



**STATE OF CALIFORNIA**

**Department of Business Oversight**

**GUIDELINES**

**FOR**

**FRANCHISE REGISTRATION**



DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA  
GUIDELINES FOR THE UNIFORM FRANCHISE DISCLOSURE DOCUMENT (“UFDD”)  
REQUIRED FOR THE UNIFORM FRANCHISE REGISTRATION APPLICATION

1. Prominent disclosures:

- a. The preface, exhibit or appendix of the Disclosure Document shall contain:

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

- b. Any advertisement that refers to the registration under the Franchise Investment Law shall contain the following in not less than 10 point type:

THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF BUSINESS OVERSIGHT NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

2. “Salesman Disclosure Form” and Item 3.A of the Body of the UFDD: In an initial application to register the offer and sale of a franchise, do not disclose a pending action involving an arrest that did not result in conviction or plea of nolo contendere.
3. Item 3.C of Body of the UFDD: In addition to the information required by Item 3.C, state whether the franchisor, any person or franchise broker in Item 2 of the UFDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange. The information required by this provision may be included in Item 3 or in a preface, exhibit or an appendix, which is part of the Disclosure Document. If the information is set forth in a preface, exhibit or an appendix, a reference to the preface, exhibit or appendix shall be prominently set forth in Item 3.
4. Item 5: If the initial fee can vary, include a mathematical formula which enables the franchisee to calculate the specific dollar amount of the franchise fee.
5. Item 17: Additional Paragraph(s) Required. The paragraph(s) required by this provision may be included in Item 17 or set forth in a preface, exhibit or appendix, which is part of the Disclosure Document. If the paragraph(s) are set forth in a preface, exhibit or appendix, a reference to the preface, exhibit or appendix shall be prominently set forth in Item 17.

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- a. In addition to the information required by Item 17, all Disclosure Documents shall contain the following paragraph:
- b. California Business and Professions Code sections 20000 through 20043 establish the rights of the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.
- c. If the franchise agreement contains one or more of the provisions referred to in the following paragraph(s), the appropriate paragraph(s) shall be included:
  - i. The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. § 101 et seq.).
  - ii. The franchise agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.
  - iii. The franchise agreement contains a liquidated damages clause. Under California Civil Code section 1671, certain liquidated damages clauses are unenforceable.
  - iv. The franchise agreement requires binding arbitration. The arbitration will occur at (indicate sites) with the costs being borne by (explanation).

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code section 20040.5, Code of Civil Procedure section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

- v. The franchise agreement requires application of the laws of (indicate jurisdiction). This provision may not be enforceable under California law.
6. Item 19: If any earnings claim is made, and the earnings claim figure(s) does (do) not include either costs of sales or operating expenses, then, in addition to the information required by Item 19, all Disclosure Documents shall contain the following statement prominently set forth in Item 19 or set forth in a preface, exhibit or appendix, which is part of the Disclosure Document. If the statement is set forth in a preface, exhibit or appendix, a reference to the preface, exhibit or appendix shall be prominently set forth in Item 19: “The earnings claims figure(s) does (do) not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your (franchised business). Franchisees or former franchisees, listed in the Disclosure Document, may be one source of this information.”
7. **NOTE:** Civil Code § 1189 requires that any notary’s certificate of [acknowledgment](#) taken *within this state* must be in the form attached. Any certificate of [acknowledgment](#) taken *in another state* shall be sufficient in California if it is taken in accordance with the laws of the state where the acknowledgment is made. In that instance only, the current NASAA form

would be acceptable in California.

8. As of January 1, 2008, California Corporations Code section 31119 requires that the franchise disclosure documents together with all proposed agreements relating to the sale of the franchise be delivered to prospective franchisees at least 14 days prior to execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first.
9. As of January 1, 2008, California Corporations Code section 31155 requires that all applicants for registration, except for California corporations, California limited partnerships, or California limited liability companies, file an irrevocable consent appointing the Commissioner to be the applicant's attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant which arises under the Franchise Investment Law.
10. As of July 1, 2008, only the UFDD can be used as the offering document to offer and sell registered franchises in California, regardless of when the franchisor registered its franchise system and regardless of any prior registration involving a UFOC.
11. As of July 1, 2013, the Department of Corporations changed its name to the Department of Business Oversight. All required forms and disclosures should reference the Department of Business Oversight and the commissioner of Business Oversight as applicable.
12. As of June 18, 2014, the Department retired the Cal-Easi database and replaced it with the DOCQNET Self-Service portal. (see [www.dbo.ca.gov](http://www.dbo.ca.gov)). Please note that Cal-Easi database provided a permanent identification number for each entity known as a file number and a specific identification number for each filing as a package number. In DOCQNET the permanent identifier is called an organization identification number (Org ID) and the specific identifier for each filing is an application identification number (App-1234).
13. As of January 1, 2015, California Corporations Code sections 31116 and 31121 have been amended. The amendment changes the automatic effective date to the 30<sup>th</sup> business day after the filing of a complete application for registration or the last pre-effective amendment. A complete application means an application that contains the appropriate filing fee, UFDD and all additional exhibits including financial statements in conformity with regulations of the commissioner.
14. If the franchise being offered in California involves a multi-unit franchising structure, the franchisor must use either the terms defined in (1) California Corporations Code sections 31008, 31008.5 and 31009 or (2) the definitions adopted by the North American Securities Administrators Association, Inc.'s Multi-Unit Commentary ("Multi-Unit Commentary") adopted September 16, 2014: Area Development/Area Developer, Subfranchise Rights/Subfranchisor and Area Representation/Area Representative.
15. If the commercial arrangement involves a multi-unit franchising structure that meets the definition of an Area Representation arrangement or a Subfranchise arrangement under the

Multi-Unit Commentary, the franchisor must file a separate application for registration with a separate Uniform Franchise Disclosure Document (“UFDD”).

16. If a franchisor includes multiple brands within a single UFDD, the commissioner will require a separate application for registration with a separate UFDD for each brand if the Commissioner determines that combining the brands in the same UFDD would be confusing or misleading to prospective franchisees.
17. Compliance guidance is available by email at [ask.dbo@dbo.ca.gov](mailto:ask.dbo@dbo.ca.gov) or at 1-866-275-2677.
18. All filing forms are available for download on the Department of Business Oversight’s website at [http://www.dbo.ca.gov/Licensees/franchise\\_investment\\_law/Forms.asp](http://www.dbo.ca.gov/Licensees/franchise_investment_law/Forms.asp)

CALIFORNIA FRANCHISE REGISTRATION

1. FEES:

Franchise Registration	\$675
Renewal Franchise Registration	\$450
Post-Effective Amendment	\$50
Pre-effective Amendment	No Fee
Material Modification	\$50
Notice of Violation	\$675

Make check payable to “California Department of Business Oversight”

2. SEND YOUR APPLICATION TO:

CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT  
320 WEST 4<sup>TH</sup> STREET, SUITE 750  
LOS ANGELES, CA 90013-2344

OR

CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT  
ONE SANSOME STREET, SUITE 600  
SAN FRANCISCO, CA 94104-4448

OR

CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT  
1515 K STREET, SUITE 200  
SACRAMENTO, CA 95814-4052

3. COVER LETTER:

Please acknowledge in your application cover letter whether any documents or exhibits will be submitted at a later time. If the franchisor offered or sold securities in California under the California Corporate Securities Law of 1968, the franchisor must describe these transactions in the cover letter and indicate whether the securities were qualified or exempt and/or make any required filings.

The cover letter should tell the Department the date of the franchisor’s fiscal year end, and acknowledge that the registration will generally end 110 days after the date of its next fiscal year. This will coordinate registration renewal with the required fiscal year end audited financial statements, and will reduce the need to submit interim statements.

4. FORMS FOR THE FRANCHISOR’S APPLICATION:

- A. Application Cover Page. See attached [Form A](#) sample page 71.
- B. Supplemental Information Page. See [Form B](#) sample page 72 or NASAA’s form Franchisor Costs and Source of Funds
- C. Verification/Certification: An authorized officer, manager or general partner should sign the application. See [Form C](#) on attached sample pages 73 and 74. A person holding a power of attorney may sign if the authorizing corporate resolution is included.
- D. Either (1) Sales Agent Disclosure Form. See [Form E](#) on attached page 77. Send a clean copy (marked CONFIDENTIAL) and one that redacts (blacks out) home address and telephone number, SSN and birth date or (2) NASAA’s Franchise Seller Form. Individuals listed in Item 2 do not have to submit either form.
- E. NOTE: Complete a form only for each person offering and selling the franchise in California. Do not submit forms for individuals who may sell in California. When a franchise seller has a prospect in California file a post-effective amendment and submit a franchise seller form for the individual at that time.
- F. One copy of the Disclosure Document in the Uniform Franchise Disclosure Document (UFDD) format in this packet (UFDD as adopted by NASAA on June 22, 2007). Note the Mandatory Disclosure Requirements outlined in California Code of Regulations, title 10, section 310.114.1 that make some changes to the format. (California State Addendum)
- G. [Consent to Service of Process](#) (not required for California entities: California corporations, California limited partnerships, or California limited liability companies).
- H. Acknowledgement: An authorized officer, manager or general partner should sign the acknowledgment in their authorized capacity. This form is required for the Consent to Service of Process.
- I. [Customer Authorization Form](#) [QR 500.265, see also Corporations Code section 31111(b)]
- J. Internet Ad Exemption Notice. This notice is required annually. See Rule 310.156.3 of title 10, California code of regulations.
- K. Auditor’s Consent
- L. Audited (or, if eligible, Reviewed) financial statements.
- M. Send only one set of all Forms A-L.

5. REQUIRED FINANCIAL STATEMENTS FOR REGISTRATION:

Normally, the application must include the franchisor’s financial statements audited by an independent certified public accountant (CPA) in accordance with generally accepted accounting

principles (GAAP) (See Cal. Code Regs, tit. 10, section 310.111.2 for requirements). With the application, a franchisor must include a manually signed consent of the independent public accountant for the use of the audited financial statements in the UFDD. The Department will not accept “Compilation” report financial statements unless they are interim financials, submitted with “Audited” report financials.

Note that the use of audited financial statements does not relieve the applicant, or any person, from liability for false and misleading statements contained in the financial statements.

The Department may accept a current “Review” report balance sheet instead of an audit if:

- A. It is the franchisor’s first registration application in California and the franchisor has no prior audited financial statements;
- B. The “Review” report balance sheet is dated within 90 days of the application filing date;
- C. The financials include profit and loss statements covering the prior three years, or from inception of the business; a Statement of Cash Flow; and appropriate footnotes.
- D. The “Review” report conforms to the standards promulgated by the American Institute of Certified Public Accountants.

Note: California did not adopt the FTC’s “phase-in” option for unaudited financial statements.

