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Franchise Agreement

It's important to remember that while the disclosure section of the FDD (Franchise Disclosure Document) describes the relationship between the franchisor and the franchisee, the franchise agreement – the written contract – governs the relationship.

The franchise agreement is more specific than the FDD about the terms of the relationship. After reading the FDD, you (the prospective franchisee) often believe that you understand the relationship, so you only scan the franchise agreement. This is a terrible idea. Make sure you read and thoroughly understand the franchise agreement. Unless you're an experienced franchise attorney, you're likely to misunderstand the impact of some of the terms included in the agreement.

It's an excellent idea to hire an experienced franchise attorney to help you understand the franchise agreement. Although Uncle Alex, who did your last house closing, is cheap, his lack of expertise in franchise law, and the customs and practices in drafting franchise documents, may be costly later on.

Every franchise agreement is different, although all franchise agreements have similar provisions. As you review franchise agreements, it will become evident that they are written to afford the maximum protection and benefit to the franchisor, and not the franchisee. After all, it was the franchisor and his/her attorneys who drafted the contract.

The key clauses that most franchise agreements have in common are listed below, along with a brief explanation. Remember, the franchise agreement is the heart and soul of the business relationship, and you should have a clear understanding of this fact.

1. **Recitals**

These introductory preliminaries appear at the beginning of the franchise agreement, naming the parties, date and mutual benefits of entering the contract. The recitals will frequently refer to the FDD and incorporate its information into the agreement.

2. **Grant, Term and Renewal**

The franchise agreement will state a specific period of time in which privileges are granted, and define renewal terms.

3. **Territory**

In this section, most franchise agreements will grant the right to operate a franchise only at a specified location. Occasionally, the franchisor will grant an exclusive territory, or protective

circle around the specific location. This can be the most important and most misunderstood portion of the franchise agreement.

4. Site Selection

This section will indicate who is responsible for site selection and what assistance the franchise may offer in finding a location. In all cases, the franchisor will reserve the right to approve the location.

5. Development and Improvement

Most franchise agreements will specify the number of days within which the franchise must be open, including penalties for missed dates. The language in this section will refer to specific times for site build-out and opening.

6. Services Provided by Franchisor

The products and services to be provided by the franchisor to the franchisee or its affiliates are listed here, including ongoing assistance.

7. Fees Payable to Franchisor

The total amount paid by the franchisee, both initially and on an ongoing basis, is listed here.

8. Reporting Requirements

The franchise must prepare and give to the franchisor weekly or monthly detailed reports of sales activity. These reports are subject to inspection and audit by the franchisor.

9. Advertising and Promotional Activity

This section regulates the content, frequency, appearance and style of advertising allowed/required by the franchisor.

10. Quality Control

This section deals with consistency and quality control throughout the franchise system. It will include approved suppliers, hours of operation, insurance requirements, operating standards and expected language.

11. Insurance Requirements

The franchisor will require the franchisee to carry various kinds of insurance in varying amounts, protecting both franchisor and franchisee.

12. Obligations of the Franchisee

This section dictates the responsibilities and obligations of the franchisee.

13. Transfer and Assignment

The franchisee typically cannot assign the franchise agreement, nor transfer the agreement, without the prior written approval of the franchisor.

14. Condemnation and Casualty

This includes the terms and conditions under which a franchisee may cease operation without penalty due to natural disaster or eminent domain from a governmental body.

15. Default and Termination

This portion of the franchise agreement dictates under what conditions the agreement may be terminated and the franchisee is placed under default.

16. Obligations of Franchisee Upon Termination

Once the franchisee agreement is terminated, the franchisee immediately loses all rights and privileges associated with the franchise, including the rights to the use of the name.

17. Noncompetition Covenants

The franchise agreement will specify how and when the trade secrets, trademarks, copyrights and patents of the franchisor may be used.

18. Relationship of the Parties

The relationship is that of an independent contractor allowed to operate under the franchise system. There is no employment relationship.

19. Miscellaneous

This section will include the standard boilerplate provisions, such as “final agreement superseding other oral agreements,” and “state law governing the agreement.”

Most franchise agreements are non-negotiable for the simple reason that variances must be disclosed to future prospects. A large franchise company does not want to have to negotiate every sale; a smaller or newer franchise might offer more flexibility in its terms. This can be one of the greatest advantages of dealing with emerging franchise opportunities.