

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 U.S. 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. Chronological list (and copies, if not provided in response to I.B.2.a. below) of all executed franchise agreements (including standard franchise and non-traditional franchise agreements), identifying the outlet and whether:

- 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**].

For each agreement, please list franchisee names, location, and effective date.

2. All forms of franchise agreements currently in effect

B. Current Franchisees

1. Franchisee files for each franchisee listed in #1 above, including:

- a) franchise agreement, with all negotiated changes and amendments;
- b) any state-specific addenda to the franchise agreement;
- c) signed acknowledgment of receipt of FDD;
- d) correspondence or other documents indicating potential or actual problems or lawsuits; and
- e) any personal guarantees.

2. Copies of, all correspondence and materials related to franchisees in default under franchise agreements, leases, loans or other contracts with franchisor or its affiliates, and a description of such default.

3. A descriptive list of all persons who are in process as prospective franchisees (including applicable geographic area). Description of any alleged violations by franchisor of any franchise agreement, or other agreement with any franchisee.

C. Development Agreements, Option Agreements, and Other Agreements

1. Chronological list of development agreements, option agreements, area franchise agreements, subfranchise agreements, master franchise agreements, joint venture agreements, license agreements, and other agreements (collectively, "Other Agreements") offered, used, or currently in effect, and including any amendment made to a standard form, 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.

2. Copy of any other area agreements, or any other contracts (not previously disclosed) which may bear on any rights to be granted.

D. Former (Terminated, Nonrenewed, Transferred) Franchisees¹

1. Information for franchisees of franchisor whose franchise agreements were **[transferred and/or] terminated [in the last 3 years]:**

- a) List of, and copies of, all correspondence and materials related to terminated franchisees, including allegations of contract breaches or violations of law;
- b) A list of all termination or nonrenewal notices sent to franchisees, either pending or implemented;
- c) List of, and copies of, all correspondence and materials related to transferred franchisees;

E. Other Franchisee Defaults

1. A list of all franchisees in default with respect to any payment of fees or royalties.
2. A list of any other defaults by franchisees which could have a materially adverse effect on the franchise program.

II. FDDs AND FRANCHISE REGISTRATIONS (INCLUDING ADVERTISING AND FRANCHISE SELLER AND BROKER REGISTRATIONS)

A. General

1. Any registration applications pending, or in the process of being prepared for filing, under any state franchise or business opportunities registration act.
2. A docket showing the current effective dates of registrations, notice filings and exemptions, and expiration dates for the last **[3 or 5]** fiscal years.
3. All disclosure documents **[used in the last 3 or 5 years]**, including exhibits and state addenda.
4. Copies of franchise sales advertisements, brochures, etc. used by franchisor and applications filed with state franchise law administrators for approval of such materials, if any.

III. FINANCIAL PERFORMANCE REPRESENTATIONS: FRANCHISE EARNINGS CLAIMS OR SALES/FINANCIAL PROJECTIONS

- A. Instructions to franchise sales staff or franchise broker(s) regarding the making of representations regarding financial performance.
- B. 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.

IV. SYSTEM OPERATIONS (MANUALS, ETC.)

- A. Operating manuals currently in use for the franchise system.
- B. A description of all training programs provided to franchisees in the last three years **[last year],[including copies of all written materials provided to franchisees, and instructions from franchisor to the training staff.]**
- C. Agreements and arrangements with third parties and with franchisees regarding the use, sale, and administration of gift cards, reloadable stored value cards, and other frequent purchaser or customer preference cards, including legal compliance policies.
- D. Information on any independent franchisee association or franchisor-sponsored franchise advisory council, including copies of bylaws, meeting minutes or other material correspondence or communications involving any franchise advisory council and/or franchisee association.

V. SUPPLY AND DISTRIBUTION

- A. All supply and distribution agreements between franchisor and any suppliers, distributors or agents, by which franchisor receives monies or rebates from the supplier.
- B. Reports and records of all rebates, commissions and allowance received by franchisor and/or its franchisees in the most recent 3 years, and the allocation, uses or distribution of those monies to franchisees, to the advertising fund, to the franchisor, and/or other parties, entities and purposes.
- C. All supply and distribution agreements between franchisor and its franchisees.

VI. INTERNATIONAL

- A. A list of all foreign jurisdictions in which the franchisor conducts business or sells franchises, and a description of the business conducted in each jurisdiction.
- B. Agreements: Copies of all agreements and other documents relating to system expansion in foreign countries, including:
 - 1. any Master Franchise or Development Agreements;
 - 2. any Franchise Agreements; and
 - 3. Any joint venture or similar arrangements.
- C. Disclosure Documents: Franchise disclosure documents used with respect to the offer and sale of franchises in foreign countries.

VII. REAL ESTATE, OTHER ASSETS, FINANCING

- A. List of outlets (franchised) where franchisor has an interest in the real estate, indicating whether franchisor is the lessor, prime lessee or lease guarantor, and copies of leases, subleases, or guarantees to which franchisor is a party.
- B. Copies of all comfort letters/inter-creditor agreements entered into between franchisor and its franchisees' lenders.

VIII. INTELLECTUAL PROPERTY [Depending on whether IP is part of the franchise due diligence or performed by separate team, IP related requests may have to be made]

IX. LITIGATION & DISPUTES [Depending on whether general litigation is part of the franchise due diligence or the focus of a separate team, litigation request may have to be made.]

X. ADVERTISING

- A. List of any public figures used in advertising.
- B. A description of any marketing or advertising fund (domestic and/or international), the amount of monies currently in the funds, whether the fund is a trust, whether the franchisor contributes to the fund, how fund monies were used in the past year, and what happens to the funds if the franchise system is sold.
- C. A description of any national accounts program and how franchisees participate in the program.
- D. Copies of all franchise advertisements and brochures.
- E. Any agreements with the marketing committee related to the advertising fund.
- F. Organizational documents of, meeting minutes of, and correspondence with, the advertising fund.
- G. Copies of all organizational and governing documents of any advertising cooperatives.