#### 6. FINANCIAL ASSURANCES:

1. **Impound:** The franchisor must demonstrate its present financial ability to meet its obligations to the franchisee stated in the UFDD and Franchise Agreement without relying on the proposed franchisee’s funds. Otherwise, the Commissioner will impound all initial fees paid by the franchisee to the franchisor. If an impound is required, you must submit a copy of the form of Purchase receipt, and the written consent of the Depository. (See Cal. Code Regs., tit. 10, § 310.113 through 310.113.2).
2. **Increase in capital:** The franchisor may avoid an impound if an increase in the franchisor’s capitalization demonstrates its financial ability to meet the proposed obligations.
3. **Surety Bond:** The franchisor may avoid an impound by posting a surety bond as per Cal. Code Regs., tit. 10, § 310.113.5. See attached form.
4. **Guarantee of Performance:** An impound may also be avoided by providing an adequate Guarantee of Performance, along with the Guarantor’s audited financial statements which must be included along with the Guarantee in the UFDD. These financials must show the Guarantor’s financial ability to meet the franchisor’s obligations. See [Form F](#) on page 79, attached.
5. **Fee Deferral:** The franchisor may avoid an impound by postponing payment of the initial franchise fee, provided that the franchisor has completed its initial obligations (as disclosed in Item 11) and the franchisee is open for business. A fee deferral is required to be disclosed in the UFDD.

7. PRE-EFFECTIVE AMENDMENT:

A Pre-effective amendment changes a pending application. The application must include a facing page and a verification page. Underline or mark documents to show changes from the previous filing. Send only the marked copy. Do not send an unmarked copy. Do not highlight changes in color. There is no fee to file a pre-effective amendment, unless a balance fee is owed on the previous filing.

A pre-effective amendment may also be filed within 6 months of an abandonment of the application only if all the outstanding comments at the time of the abandonment are addressed. Additionally, the applicant must file a facing page marked as a pre-effective amendment/RE-INSTATEMENT, with a certification page. The cover letter must specifically mention that the applicant is seeking the reinstatement of an application that was abandoned on a specified date.

8. POST-EFFECTIVE AMENDMENT:

A Post-effective amendment is submitted after a registration is effective. A Post-effective amendment application includes a completed application cover page, and a verification page. Mark the documents to reflect any changes from the prior filing. Send only this one marked copy of the document, which clearly indicates the changes made. Do not send an unmarked copy and do not send documents that have not been changed. There is a \$50 fee for filing a post-effective amendment application.

After the franchisor is registered, it must file an application for post-effective amendment when a material change occurs or to add sales agents. A post-effective amendment application is effective as of the date an order is issued indicating the effectiveness of the post-effective amendment.

9. RENEWAL:

A renewal application must be submitted in the same format as the original application. Include all documents required for an initial registration. In the cover letter of the application, please acknowledge whether any documents or exhibits will be submitted at a later time, and state the fiscal year.

The franchisor's financial statements for the most recent fiscal year must be certified as audited by an independent CPA. Submit a manually executed auditor's consent for use of the financial statements in the UFDD.

Send one complete, updated, clean copy of the UFDD and exhibits. If a document is revised, send only one copy of the changed pages, with the changes clearly marked, but not highlighted in color. Do NOT send extra copies.

As of January 1, 2015, California Corporations Code sections 31116 and 31121 have been amended. The amendment changes the automatic effective date to the 30th business day after the filing of a complete application for registration or the last pre-effective amendment. A complete application means an application that contains the appropriate filing fee, UFDD and all additional exhibits including financial statements in conformity with regulations of the

commissioner.

A renewal application must be filed before the expiration date of the registration. So long as a renewal filing of a complete application is received by the Department before the current registration expires, the renewal filing fee is \$450. Checks should be made payable to the Department Business Oversight. If the renewal is received after the current registration expires, it will be treated as an initial filing for filing fee purposes. The initial filing fee is \$675.

The franchisor may not offer or sell franchises in California in the interim period between expiration and renewal, except that the franchisor may make an offer (but not a sale) of a franchise in the manner provided by Corporations Code section 31107.

PLEASE KEEP IN MIND ANY STATE HOLIDAYS THAT MAY AFFECT THE FILING DATE.

Incomplete applications cannot go automatically effective. If you acknowledge that your application package is incomplete in any way, or the Department sends written comments to the franchisor before any automatic effectiveness, the application is deemed incomplete and will not go automatically effective upon the expiration of the previous registration. When all issues raised in the Department’s comments have been resolved, the application will then be considered complete. The registration of the offer of the franchises will become automatically effective at 12:00 pm, California time, of the 30<sup>th</sup> business day after filing the complete application.

10. MATERIAL MODIFICATION OF EXISTING FRANCHISEES:

If the franchisor proposes to change any terms of an **existing** franchise agreement for a California franchise then an application must be sent into the Department under Corporations Code section 31125 before the change is made unless an exception applies. See Cal. Code Regs., tit. 10, § 310.125.

Corporations Code sections 31125(c) and (d) excepts modifications of the existing franchise(s) if all of the following conditions are met:

1. The franchise owner must receive the complete written modification at least five business days prior to the execution of a binding agreement, or provide that the franchise owner may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor within not less than five business days following the execution of the agreement, rescind the agreement to the material modification;
2. The modification agreement must not be signed within twelve months after the date of the franchise agreement;
3. The modification must not waive any right of the franchise owner under the California Franchise Relations Act, but the modification may include a general release of all known and unknown claims by a party to the modification; and
4. (i) The proposed modification must be in connection with the resolution of a bona fide dispute between the franchisor and the franchise owner, and the modification must not be applied on a franchise system wide basis (meaning offered on a voluntary basis to fewer

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than twenty-five percent of the franchisor's California franchises within any twelve month period); OR (ii) The proposed modification must be offered on a voluntary basis to fewer than twenty-five percent of the franchisor's California franchises within any twelve month period, provided each franchise owner must be given a right to rescind the modification agreement if the modification is not made in compliance with paragraph (i); or

5. The modification must be offered on a voluntary basis and must not substantially or adversely impact the franchise owner's rights, benefits, privileges, duties, obligations, or responsibilities under the franchise agreement.

**11. NEGOTIATED SALES**

Under the California Franchise Investment Law, a franchisor is prohibited from offering to prospective franchise owners any franchise terms different from the terms of the offer registered under Corporations Code sections 31111 (initial registration), 31121 (renewal) or 31123 (post-effective Amendment). So this prohibition does not apply to offers and sales of franchises made under an exemption.

Note that Negotiated Sales are different than Material Modifications as Material Modifications are made to existing franchise agreements. If the franchisor proposes to change any terms of an existing franchise agreement to a California franchise then an application must be filed with the Department under Corporations Code section 31125 before the change is made unless an exception applies.

There are 3 options for addressing negotiates sales in California.

1. Corporations Code section 31109.1 and California Code of Regulations, title 10, section 310.100.4<sup>1</sup> require the franchisor to take the following actions:
  - a. The initial offer must be registered under Corporations Code section 31111, 31121, or 31123;
  - b. In an appendix to the FDD, the franchisor must provide a prospective franchise owner with a summary description of all of the material negotiated terms during the prior 12 month period in the form prescribed under California Code of Regulations, title 10, section 310.100.4, along with a statement that copies of the negotiated terms are available upon written request and the contact information of the franchisor's representative from whom negotiated terms can be obtained;
  - c. The franchisor must certify or declare in an appendix to its application for renewal that it has complied with all of the requirements under Corporations Code section 31109.1 (in the event this exemption is claimed);
  - d. The negotiated terms, on the whole, must confer additional benefits on the prospective franchise owner;
  - e. The franchisor must provide a copy of all negotiated terms to the prospective franchise owner within five business days following the request of the prospective franchise owner; and

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<sup>1</sup> The rules referred to herein are in the California Code of Regulations (CCR), title 10.

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- f. The franchisor must keep copies of all material negotiated terms for a period of five years from the date of the first agreement containing the relevant negotiated term. Upon the request of the commissioner, the franchisor must make the copies available to the commissioner for review.
2. California Code of Regulations, title 10, section 310.100.2 exempts the offer or sale of a franchise on terms different from the terms of the offer registered if all of the following conditions are met:
    - a. The initial offer must be registered under Corporations Code section 31111, 31121, or 31123;
    - b. When the prospective franchise owner receives the FDD, he or she must also receive copies of all Notices of Negotiated Sale of Franchise filed with the state within the last 12 months, if any;
    - c. Before selling another franchise, the franchisor must amend its registered offer with prescribed language indicating that items have been negotiated with other franchise owners and copies of filed notices of negotiated sales are attached to the document (which can also be done by amendment that is automatically effective upon filing);
    - d. A Notice of Negotiated Sale of Franchise in prescribed form must be filed with the state within fifteen business days after the negotiated sale is consummated; and
    - e. The franchisor certifies or declares in an appendix to its application for renewal that all notices have been filed with the state as required under California Code of Regulations, title 10, section 310.100.2.
  3. Corporations Code section 31123 requires a franchisor to promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed. The negotiated changes under this option must be sent to the Department as a post-effective amendment. The prospective franchisee is re-disclosed after the Department issues an order and the sale is not consummated until after the 14-day waiting period.

**12. FILING AN ELECTRONIC COPY OF YOUR APPLICATION:**

An applicant may file the entire application through DOCQNET, the Department’s Self-Service Portal. All of the documents submitted should be converted to ".pdf" files. The submission of an electronic filing is subject to all of the same requirements as submitting a hardcopy filing. Filing your application will expedite the processing of the file into the Department’s electronic database. The cover letter from the attorney or officer of the Company submitting the file should contain a representation that all of the information contained in the electronic file is complete.

**13. INCOMPLETE APPLICATIONS:**

As of January 1, 2015, California Corporations Code sections 31116 and 31121 have been amended. The amendment changes the automatic effective date to the 30th business day after the filing of a complete application for registration or the last pre-effective amendment.

A complete application means an application that contains the appropriate filing fee, UFDD and all additional exhibits including financial statements in conformity with regulations of the commissioner.

Applications that are incomplete are not eligible for automatic effectiveness.

14. ADVERTISING:

Any franchise subject to the registration requirements of this law must file a true copy of the advertisement with the commissioner and the franchisor shall not publish the advertisement until the advertisement has been filed in the office of the commissioner at least 3 business days.

See Corporations Code section 31156, and California Code of Regulations, title 10, sections 310.156 through 310.156.2, regarding the filing of the advertising.

If the franchisor advertises the offer and sale of a franchise on a website on the Internet, the franchisor must comply with California Code of Regulations, title 10, section 310.156.3 regarding Internet advertisements.

15. COPIES OF CALIFORNIA FRANCHISE LAW AND RULES:

The Franchise Investment Law can be found in Corporations Code sections 31000 to 31516. The rules are in the California Code of Regulations, title 10, Chapter 3, sections 310.000 through 310.505.

To view or obtain copies of the Corporations Code or the Rules contact:

- a. West Publishing Company: “Corporations Code Compact Edition” for both the law and rules. 1-800-328-9352
- b. LexisNexis [www.LexisNexis.com](http://www.LexisNexis.com) or 1-800-223-1940
- c. Department’s website [www.dbo.ca.gov](http://www.dbo.ca.gov)
- d. Legislative Counsel’s website (for code sections only): [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

16. RELIANCE ON THESE INSTRUCTIONS:

Applicants should review the current Franchise Investment Law and the Commissioner’s Rules. These instructions paraphrase the statutes and rules. The franchisor should rely on the published statute and rules.

