs exists, copies of the reports submitted to the Company by “mystery shoppers” over the past 3 years.

IV. SUPPLY AND DISTRIBUTION

- A. List of all the Company’s authorized suppliers.
- B. A description of details of any rebates, allowances, volume discount arrangements as between the Company and suppliers.

V. FINANCING AND OTHER ASSETS

- A. Copies of all general security agreements and registration particulars in regard to securing assets of franchisees.

VI. LITIGATION & DISPUTES

- A. Copies of all pleadings and audit responses in relation to pending or existing litigation with franchisees or others (e.g. employees, landlords, etc.).
- B. Copies of opinions of the Company’s counsel on the likelihood of success of the pending or

existing litigation with franchisees or others (e.g. employees, landlords, etc.).

- C. Copies of any correspondence alleging a misrepresentation by the Company in the sale of a franchise, whether pursuant to provincial franchise law or otherwise.

## VII. ADVERTISING

- A. Copies of full financial and operational details regarding any advertising fund or advertising co-ops in place.
- B. Copies of all franchise advertisements and brochures.