17. FORMS, RECORDS AND COPYWORK:

For the Department’s forms, official records of franchise applicants in California or copy work, call the Department’s toll free number 1-866- 275-2677 or visit the Department’s website at [www.dbo.ca.gov](http://www.dbo.ca.gov) see Resources (Information Regarding Franchises) for forms see Online Resources [Access to Securities & Franchise Filings (“DocQNet”)] for all franchise filings since late 2002. For access to the North American Securities Administrators Association’s “INSTRUCTIONS FOR FILING A UNIFORM FRANCHISE REGISTRATION

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APPLICATION USING THE “NEW FTC FRANCHISE RULE” AFTER JULY 1, 2007” (“NASAA”), including the Application Page (page 71) and Forms B through Form F (pages 72 – 79), go to the NASAA website [www.nasaa.org](http://www.nasaa.org), click on INDUSTRY & REGULATORY RESOURCES, Uniform Forms. Highlight an area, click on Format, Font and choose a Size to enlarge.

18. ADDITIONAL INFORMATION: For additional information regarding franchising in California, review the Department’s website at [www.dbo.ca.gov](http://www.dbo.ca.gov).

**SUMMARY OF CALIFORNIA FRANCHISE EXEMPTIONS:**

CALIFORNIA					
Type of Exemption	Cite (CA Corp Code)	Disclosure Required	Exempt from Disclosure	Notice Filing	Self-Executing
Discretionary <sup>1</sup>					
Fractional Franchise	§ 31108		✓	✓	
Insiders	§ 31106		✓	✓	
Institutional Franchisee					
Large Franchisee <sup>2</sup>	§ 31109		✓	✓	
Large Franchisor	§ 31101	✓		✓	
Large Investment					
Nominal Fee <sup>3</sup>	Rule 310.011		✓		✓
Out of State Sales <sup>4</sup>	§ 31105		✓		✓
Renewal of Existing Agreement <sup>5</sup>	§ 31018		✓		✓
Sale of Single Franchise					
Sales by Existing Franchisees <sup>6</sup>	§ 31102		✓		✓
Sales to Existing Franchisees	§ 31106		✓	✓	

1: See Commissioner's Release 61-C: How to request an Interpretive Opinion

2: Corporations Code section 31109(e) The notice must be filed before the offer is made

3: Nominal fee cannot exceed \$500 annually

4: No CA residents purchasing and all business located outside of CA

5: Exempt only if there is no interruption in the operation of the business and no material modification of the existing franchise.

6: Sale cannot be effected by or through franchisor but franchisor may approve new franchisee

**CAVEAT:** §31153 places burden of proving an exemption the person claiming it

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INSTRUCTIONS FOR FILING  
A UNIFORM FRANCHISE REGISTRATION APPLICATION USING THE “NEW FTC  
FRANCHISE RULE”  
AFTER JULY 1, 2007

I. Background

On January 23, 2007, after a twelve year regulatory review, the Federal Trade Commission (“FTC”) announced that it had adopted a final amended Franchise Rule, with a Statement of Basis and Purpose and Regulatory Analysis (the “2007 Franchise Rule”)<sup>2</sup> The 2007 Franchise Rule represents the first time the FTC has amended its Franchise Rule (the “Original Franchise Rule”) since 1978, when it was originally promulgated.<sup>3</sup>

Among other things, the 2007 Franchise Rule adopts new requirements for franchisors preparing franchise disclosure documents, also called “offering circulars.” Since December 30, 1993, the FTC has allowed franchisors to prepare and distribute disclosure documents under one of two disclosure formats: (1) the FTC’s Original Franchise Rule; or (2) the Uniform Franchise Offering Circular (“UFOC”) Guidelines, adopted on April 23, 1993 by the North American Administrators Association, Inc. (“NASAA”).<sup>4</sup>

After NASAA adopted the UFOC Guidelines, fifteen states (“Registration States”) required franchisors to follow that disclosure format to comply with state franchise laws. As a practical matter, most franchisors have chosen to prepare their disclosure documents under the UFOC Guidelines, even in states where that format is not specifically required.

The FTC’s 2007 Franchise Rule adopts disclosure requirements that closely track the UFOC Guidelines.<sup>5</sup> In some instances, however, the 2007 Franchise Rule omits or streamlines UFOC Guideline disclosure requirements, such as broker disclosures, cover page risk factors, and detailed computer requirements. In addition, the 2007 Franchise Rule incorporates new disclosure requirements not found in the UFOC Guidelines, including disclosures related to a franchisor’s parent, franchisor initiated litigation, confidentiality clauses and the existence of trademark-specific franchisee associations. The 2007 Franchise Rule also substantially revised the UFOC Guideline disclosure of statistical information on franchisees and outlets (Item 20), adopting the approach suggested by NASAA in its comment to the FTC’s Notice of Proposed Rulemaking.<sup>6</sup>

In light of the similarities between the 2007 Franchise Rule and the UFOC Guidelines, and the FTC’s lengthy and comprehensive regulatory review that preceded its adoption of the 2007 Franchise Rule, NASAA intends at this time to adopt the disclosure requirements under the 2007 Franchise Rule as a successor to the UFOC Guidelines, with minimal additional requirements, the most significant being a state risk factor cover page.

The FTC’s 2007 Franchise Rule allows franchisors to choose to follow the new disclosure format on July 1, 2007, and some franchisors may seek to utilize that disclosure format in the Registration States

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<sup>2</sup> 16 CFR 436, as amended, 72 FR 15444 (Mar. 30, 2007)

<sup>3</sup> 43 FR 59614 (Dec. 21, 1978)

<sup>4</sup> 16 CFR 436.1 (a)-(e), 58 FR 69224 (Dec. 30, 2007)

<sup>5</sup> 2007 Franchise Rule, 72 FR 15448

<sup>6</sup> 2007 Franchise Rule, 72 FR at 15502

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as soon as possible. Consequently, until NASAA adopts a replacement for the UFOC Guidelines, NASAA recommends that, as of July 1, 2007, Registration States permit franchisors to file in those states franchise disclosure documents prepared under the 2007 Franchise Rule, in accordance with the Instructions set forth below. Franchisors may continue to file and use in the Registration States franchise disclosure documents prepared under the UFOC Guidelines until July 1, 2008.

### II. Uniform Franchise Registration Application

In order to register a franchise in the Registration States, franchisors must continue to follow the Instructions provided under the UFDD Guidelines for filing franchise registration applications, and must continue to file the following application documents, other than the disclosure document, in the format required under the UFDD Guidelines:

- A. [Uniform Franchise Registration Application Page](#);
- B. [Supplemental Information page\(s\)](#);
- C. Certification page
- D. [Uniform Consent to Service of Process](#);
- E. [Sales Agent Disclosure Form](#)/ Franchise Seller Form
- F. If the applicant is a corporation or partnership or limited liability company, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
- G. Uniform Franchise Disclosure Document (see Part III below);
- H. Application Fee;
- I. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular; and
- J. Advertising or promotional materials, if required.

### III. The Uniform Franchise Disclosure Document

- A. Format.

The Uniform Franchise Disclosure Document shall be prepared in the format required under the 2007 Franchise Rule, 16 CFR 436.3 -.5, as amended, (Subparts C and D), with the additions listed at Section III B and C below. A copy of the contents and instructions for preparing a Uniform Franchise Disclosure Document under the 2007 Franchise Rule, along with accompanying definitions applicable for preparing that form of disclosure document, is attached to these Instructions at Exhibit 1.

- B. State Cover Page.

The Uniform Franchise Disclosure Document shall include the following State Cover Page prepared in accordance with these Instructions and shall immediately follow the Cover Page described at 16 CFR 436.3 of the 2007 Franchise Rule:

- 1. State the following legend:

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STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. **REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.**

Call the state franchise administrator listed in Exhibit \_\_\_ for information about the franchisor, or about franchising in your state.

2. State the following:

**MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.**

3. If any of the following apply, state the following, using capital letters as shown: Please consider the following **RISK FACTORS** before you buy this franchise:

**THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY [LITIGATION/ARBITRATION/MEDIATION] ONLY IN [STATE]. OUT-OF-STATE [LITIGATION/ARBITRATION/MEDIATION] MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO [SUE/ARBITRATE/MEDIATE] WITH US IN [STATE] THAN IN YOUR OWN STATE.**

**THE FRANCHISE AGREEMENT STATES THAT [STATE] LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.**

4. In addition to the above, disclose other risk factors required by a state administrator.

5. If one or more risk factor applies, also state:

**THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.**

6. If applicable, state the following:

We use the services of one or more **FRANCHISE BROKERS** or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

7. (a) State the following:

Effective Date: \_\_\_\_\_

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- (b) Leave the effective date blank until notified of effectiveness by the state administrator.
- (c) If an applicant is using a multi-state disclosure document, the applicant may list multiple state effective dates together on a separate page following the Supplement State Cover page.

A sample State Cover Page is attached following these Instructions at Exhibit 2.

C. Receipt.

If applicable state law requires a franchisor to provide the disclosure document earlier than the 14 days provided in the 2007 Franchise Rule, the franchisor shall add a statement to the receipt page to the uniform franchise disclosure document to accurately reflect state law requirements to deliver the disclosure document.

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## Exhibit 1: Uniform Franchise Disclosure Document

### Definitions:

Unless stated otherwise, the following definitions apply throughout these Instructions to the extent they do not conflict with applicable state law.

- (a) Action includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.
- (b) Affiliate means an entity controlled by, controlling, or under common control with, another entity.
- (c) Confidentiality clause means any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his or her personal experience as a franchisee in the franchisor’s system with any prospective franchisee. It does not include clauses that protect franchisor’s trademarks or other proprietary information.
- (d) Disclose, state, describe, and list each mean to present all material facts accurately, clearly, concisely, and legibly in plain English.
- (e) Financial performance representation means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.
- (f) Fiscal year refers to the franchisor’s fiscal year.
- (g) Franchisee means any person who is granted a franchise.
- (h) Franchise seller means a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor’s employees, representatives, agents, sub franchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.
- (i) Franchisor means any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, it includes sub franchisors. For purposes of this definition, a “sub franchisor” means a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance.
- (j) Parent means an entity that controls another entity directly, or indirectly through one or more subsidiaries.
- (k) Person means any individual, group, association, limited or general partnership, corporation, or any other entity.
- (l) Plain English means the organization of information and language usage understandable by

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a person unfamiliar with the franchise business. It incorporates short sentences; definite, concrete, everyday language; active voice; and tabular presentation of information, where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

(m) Predecessor means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor’s assets.

(n) Principal business address means the street address of a person’s home office in the United States. A principal business address cannot be a post office box or private mail drop.

(o) Prospective franchisee means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(p) Required payment means all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(q) Trademark includes trademarks, service marks, names, logos, and other commercial symbols.

Contents of the Uniform Franchise Disclosure Document

Part 1: Cover page.

Begin the disclosure document with a cover page, in the order and form as follows:

(a) The title “FRANCHISE DISCLOSURE DOCUMENT” in capital letters and bold type.

(b) The franchisor’s name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

(c) A sample of the primary business trademark that the franchisee will use in its business.

(d) A brief description of the franchised business. (e) The following statements:

(1) The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7]. This includes [the total amount in Item 5] that must be paid to the franchisor or affiliate.

(2) This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [The following sentence in bold

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type] Note, however, that no governmental agency has verified the information contained in this document.

- (3) The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.
- (4) Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.
- (5) There may also be laws on franchising in your state. Ask your state agencies about them.
- (6) [The issuance date].
- (f) A franchisor may include the following statement between the statements set out at paragraphs (2) and (3) of this Part: "You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number]."
- (g) Franchisors may include additional disclosures on the cover page, on a separate cover page, or addendum to comply with state pre-sale disclosure laws.

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Part 2: Table of contents.

Include the following table of contents. State the page where each disclosure Item begins. List all exhibits by letter, as shown in the following example.

Table of Contents

1. The Franchisor and any Parents, Predecessors, and Affiliates
2. Business Experience
3. Litigation
4. Bankruptcy
5. Initial Fees
6. Other Fees
7. Estimated Initial Investment
8. Restrictions on Sources of Products and Services
9. Franchisee’s Obligations
10. Financing
11. Franchisor’s Assistance, Advertising, Computer Systems, and Training
12. Territory
13. Trademarks
14. Patents, Copyrights, and Proprietary Information
15. Obligation to Participate in the Actual Operation of the Franchise Business
16. Restrictions on What the Franchisee May Sell
17. Renewal, Termination, Transfer, and Dispute Resolution
18. Public Figures
19. Financial Performance Representations
20. Outlets and Franchisee Information
21. Financial Statements
22. Contracts
23. Receipts

Exhibits

- A. Franchise Agreement

Part 3: The Franchise Disclosure Document

Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates.

Disclose:

(1) The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.

(2) The name and principal business address of any predecessors during the 10-year period

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immediately before the close of the franchisor’s most recent fiscal year.

- (3) The name that the franchisor uses and any names it intends to use to conduct business.
- (4) The identity and principal business address of the franchisor’s agent for service of process.
- (5) The type of business organization used by the franchisor (for example, corporation, partnership) and the state in which it was organized.
- (6) The following information about the franchisor’s business and the franchises offered:
  - (i) Whether the franchisor operates businesses of the type being franchised.
  - (ii) The franchisor’s other business activities.
  - (iii) The business the franchisee will conduct.
  - (iv) The general market for the product or service the franchisee will offer. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal.
  - (v) In general terms, any laws or regulations specific to the industry in which the franchise business operates.
  - (vi) A general description of the competition.
- (7) The prior business experience of the franchisor; any predecessors listed in Item 1(a)(2) of this part; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor, including:
  - (i) The length of time each has conducted the type of business the franchisee will operate.
  - (ii) The length of time each has offered franchises providing the type of business the franchisee will operate.
  - (iii) Whether each has offered franchises in other lines of business. If so, include:
    - (A) A description of each other line of business.

- (B) The number of franchises sold in each other line of business.
- (C) The length of time each has offered franchises in each other line of business.

Item 2: Business Experience.

Disclose by name and position the franchisor’s directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale or operation of franchises offered by this document. For each person listed in this section, state his or her principal positions and employers during the past five years, including each position’s starting date, ending date, and location.

Item 3: Litigation.

(1) Disclose whether the franchisor; a predecessor; a parent or affiliate who induces franchise sales by promising to back the franchisor financially or otherwise guarantees the franchisor’s performance; an affiliate who offers franchises under the franchisor’s principal trademark; and any person identified in Item 2 of this part:

(i) Has pending against that person:

(A) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

(B) Civil actions, other than ordinary routine litigation incidental to the business, which are material in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(ii) Was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this section, “franchise relationship” means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include actions involving suppliers or other third parties, or indemnification for tort liability.

(iii) Has in the 10-year period immediately before the disclosure document’s issuance date:

(A) Been convicted of or pleaded nolo contendere to a felony charge.

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(B) Been held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations. “Held liable” means that, as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.

(2) Disclose whether the franchisor; a predecessor; a parent or affiliate who guarantees the franchisor’s performance; an affiliate who has offered or sold franchises in any line of business within the last 10 years; or any other person identified in Item 2 of this part is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

(3) For each action identified in paragraphs (1) and (2) of this Item 3, state the title, case number or citation, the initial filing date, the names of the parties, the forum, and the relationship of the opposing party to the franchisor (for example, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Except as provided in paragraph (4) of this Item 3, summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.<sup>7</sup>

In addition, state:

- (i) For pending actions, the status of the action.
- (ii) For prior actions, the date when the judgment was entered and any damages or settlement terms.<sup>8</sup>

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<sup>7</sup> Franchisors may include a summary opinion of counsel concerning any action if counsel consent to use the summary opinion and the full opinion is attached to the disclosure document.

<sup>8</sup> If a settlement agreement must be disclosed in this Item, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales. Further, any franchisor who has historically used only the Franchise Rule format, or who is new to franchising, need not disclose confidential settlements entered prior to the effective date of this Rule.

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(iii) For injunctive or restrictive orders, the nature, terms, and conditions of the order or decree.

(iv) For convictions or pleas, the crime or violation, the date of conviction, and the sentence or penalty imposed.

(4) For any other franchisor-initiated suit identified in paragraph (1)(ii) of this Item 3, the franchisor may comply with the requirements of paragraphs (3)(i)-(iv) of this Item 3 by listing individual suits under one common heading that will serve as the case summary (for example, “royalty collection suits”).

**Item 4: Bankruptcy.**

(1) Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale or operation of franchises offered by this document, has, during the 10-year period immediately before the date of this disclosure document:

(i) Filed as debtor (or had filed against it) a petition under the United States Bankruptcy Code (“Bankruptcy Code”).

(ii) Obtained a discharge of its debts under the Bankruptcy Code.

(iii) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code, or that obtained a discharge of its debts under the Bankruptcy Code while, or within one year after, the officer or general partner held the position in the company.

(2) For each bankruptcy, state:

(i) The current name, address, and principal place of business of the debtor.

(ii) Whether the debtor is the franchisor. If not, state the relationship of the debtor to the franchisor (for example, affiliate, officer).

(iii) The date of the original filing and the material facts, including the bankruptcy court, and the case name and number. If applicable, state the debtor’s discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy

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Code.

- (3) Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy.

Item 5: Initial Fees

Disclose the initial fees and any conditions under which these fees are refundable. If the initial fees are not uniform, disclose the range or formula used to calculate the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For this section, “initial fees” means all fees and payments, or commitments to pay, for services or goods received from the franchisor or any affiliate before the franchisee’s business opens, whether payable in lump sum or installments. Disclose installment payment terms in this section or in Item 10 of this part.

Item 6: Other Fees.

Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title “OTHER FEES” in capital letters using bold type. Include any formula used to compute the fees.

Item 6 Table

OTHER FEES

Type of fee	Amount	Due Date	Remarks

- (1) In column (1), list the type of fee (for example, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).
- (2) In column (2), state the amount of the fee.
- (3) In column (3), state the due date for each fee.
- (4) In column (4), include remarks, definitions, or caveats that elaborate on the information in the table. If remarks are long, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:
  - (i) Whether the fees are payable only to the franchisor
  - (ii) Whether the fees are imposed and collected by the franchisor.
  - (iii) Whether the fees are non-refundable or describe the circumstances when the fees are refundable.
  - (iv) Whether the fees are uniformly imposed.
  - (v) The voting power of franchisor-owned outlets on any fees imposed by cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

Item 7: Estimated Initial Investment.

Disclose, in the following tabular form, the franchisee’s estimated initial investment. State the title “YOUR ESTIMATED INITIAL INVESTMENT” in capital letters using bold type. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

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Item 7 Table:

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of expenditure	Amount	Method of payment	When due	To whom payment is to be made
<b>Total.</b>				

(1) In column (1):

(i) List each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to include remarks, definitions, or caveats that elaborate on the information in the Table.

(A) The initial franchise fee.

(B) Training expenses.

(C) Real property, whether purchased or leased.

(D) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.

(E) Inventory to begin operating.

(F) Security deposits, utility deposits, business licenses, and other prepaid expenses.

(ii) List separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.

(iii) Include a category titled “Additional funds – [initial period]” for any other required expenses the franchisee will incur before operations begin and during the initial period of operations. State the initial period. A reasonable initial period is at least three months or a reasonable period for the industry. Describe in general terms the factors, basis, and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

(2) In column (2), state the amount of the payment. If the amount is unknown, use a low-high range based on the franchisor’s current experience. If real property costs cannot be estimated in a low-

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high range, describe the approximate size of the property and building and the probable location of the building (for example, strip shopping center, mall, downtown, rural, or highway).

(3) In column (3), state the method of payment.

(4) In column (4), state the due date.

(5) In column (5), state to whom payment will be made.

(6) Total the initial investment, incorporating ranges of fees, if used.

(7) In a footnote, state:

(i) Whether each payment is non-refundable, or describe the circumstances when each payment is refundable.

(ii) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual interest rate, rate factors, and the estimated loan repayments. Franchisors may refer to Item 10 of this part for additional details.

Item 8: Restrictions on Sources of Products and Services.

Disclose the franchisee’s obligations to purchase or lease goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor’s specifications. Include obligations to purchase imposed by the franchisor’s written agreement or by the franchisor’s practice.<sup>9</sup>

For each applicable obligation, state:

(1) The good or service required to be purchased or leased.

(2) Whether the franchisor or its affiliates are approved suppliers or the only approved suppliers of that good or service.

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<sup>9</sup>Franchisors may include the reason for the requirement. Franchisors need not disclose in this Item the purchase or lease of goods or services provided as part of the franchise without a separate charge (such as initial training, if the cost is included in the franchise fee). Describe such fees in Item 5 of this section. Do not disclose fees already described in Item 6 of this part.

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- (3) Any supplier in which an officer of the franchisor owns an interest.
- (4) How the franchisor grants and revokes approval of alternative suppliers, including:
  - (i) Whether the franchisor’s criteria for approving suppliers are available to franchisees.
  - (ii) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor’s criteria.
  - (iii) Any fees and procedures to secure approval to purchase from alternative suppliers.
  - (iv) The time period in which the franchisee will be notified of approval or disapproval.
  - (v) How approvals are revoked.
- (5) Whether the franchisor issues specifications and standards to franchisees, sub franchisees, or approved suppliers. If so, describe how the franchisor issues and modifies specifications.
- (6) Whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees. If so, describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating:
  - (i) The franchisor’s total revenue.<sup>10</sup>
  - (ii) The franchisor’s revenues from all required purchases and leases of products and services.
  - (iii) The percentage of the franchisor’s total revenues that are from required purchases or leases.
  - (iv) If the franchisor’s affiliates also sell or lease products or services to franchisees, the affiliates’ revenues from those sales or leases.
- (7) The estimated proportion of these required purchases and leases by the franchisee to all purchases and leases by the franchisee of goods and services in establishing and operating the franchised businesses.

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<sup>10</sup> Take figures from the franchisor’s most recent annual audited financial statement required in Item 21 of this part. If audited statements are not yet required, or if the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

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(8) If a designated supplier will make payments to the franchisor from franchisee purchases, disclose the basis for the payment (for example, specify a percentage or a flat amount). For purposes of this disclosure, a “payment” includes the sale of similar goods or services to the franchisor at a lower price than to franchisees.

(9) The existence of purchasing or distribution cooperatives.

(10) Whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

(11) Whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee’s purchase of particular products or services or use of particular suppliers.

Item 9: Franchisee’s Obligations.

Disclose, in the following tabular form, a list of the franchisee’s principal obligations. State the title “FRANCHISEE’S OBLIGATIONS” in capital letters using bold type. Cross- reference each listed obligation with any applicable section of the franchise or other agreement and with the relevant disclosure document provision. If a particular obligation is not applicable, state “Not Applicable”. Include additional obligations, as warranted.

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Item 9 Table:

**FRANCHISEE’S OBLIGATIONS**

[In bold] This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

Obligation	Section in agreement	Disclosure document item
a. Site selection and acquisition/lease		
b. Pre-opening purchase/leases		
c. Site development and other pre-opening requirements		
d. Initial and ongoing training		
e. Opening		
f. Fees		
g. Compliance with standards and policies/operating manual		
h. Trademarks and proprietary information		
i. Restrictions on products/services offered		
j. Warranty and customer service requirements		
k. Territorial development and sales quotas		
l. Ongoing product/service purchases		
m. Maintenance, appearance, and remodeling requirements		
n. Insurance		
o. Advertising		
p. Indemnification		
q. Owner’s participation/management/staffing		
r. Records and reports		
s. Inspections and audits		
t. Transfer		
u. Renewal		
v. Post-termination obligations		
w. Non-competition covenants		
x. Dispute resolution		
y. Other (describe)		

Item 10: Financing.

(1) Disclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor, its agent, or affiliates offer directly or indirectly to the franchisee.<sup>11</sup>

The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see Appendix A of this part. For each financing arrangement, state:

(i) What the financing covers (for example, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or fixtures, opening or ongoing inventory or supplies, or other continuing expenses).<sup>12</sup>

(ii) The identity of each lender providing financing and their relationship to the franchisor (for example, affiliate).

(iii) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed.

(iv) The rate of interest, plus finance charges, expressed on an annual basis. If the rate of interest, plus finance charges, expressed on an annual basis, may differ depending on when the financing is issued, state what that rate was on a specified recent date.

(v) The number of payments or the period of repayment.

(vi) The nature of any security interest required by the lender.

(vii) Whether a person other than the franchisee must personally guarantee the debt.

(viii) Whether the debt can be prepaid and the nature of any prepayment penalty. applicable, state “Not Applicable.” Include additional obligations, as warranted.

(ix) The franchisee’s potential liabilities upon default, including any:

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<sup>11</sup> Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arrangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor’s guarantee of a note, lease, or other obligation of the franchisee.

<sup>12</sup> Include sample copies of the financing documents as an exhibit to Item 22 of this part. Cite the section and name of the document containing the financing terms and conditions.

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- (A) Accelerated obligation to pay the entire amount due;
  - (B) Obligations to pay court costs and attorney’s fees incurred in collecting the debt;
  - (C) Termination of the franchise; and
  - (D) Liabilities from cross defaults such as those resulting directly from non-payment, or indirectly from the loss of business property.
- (x) Other material financing terms.
- (2) Disclose whether the loan agreement requires franchisees to waive defenses or other legal rights (for example, confession of judgment), or bars franchisees from asserting a defense against the lender, the lender’s assignee or the franchisor. If so, describe the relevant provisions.
- (3) Disclose whether the franchisor’s practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, state:
- (i) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and
  - (ii) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.
- (4) Disclose whether the franchisor or an affiliate receives any consideration for placing financing with the lender. If such payments exist:
- (i) Disclose the amount or the method of determining the payment; and
  - (ii) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

**Item 11: Franchisor’s Assistance, Advertising, Computer Systems, and Training.**

Disclose the franchisor’s principal assistance and related obligations of both the franchisor and franchisee as follows. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by stating the following sentence in bold type: “Except as listed below, [the franchisor] is not required to provide you with any assistance.”

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(1) Disclose the franchisor’s pre-opening obligations to the franchisee, including any assistance in:

(i) Locating a site and negotiating the purchase or lease of the site. If such assistance is provided, state:

(A) Whether the franchisor generally owns the premises and leases it to the franchisee.

(B) Whether the franchisor selects the site or approves an area in which the franchisee selects a site. If so, state further whether and how the franchisor must approve a franchisee- selected site.

(C) The factors that the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms).

(D) The time limit for the franchisor to locate or approve or disapprove the site and the consequences if the franchisor and franchisee cannot agree on a site.

(ii) Conforming the premises to local ordinances and building codes and obtaining any required permits.

(iii) Constructing, remodeling, or decorating the premises.

(iv) Hiring and training employees.

(v) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. If any such assistance is provided, state:

(A) Whether the franchisor provides these items directly or only provides the names of approved suppliers.

(B) Whether the franchisor provides written specifications for these items.

(C) Whether the franchisor delivers or installs these items.

(2) Disclose the typical length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee’s business. Describe the factors that may affect the time period, such as ability to obtain a lease, financing

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or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

(3) Disclose the franchisor’s obligations to the franchisee during the operation of the franchise, including any assistance in:

(i) Developing products or services the franchisee will offer to its customers.

(ii) Hiring and training employees.

(iii) Improving and developing the franchised business.

(iv) Establishing prices.

(v) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures.

(vi) Resolving operating problems encountered by the franchisee.

(4) Describe the advertising program for the franchise system, including the following:

(i) The franchisor’s obligation to conduct advertising, including:

(A) The media the franchisor may use.

(B) Whether media coverage is local, regional, or national.

(C) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(D) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(ii) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(iii) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

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(A) How members of the council are selected.

(B) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(C) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(iv) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(A) How the area or membership of the cooperative is defined.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether those contributions are on the same basis as those for franchisees.

(D) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(E) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(F) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(G) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(v) Whether the franchisee must participate in any other advertising fund. If so, state:

(A) Who contributes to the fund.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

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(D) Who administers the fund.

(E) Whether the fund is audited and when it is audited.

(F) Whether financial statements of the fund are available for review by the franchisee.

(G) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(vi) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(vii) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales.

(5) Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in non-technical language, including the types of data to be generated or stored in these systems, and state the following:

(i) The cost of purchasing or leasing the systems.

(ii) Any obligation of the franchisor, any affiliate, or third party to provide ongoing maintenance, repairs, upgrades, or updates.

(iii) Any obligations of the franchisee to upgrade or update any system during the term of the franchise, and, if so, any contractual limitations on the frequency and cost of the obligation.

(iv) The annual cost of any optional or required maintenance, updating, upgrading, or support contracts.

(v) Whether the franchisor will have independent access to the information that will be generated or stored in any electronic cash register or computer system. If so, describe the information that the franchisor may access and whether there are any contractual limitations on the franchisor's right to

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access the information.

(6) Disclose the table of contents of the franchisor’s operating manual provided to franchisees as of the franchisor’s last fiscal year-end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. This disclosure may be omitted if the franchisor offers the prospective franchisee the opportunity to view the manual before buying the franchise.

(7) Disclose the franchisor’s training program as of the franchisor’s last fiscal year- end or a more recent date.

(i) Describe the training program in the following tabular form. Title the table “TRAINING PROGRAM” in capital letters and bold type.

Item 11 Table

**TRAINING PROGRAM**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
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(A) In column (1), state the subjects taught.

(B) In column (2), state the hours of classroom training for each subject.

(C) In column (3), state the hours of on-the-job training for each subject.

(D) In column (4), state the location of the training for each subject.

(ii) State further:

(A) How often training classes are held and the nature of the location or facility where training is held (for example, company, home, office, franchisor-owned store).

(B) The nature of instructional materials and the instructor’s experience, including the instructor’s length of experience in the field and with the franchisor. State only experience relevant to the subject taught and the franchisor’s operations.

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(C) Any charges franchisees must pay for training and who must pay travel and living expenses of the training program enrollees.

(D) Who may and who must attend training. State whether the franchisee or other persons must complete the program to the franchisor’s satisfaction. If successful completion is required, state how long after signing the agreement or before opening the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the training program during the preceding 12 months.

(E) Whether additional training programs or refresher courses are required.

Item 12: Territory.

Disclose:

(1) Whether the franchise is for a specific location or a location to be approved by the franchisor.

(2) Any minimum territory granted to the franchisee (for example, a specific radius, a distance sufficient to encompass a specified population, or another specific designation).

(3) The conditions under which the franchisor will approve the relocation of the franchised business or the franchisee’s establishment of additional franchised outlets.

(4) Franchisee options, rights of first refusal, or similar rights to acquire additional franchises.

(5) Whether the franchisor grants an exclusive territory.

(i) If the franchisor does not grant an exclusive territory, state: “You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.”

(ii) If the franchisor grants an exclusive territory, disclose:

(A) Whether continuation of territorial exclusivity depends on achieving a certain sales volume, market penetration, or other contingency, and the circumstances when the franchisee’s territory may be altered. Describe any sales or other conditions. State the franchisor’s rights if the franchisee fails to meet the requirements.

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(B) Any other circumstances that permit the franchisor to modify the franchisee’s territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise in the area) and the effect of such modifications on the franchisee’s rights.

(6) For all territories (exclusive and non-exclusive):

(i) Any restrictions on the franchisor from soliciting or accepting orders from consumers inside the franchisee’s territory, including:

(A) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing sales, to make sales within the franchisee’s territory using the franchisor’s principal trademarks.

(B) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales within the franchisee’s territory of products or services under trademarks different from the ones the franchisee will use under the franchise agreement.

(C) Any compensation that the franchisor must pay for soliciting or accepting orders from inside the franchisee’s territory.

(ii) Any restrictions on the franchisee from soliciting or accepting orders from consumers outside of his or her territory, including whether the franchisee has the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales outside of his or her territory.

(iii) If the franchisor or an affiliate operates, franchises, or has plans to operate or franchise a business under a different trademark and that business sells or will sell goods or services similar to those the franchisee will offer, describe:

(A) The similar goods and services.

(B) The different trademark.

(C) Whether outlets will be franchisor owned or operated.

(D) Whether the franchisor or its franchisees who use the different trademark will solicit or

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accept orders within the franchisee’s territory.

(E) The timetable for the plan.

(F) How the franchisor will resolve conflicts between the franchisor and franchisees and between the franchisees of each system regarding territory, customers, and franchisor support.

(G) The principal business address of the franchisor’s similar operating business. If it is the same as the franchisor’s principal business address stated in Item 1 of this part, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

Item 13: Trademarks.

(1) Disclose each principal trademark to be licensed to the franchisee. For this Item, “principal trademark” means the primary trademarks, service marks, names, logos, and commercial symbols the franchisee will use to identify the franchised business. It may not include every trademark the franchisor owns.

(2) Disclose whether each principal trademark is registered with the United States Patent and Trademark Office. If so, state:

(i) The date and identification number of each trademark registration.

(ii) Whether the franchisor has filed all required affidavits.

(iii) Whether any registration has been renewed.

(iv) Whether the principal trademarks are registered on the Principal or Supplemental Register of the United States Patent and Trademark Office.

(3) If the principal trademark is not registered with the United States Patent and Trademark Office, state whether the franchisor has filed any trademark application, including any “intent to use” application or an application based on actual use. If so, state the date and identification number of the application.

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(4) If the trademark is not registered on the Principal Register of the United States Patent and Trademark Office, state: “We do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.”

(5) Disclose any currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the ownership, use, or licensing of the trademark.

(6) Disclose any pending material federal or state court litigation regarding the franchisor’s use or ownership rights in a trademark. For each pending action, disclose:<sup>13</sup>

(i) The forum and case number.

(ii) The nature of claims made opposing the franchisor’s use of the trademark or by the franchisor opposing another person’s use of the trademark.

(iii) Any effective court or administrative agency ruling in the matter.

(7) Disclose any currently effective agreements that significantly limit the franchisor’s rights to use or license the use of trademarks listed in this section in a manner material to the franchise. For each agreement, disclose:

(i) The manner and extent of the limitation or grant.

(ii) The extent to which the agreement may affect the franchisee.

(iii) The agreement’s duration.

(iv) The parties to the agreement.

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<sup>13</sup> The franchisor may include an attorney’s opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

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- (v) The circumstances when the agreement may be canceled or modified.
- (vi) All other material terms.
- (8) Disclose:
  - (i) Whether the franchisor must protect the franchisee’s right to use the principal trademarks listed in this section, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee’s use of the trademarks.
  - (ii) The franchisee’s obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee.
  - (iii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims.
  - (iv) Whether the franchisor or franchisee has the right to control any administrative proceedings or litigation involving a trademark licensed by the franchisor to the franchisee.
  - (v) Whether the franchise agreement requires the franchisor to participate in the franchisee’s defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.
  - (vi) The franchisee’s rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using a trademark.
- (9) Disclose whether the franchisor knows of either superior prior rights or infringing uses that could materially affect the franchisee’s use of the principal trademarks in the state where the franchised business will be located. For each use of a principal trademark that the franchisor believes is an infringement that could materially affect the franchisee’s use of a trademark, disclose:
  - (i) The nature of the infringement.
  - (ii) The locations where the infringement is occurring.
  - (iii) The length of time of the infringement (to the extent known).

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- (iv) Any action taken or anticipated by the franchisor.

Item 14: Patents, Copyrights, and Proprietary Information.

(1) Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, state:

- (i) The nature of the patent, patent application, or copyright and its relationship to the franchise.

- (ii) For each patent:

- (A) The duration of the patent.

- (B) The type of patent (for example, mechanical, process, or design).

- (C) The patent number, issuance date, and title.

- (iii) For each patent application:

- (A) The type of patent application (for example, mechanical, process, or design).

- (B) The serial number, filing date, and title.

- (iv) For each copyright:

- (A) The duration of the copyright.

- (B) The registration number and date.

- (C) Whether the franchisor can and intends to renew the copyright.

(2) Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding the patent or copyright. Include the forum and matter number. Describe how the determination affects the franchised business.

- (3) State the forum, case number, claims asserted, issues involved, and effective

determinations for any material proceeding pending in the United States Patent and Trademark Office or any court.<sup>14</sup>

(4) If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the agreement may affect the franchisee, and other material terms of the agreement.

(5) Disclose the franchisor's obligation to protect the patent, patent application, or copyright; and to defend the franchisee against claims arising from the franchisee's use of patented or copyrighted items, including:

(i) Whether the franchisor's obligation is contingent upon the franchisee notifying the franchisor of any infringement claims or whether the franchisee's notification is discretionary.

(ii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement.

(iii) Who has the right to control any litigation.

(iv) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee.

(v) Whether the franchisor's obligation is contingent upon the franchisee modifying or discontinuing the use of the subject matter covered by the patent or copyright.

(vi) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using the subject matter covered by the patent or copyright.

(6) If the franchisor knows of any patent or copyright infringement that could materially affect the franchisee, disclose:

(i) The nature of the infringement.

(ii) The locations where the infringement is occurring.

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<sup>14</sup> If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

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(iii) The length of time of the infringement (to the extent known).

(iv) Any action taken or anticipated by the franchisor.

(7) If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

Item 15: Obligation to Participate in the Actual Operation of the Franchise Business.

(1) Disclose the franchisee’s obligation to participate personally in the direct operation of the franchisee’s business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor’s practice.

(2) If personal “on-premises” supervision is not required, disclose the following:

(i) If the franchisee is an individual, whether the franchisor recommends on-premises supervision by the franchisee.

(ii) Limits on whom the franchisee can hire as an on-premises supervisor.

(iii) Whether an on-premises supervisor must successfully complete the franchisor’s training program.

(iv) If the franchisee is a business entity, the amount of equity interest, if any, that the on-premises supervisor must have in the franchisee’s business.

(3) Disclose any restrictions that the franchisee must place on its manager (for example, maintain trade secrets, covenants not to compete).

Item 16: Restrictions on What the Franchisee May Sell.

Disclose any franchisor-imposed restrictions or conditions on the goods or services that the franchisee may sell or that limit access to customers, including:

(1) Any obligation on the franchisee to sell only goods or services approved by the franchisor.

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(2) Any obligation on the franchisee to sell all goods or services authorized by the franchisor.

(3) Whether the franchisor has the right to change the types of authorized goods or services and whether there are limits on the franchisor’s right to make changes.

Item 17: Renewal, Termination, Transfer, and Dispute Resolution.

Disclose, in the following tabular form, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Title the table “THE FRANCHISE RELATIONSHIP” in capital letters and bold type.

(1) Describe briefly each contractual provision. If a particular item is not applicable, state “Not Applicable.”

(2) If the agreement is silent about one of the listed provisions, but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe the policy and state whether the policy is subject to change.

(3) In the summary column for Item 17(c), state what the term "renewal" means for your franchise system, including, if applicable, a statement that franchisees may be asked to sign a contract with materially different terms and conditions than their original contract.

Item 17 Table:

**THE FRANCHISE RELATIONSHIP**

[In bold] This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in franchise or other agreement	Summary
a. Length of the franchise term		
b. Renewal or extension of the term		
c. Requirements for franchisee to renew or extend		
d. Termination by franchisee		
e. Termination by franchisor without cause		
f. Termination by franchisor with cause		
g. “Cause” defined - curable defaults		
h. “Cause” defined - non-curable defaults		
i. Franchisee’s obligations on termination/non-renewal		
j. Assignment of contract by franchisor		
k. “Transfer” by franchisee - defined		
l. Franchisor approval of transfer by franchisee		
m. Conditions for franchisor approval of transfer		
n. Franchisor’s right of first refusal to acquire franchisee’s business		
o. Franchisor’s option to purchase franchisee’s business		
p. Death or disability of franchisee		
q. Non-competition covenants during the term of the franchise		
r. Non-competition covenants after the franchise is terminated or expires		
s. Modification of the agreement		
t. Integration/merger clause		
u. Dispute resolution by arbitration or mediation		
v. Choice of forum		
w. Choice of law		

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Item 18: Public Figures.

Disclose:

(1) Any compensation or other benefit given or promised to a public figure arising from either the use of the public figure in the franchise name or symbol, or the public figure’s endorsement or recommendation of the franchise to prospective franchisees.

(2) The extent to which the public figure is involved in the management or control of the franchisor. Describe the public figure’s position and duties in the franchisor’s business structure.

(3) The public figure’s total investment in the franchisor, including the amount the public figure contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

(4) For purposes of this section, a public figure means a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

Item 19: Financial Performance Representations.

(1) Begin by stating the following:

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

(2) If a franchisor does not provide any financial performance representation in Item 19, also state:

We do not make any representations about a franchisee’s future financial performance or the

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past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.

(3) If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:

(i) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.

(ii) If the representation relates to past performance of the franchise system's existing outlets, the material bases for the representation, including:

(A) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location (such as free standing vs. shopping center), degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or operated).

(B) The dates when the reported level of financial performance was achieved.

(C) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

(D) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(E) Of those outlets whose data were used in arriving at the representation, the number

and percent that actually attained or surpassed the stated results.

(F) Characteristics of the included outlets, such as those characteristics noted in paragraph (3)(ii)(A) of this Item 19, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(iii) If the representation is a forecast of future financial performance, state the material bases and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses.

(iv) A clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(v) A statement that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

(4) If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it need not comply with this section, provided the information is given only to potential purchasers of that outlet.

(5) If a franchisor furnishes financial performance information according to this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

- (i) Be in writing.
- (ii) Explain the departure from the financial performance representation in the disclosure document.
- (iii) Be prepared in accordance with the requirements of paragraph (3)(i)-(iv) of this Item 19.
- (iv) Be furnished to the prospective franchisee.

Item 20: Outlets and Franchisee Information.

- (1) Disclose, in the following tabular form, the total number of franchised and company-

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owned outlets for each of the franchisor’s last three fiscal years. For purposes of this section, “outlet” includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20(1) Table.

Table No. 1  
Systemwide Outlet Summary  
For years [ ] to [ ]

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised				
Company-Owned				
Total Outlets				

- (i) In column (1), include three outlet categories titled “franchised,” “company-owned, and “total outlets.”
  - (ii) In column (2), state the last three fiscal years.
  - (iii) In column (3), state the total number of each type of outlet operating at the beginning of each fiscal year.
  - (iv) In column (4), state the total number of each type of outlet operating at the end of each fiscal year.
  - (v) In column (5), state the net change, and indicate whether the change is positive or negative, for each type of outlet during each fiscal year.
- (2) Disclose, in the following tabular form, the number of franchised and company-

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owned outlets and changes in the number and ownership of outlets located in each state during each of the last three fiscal years. Except as noted, each change in ownership shall be reported only once in the following tables. If multiple events occurred in the process of transferring ownership of an outlet, report the event that occurred last in time. If a single outlet changed ownership two or more times during the same fiscal year, use footnotes to describe the types of changes involved and the order in which the changes occurred.

(i) Disclose, in the following tabular form, the total number of franchised outlets transferred in each state during each of the franchisor’s last three fiscal years. For purposes of this section, “transfer” means the acquisition of a controlling interest in a franchised outlet, during its term, by a person other than the franchisor or an affiliate. A sample Item 20 (2) Table.

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
 For years [ ] to [ ]

State	Year	Number of Transfers
Total		

(A) In column (1), list each state with one or more franchised outlets.

(B) In column (2), state the last three fiscal years.

(C) In column (3), state the total number of completed transfers in each state during each fiscal year.

(ii) Disclose, in the following tabular form, the status of franchisee-owned outlets located in each state for each of the franchisor’s last three fiscal years. A sample Item 20(3) Table.

Table No. 3

Status of Franchised Outlets  
 For years [ ] to [ ]

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
AL								
AZ								
Totals								

(A) In column (1), list each state with one or more franchised outlets.

(B) In column (2), state the last three fiscal years.

(C) In column (3), state the total number of franchised outlets in each state at the start of each fiscal year.

(D) In column (4), state the total number of franchised outlets opened in each state during each fiscal year. Include both new outlets and existing company-owned outlets that a franchisee purchased from the franchisor. (Also report the number of existing company-owned outlets that are sold to a franchisee in Column 7 of Table 4).

(E) In column (5), state the total number of franchised outlets that were terminated in each state during each fiscal year. For purposes of this section, “termination” means the franchisor’s termination of a franchise agreement prior to the end of its term and without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt).

(F) In column (6), state the total number of non-renewals in each state during each fiscal year. For purposes of this section, “non-renewal” occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

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(G) In column (7), state the total number of franchised outlets reacquired by the franchisor in each state during each fiscal year. For purposes of this section, a “reacquisition” means the franchisor’s acquisition for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term. (Also report franchised outlets reacquired by the franchisor in column 5 of Table 4).

(H) In column (8), state the total number of outlets in each state not operating as one of the franchisor’s outlets at the end of each fiscal year for reasons other than termination, non-renewal, or reacquisition by the franchisor.

(I) In column (9), state the total number of franchised outlets in each state at the end of the fiscal year.

(iii) Disclose, in the following tabular form, the status of company-owned outlets located in each state for each of the franchisor’s last three fiscal years. A sample Item 20(4) Table.

Table No. 4

Status of Company-Owned Outlets  
 For years [ ] to [ ]

State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Totals							

(A) In column (1), list each state with one or more company-owned outlets.

(B) In column (2), state the last three fiscal years.

(C) In column (3), state the total number of company-owned outlets in each state at the start of the fiscal year.

(D) In column (4), state the total number of company-owned outlets opened in each state during each fiscal year.

(E) In column (5), state the total number of franchised outlets reacquired from franchisees in each state during each fiscal year.

(F) In column (6), state the total number of company-owned outlets closed in each state during each fiscal year. Include both actual closures and instances when an outlet ceases to operate

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under the franchisor’s trademark.

(G) In column (7), state the total number of company-owned outlets sold to franchisees in each state during each fiscal year.

(H) In column (8), state the total number of company-owned outlets operating in each state at the end of each fiscal year.

(3) Disclose, in the following tabular form, projected new franchised and company-owned outlets. A sample Item 20(5) Table.

Table No. 5

Projected Openings As Of [Last Day of Last Fiscal Year]

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
Total			

(i) In column (1), list each state where one or more franchised or company-owned outlets are located or are projected to be located.

(ii) In column (2), state the total number franchise agreements that had been signed for new outlets to be located in each state as of the end of the previous fiscal year where the outlet had not yet opened.

(iii) In column (3), state the total number of new franchised outlets in each state projected to be opened during the next fiscal year.

(iv) In column (4), state the total number of new company-owned outlets in each state that are projected to be opened during the next fiscal year.

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(4) Disclose the names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.

(5) Disclose the name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.<sup>15</sup>

State in immediate conjunction with this information: “If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.”

(6) If a franchisor is selling a previously-owned franchised outlet now under its control, disclose the following additional information for that outlet for the last five fiscal years. This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.

(i) The name, city and state, current business telephone number, or if unknown, last known home telephone number of each previous owner of the outlet;

(ii) The time period when each previous owner controlled the outlet;

(iii) The reason for each previous change in ownership (for example, termination, non-renewal, voluntary transfer, ceased operations); and

---

<sup>15</sup> Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address.

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(iv) The time period(s) when the franchisor retained control of the outlet (for example, after termination, non-renewal, or reacquisition).

(7) Disclose whether franchisees signed confidentiality clauses during the last three fiscal years. If so, state the following: “In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.” Franchisors may also disclose the number and percentage of current and former franchisees who during each of the last three fiscal years signed agreements that include confidentiality clauses and may disclose the circumstances under which such clauses were signed.

(8) Disclose, to the extent known, the name, address, telephone number, email address, and Web address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(i) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(ii) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor’s disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close the franchisor’s fiscal year. The franchisor has no obligation to verify the organization’s continued existence at the end of each fiscal year. Franchisors may also include the following statement: “The following independent franchisee organizations have asked to be included in this disclosure document.”

Item 21: Financial Statements.

(1) Include the following financial statements prepared according to United States

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generally accepted accounting principles, as revised by any future United States government mandated accounting principles, or as permitted by the Securities and Exchange Commission.

Except as provided in paragraph (2) of this Item, these financial statements must be audited by an independent certified public accountant using generally accepted United States auditing standards.

Present the required financial statements in a tabular form that compares at least two fiscal years.

(i) The franchisor’s balance sheet for the previous two fiscal year-ends before the disclosure document issuance date.

(ii) Statements of operations, stockholders equity, and cash flows for each of the franchisor’s previous three fiscal years.

(iii) Instead of the financial disclosures required by paragraphs (1)(i) and (ii) of this Item 21, the franchisor may include financial statements of any of its affiliates if the affiliate’s financial statements satisfy paragraphs (1)(i) and (ii) of this Item 21 and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate’s guarantee must cover all of the franchisor’s obligations to the franchisee, but need not extend to third parties. If this alternative is used, attach a copy of the guarantee to the disclosure document.

(iv) When a franchisor owns a direct or beneficial controlling financial interest in a subsidiary, its financial statements should reflect the financial condition of the franchisor and its subsidiary.

(v) Include separate financial statements for the franchisor and any sub franchisor, as well as for any parent that commits to perform post-sale obligations for the franchisor or guarantees the franchisor’s obligations. Attach a copy of any guarantee to the disclosure document.

(2) A start-up franchise system that does not yet have audited financial statements may

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phase-in the use of audited financial statements by providing, at a minimum, the following statements at the indicated times:

(i) The franchisor’s first partial or full fiscal year selling franchises.	An unaudited opening balance sheet.
(ii) The franchisor’s second fiscal year selling franchises.	Audited balance sheet opinion as of the end of the first partial or full fiscal year selling franchises.
(iii) The franchisor’s third and subsequent fiscal years selling franchises.	All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to paragraphs (1)(i) and (ii) of this Item 21.

(iv) Start-up franchisors may phase-in the disclosure of audited financial statements, provided the franchisor:

(A) Prepares audited financial statements as soon as practicable.

(B) Prepares unaudited statements in a format that conforms as closely as possible to audited statements.

(C) Includes one or more years of unaudited financial statements or clearly and conspicuously discloses in this section that the franchisor has not been in business for three years or more, and cannot include all financial statements required in paragraphs (1)(i) and (ii) of this Item 21.

**Item 22: Contracts.**

Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

**Item 23: Receipts.**

Include two copies of the following detachable acknowledgment of receipt in the following form as the last pages of the disclosure document:

(1) State the following:

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Receipt

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.[or sooner if required by applicable state law]

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [state agency].

(2) Disclose the name, principal business address, and telephone number of each franchise seller offering the franchise.

(3) State the issuance date.

(4) If not disclosed in Item 1, state the name and address of the franchisor’s registered agent authorized to receive service of process.

(5) State the following:

I received a disclosure document dated \_\_\_\_\_ Exhibits:

(6) List the title(s) of all attached Exhibits. that included the following

(7) Provide space for the prospective franchisee’s signature and date.

(8) Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).

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Appendix A: Sample Item 10 Table

**SUMMARY OF FINANCING OFFERED**

Item Financed	Source of Financing	Down Payment	Amount Financed	Term (Yrs)	Interest Rate	Monthly Payment	Prepay Penalty	Security Required	Liability Upon Default	Loss of Legal Right on Default
Initial Fee										
Land/ Constr										
Leased Space										
Equip. Lease										
Equip. Purchase										
Opening Inventory										
Other Financing										

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## Appendix B: Sample Item 20(1) Table – System wide Outlet Summary

Systemwide Outlet Summary  
For years 2012 to 2014

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2012	859	1,062	+203
	2013	1,062	1,296	+234
	2014	1,296	2,720	+1,424
Company Owned	2012	125	145	+20
	2013	145	76	-69
	2014	76	141	+65
Total Outlets	2012	984	1,207	+223
	2013	1,207	1,372	+165
	2014	1,372	2,861	+1,489

## Appendix C: Sample Item 20(2) Table – Transfers of Franchised Outlets

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For years 2012 to 2014

State	Year	Number of Transfers
NC	2012	1
	2013	0
	2014	2
SC	2012	0
	2013	0
	2014	2
Total	2012	1
	2013	0
	2014	4

## Appendix D: Sample Item 20(3) Table – Status of Franchise Outlets

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Status of Franchise Outlets  
For years 2012 to 2014

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non- Renewals	Reacquired by Franchisor	Ceased Operations - Other	Outlets at End of the
AL	2012	10	2	1	0	0	1	10
	2013	11	5	0	1	0	0	15
	2014	15	4	1	0	1	2	15
AZ	2012	20	5	0	0	0	0	25
	2013	25	4	1	0	0	2	26
	2014	26	4	0	0	0	0	30
Totals	2012	30	7	1	0	0	1	35
	2013	36	9	1	1	0	2	41
	2014	41	8	1	0	1	2	45

Appendix E: Sample Item 20(4) Table – Status of Company-Owned Outlets

Status of Company-Owned Outlets  
For years 2012 to 2014

State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
NY	2012	1	0	1	0	0	2
	2013	2	2	0	1	0	3
	2014	3	0	0	3	0	0
OR	2012	4	0	1	0	0	5
	2013	5	0	0	2	0	3
	2014	3	0	0	0	1	2
Totals	2012	5	0	2	0	0	7
	2013	7	2	0	3	0	6
	2014	6	0	0	3	1	2

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Appendix F: Sample Item 20(5) Table – Projected New Franchised Outlets

Projected New Franchised Outlets  
As of December 31, 2014

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet in the Next Fiscal Year	Projected New Company- Owned Outlets in the Current Fiscal Year
CO	2	3	1
NM	0	4	2
Total	2	7	3

\*\*\*\*\*

[ATTACHED SEPARATELY]

\*\*\*\*\*

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## Exhibit 2: Sample State Cover Page

### STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. **REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.**

Call the state franchise administrator listed in Exhibit \_\_\_ for information about the franchisor, or about franchising in your state.

**MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.**

Please consider the following **RISK FACTORS** before you buy this franchise:

1. **THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION ONLY IN MINNESOTA. OUT-OF-STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN MINNESOTA THAN IN YOUR OWN STATE.**
2. **THE FRANCHISE AGREEMENT STATES THAT MINNESOTA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS**
3. **THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.**

We use the services of one or more **FRANCHISE BROKERS** or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

Effective Date: \_\_\_\_\_

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**Form A**                      UNIFORM FRANCHISE REGISTRATION APPLICATION

(Insert app ID of previous filings of Applicant)\_\_\_\_\_

FEE: \_\_\_\_\_  
(Enclosed when application is initially filed)

APPLICATION FOR (Check only one):

REGISTRATION OF AN OFFER AND SALE OF FRANCHISES

REGISTRATION RENEWAL STATEMENT OR ANNUAL REPORT

AMENDMENT NUMBER \_\_\_\_\_ TO APPLICATION

POST –EFFECTIVE                      FILED UNDER SECTION \_\_\_\_\_

PRE-EFFECTIVE                              DATED \_\_\_\_\_

1. \_\_\_\_\_  
Full Legal Name of Franchisor: (If applicant is sub franchisor, the name of the sub franchisor.)

2. \_\_\_\_\_  
Name under which the Franchisor is doing or intends to do business

3. \_\_\_\_\_  
Franchisor's principal business address.

4. \_\_\_\_\_  
Name and address of Franchisor's agent in the State of (Name of State) authorized to receive process.

5. \_\_\_\_\_  
Name, address and telephone number of sub franchisors, if any, for this state.

6. \_\_\_\_\_  
Name, address and telephone number of person to whom communications regarding this application should be directed.

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**Form B** - Supplemental Information

SUPPLEMENTAL INFORMATION

1. Disclose:
  - A. The states in which this proposed registration application is effective.
  - B. The states in which this proposed registration application is or will be shortly on file.
  - C. The states that have refused to register this franchise offering.
  - D. The states that have revoked or suspended the right to offer franchises.
  - E. The states in which this proposed registration of these franchises has been withdrawn within the last five years, and the reasons for revocation or suspension.

2. Source of Funds for Establishing New Franchises

Disclose franchisor's total costs for performing its pre-opening obligations to provide goods or services in connection with establishing each franchise, including real estate, improvements, equipment, inventory, training and other items stated in the offering. State separately the sources of all required funds.

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**Form C – Certification**

I certify under penalty of law that I have read and know the contents of this application and the documents attached as exhibits and incorporated by reference and that the statements in all these documents are true and correct.

Executed at \_\_\_\_\_, \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Signature(s) of Franchisor and/or Subfranchisor)

By \_\_\_\_\_

(Seal)

Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_ and, 20\_\_  
the above-named \_\_\_\_\_ and \_\_\_\_\_  
to me known to be the person(s) who executed the foregoing application (as \_\_\_\_\_  
and \_\_\_\_\_ respectively, of the above-named applicant) and (each), being  
first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true  
and correct.

\_\_\_\_\_

\_\_\_\_\_  
(Notary)

**CALIFORNIA ACKNOWLEDGMENT**

(For use with Form C See “CA JURAT”)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me,  
\_\_\_\_\_ (insert name and title of the officer) personally appeared

\_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**GUIDELINES FOR FRANCHISE REGISTRATION**

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**Form D**

UNIFORM CONSENT TO SERVICE OF PROCESS

\_\_\_\_\_, (a corporation organized under the laws of the State of \_\_\_\_\_)  
 \_\_\_\_\_) (a partnership) (an individual) \_\_\_\_\_,  
 irrevocably appoints the \_\_\_\_\_ and the successors in office, its attorney in the  
 State of \_\_\_\_\_ (regulatory authority) \_\_\_\_\_ for service of notice, process or pleading in an action or  
 proceeding against it arising out of or in connection with the sale of franchises, or a violation of the  
 franchise laws of \_\_\_\_\_, and consents that an action or proceeding against it may be  
 commenced in a court of competent jurisdiction and proper venue within  
 \_\_\_\_\_ by service of process upon this officer with the same effect as if  
 the undersigned was organized or created under the laws of \_\_\_\_\_ and had  
 lawfully been served with process in \_\_\_\_\_. It is requested that a copy of any notice, process  
 or pleading served this consent be mailed to:

\_\_\_\_\_  
 (Name and address)  
 \_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

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**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,

\_\_\_\_\_, the undersigned officer personally appeared \_\_\_\_\_  
(Name of Notary)

and \_\_\_\_\_ known personally to me to be the \_\_\_\_\_

President and \_\_\_\_\_ Secretary, respectively, of the above-named corporation, and

that they, as such officers, being authorized to do so, executed the foregoing instrument for the

purposes therein contained, by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

\_\_\_\_\_ (Notary Public)

(NOTARIAL SEAL)

My commission expires: \_\_\_\_\_

**INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,

\_\_\_\_\_, the undersigned officer, personally appeared  
(Name of Notary)

\_\_\_\_\_ to me personally known and known to me to be the  
same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the  
execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

\_\_\_\_\_ (Notary Public)

(NOTARIAL SEAL)

My commission expires: \_\_\_\_\_

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**Form E - Sales Agent Disclosure Form**

**SALES AGENT DISCLOSURE FORM**

1. List the persons who will offer or sell franchises in this state. For each person state:
  - A. Name;
  - B. Business address and telephone number;
  - C. Home address and telephone number;
  - D. Present employer;
  - E. Present title;
  - F. Social Security Number;
  - G. Birthdate; and
  - H. Employment during the past five years. For each employment, state the name of the employer, position held, and beginning and ending dates.
  
2. State whether any person identified in 1. above:
  - A. Has any administrative, civil or criminal action pending alleging a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or any comparable allegations?
  - B. Had during the ten-year period immediately before the Disclosure Document date:
    1. been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable in a civil action by final judgment if the felony or civil action involved a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable violations of law?  
  
YES \_\_\_\_\_ NO \_\_\_\_\_

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2. entered into or been named in a consent judgment, decree, order or assurance under federal or state franchise, securities, anti-trust, monopoly, trade practice or trade regulation law?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. been subject to an order or national securities association or national securities exchange as defined in the Securities and Exchange Act of 1934 suspending or expelling the person from membership in the association or exchange?

YES \_\_\_\_\_ NO \_\_\_\_\_

C. For each above question answered "YES" state:

1. the name of the person or entity involved;
2. the court, agency, association or exchange involved;
3. a summary of the allegations;
4. if applicable, the date of the conviction, judgment, decree, order or assurance; and
5. the penalty imposed, damages assessed, terms and conditions of the judgment, decree, or order or assurance.

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**Form F**

**GUARANTEE OF PERFORMANCE**

For value received \_\_\_\_\_ located

at \_\_\_\_\_ absolutely and unconditionally guarantees  
(Address)

the performance by \_\_\_\_\_, located at \_\_\_\_\_,  
(Address)

of all of the obligations of \_\_\_\_\_ under its franchise registration

in the State of \_\_\_\_\_ dated \_\_\_\_\_ and of  
(Name of state or province) (Effective date of renewal)

its Franchise Agreement. This guarantee continues until all obligations of \_\_\_\_\_

under the franchise registration and franchise agreement are satisfied. \_\_\_\_\_

is not discharged from liability if a claim by the franchisee against \_\_\_\_\_

remains outstanding. Notice of acceptance is waived. Notice of default on the part of

\_\_\_\_\_ is not waived. This guarantee is binding on \_\_\_\_\_ and

on its successors and assignees.

\_\_\_\_\_ executes this guarantee at \_\_\_\_\_  
(Parent)

on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
(Parent)

By: \_\_\_\_\_

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

**GUIDELINES FOR FRANCHISE REGISTRATION**

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STATE OF CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT

[INSTRUCTIONS FOR CUSTOMER AUTHORIZATION](#)  
OF DISCLOSURE OF FINANCIAL RECORDS FORM

On the reverse is a Customer Authorization of Disclosure of Financial Records form. The Commissioner of Business Oversight is authorized to require such authorities from certain licensees and other persons pursuant to the authority cited in the first paragraph of the form.

The form must be properly executed and submitted with the attached application for license, qualification, registration or other authority.

All information required on the form, except the signature of the person executing the form, is to be typewritten.

If the form requests a Department of Business Oversight file number, the applicant need only provide such number if it is known to the applicant and is the type of file number appropriate for the license, qualification, registration or other authority applied for in the attached application.

If additional authorization forms are needed, they may be obtained from any office of the Department of Business Oversight or accurate copies of the form may be utilized by applicants.

**GUIDELINES FOR FRANCHISE REGISTRATION**

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STATE OF CALIFORNIA  
DEPARTMENT OF BUSINESS OVERSIGHT

CUSTOMER AUTHORIZATION OF DISCLOSURE  
OF FINANCIAL RECORDS

Pursuant to Corporations Code section 31111 and Government Code sections 7470 and 7473, any financial institution, wherever situated, possessing financial records of the sale of \_\_\_\_\_, a franchise registered under the California Franchise Investment Law, by Name of Franchise

\_\_\_\_\_  
Name of Registrant Under the Franchise Investment Law

is hereby authorized to disclose to the California Department of Business Oversight records of the sale of the above-named registered franchise whether such records relate to accounts which have been closed, accounts which are currently maintained, or accounts which are hereafter established.

This authorization is effective as of the date of execution and shall remain effective until five years after the expiration or revocation of the above-named franchise registration, including renewals of such registration.

This authorization may not be revoked.

The terms used in this authorization shall have the definitions in the California Right to Financial Privacy Act (Government Code section 7460 et seq.) and the Franchise Investment Law (Corporations Code section 31000 et seq.)

The above-named registrant has duly caused this authorization to be signed on its behalf by the undersigned, thereunto duly authorized.

Executed on \_\_\_\_\_ 20\_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Department of Business Oversight  
Application Number

\_\_\_\_\_  
Name of Registrant

By: \_\_\_\_\_

\_\_\_\_\_  
Title

**GUIDELINES FOR FRANCHISE REGISTRATION**

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BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE  
STATE OF CALIFORNIA

(Under Corporations Code section 31113)

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_, as principal,  
and \_\_\_\_\_, a corporation, created, organized and existing under and by virtue of  
the laws of the state of \_\_\_\_\_, as surety, are held and firmly bound  
unto the State of California for the use thereof, and for the use of any interested person or persons who may  
have a cause of action against the above-named principal of said bond under the provisions of the Law  
entitled “Franchise Investment Law,” of the State of California, in the aggregate sum of \_\_\_\_\_,  
lawful money of the United States of America, to be paid to the State of California, or to any person or  
persons, for the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves,  
our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that--

WHEREAS, The above-named principal has made application to the Commissioner of Business  
Oversight of the State of California for registration of franchises under and pursuant to the Franchise  
Investment Law, and desires to furnish a bond under the provisions of Corporations Code section 31113 and  
Section 310.113.5 of Title 10, California Administrative Code in the penal sum above named, conditioned  
as herein set forth; and

WHEREAS, Corporations Code section 31113 requires that this bond be conditioned upon the  
discharge by the franchisor of its (his) obligations under the franchise contract to provide real estate,  
improvements, equipment, inventory, training and other items included in the offering of franchises;

NOW, THEREFORE, If the said principal and any and all agents and employees representing said  
principal shall faithfully conform to and abide by the provisions of the Law entitled “Franchise Investment  
Law,” and of all rules and regulations made by the Commissioner of Business Oversight thereunder, and  
further shall pay to the State, and to such person or persons, any and all amounts which may become due or  
owing to the State or to such person or persons, from said principal under and by virtue of the provisions of  
said Law, then this obligation is to be void, otherwise to remain in full force and effect.

This bond is subject to the following provisions:

1. That any person who sustains an injury covered by this bond, may, in addition to any other  
remedy that he may have, bring an action in his own name upon this bond for the recovery of  
any damage sustained by him.

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2. That the total aggregate liability of the sureties herein for all claims which may arise under this bond shall be limited to the payment of \_\_\_\_\_.
3. That the surety or sureties may cancel this bond and be relieved of further liability hereunder by delivering thirty days' written notice to the Commissioner of Business Oversight of the State of California; however, such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty-day period.
4. That this bond shall remain in force and effect until the surety or sureties are released from liability by said Commissioner, or until the bond is canceled by said surety or sureties.
5. That the effective date of this bond shall be \_\_\_\_\_, 20 \_\_\_\_\_.

IN WITNESS WHEREOF, The seal and signature of the said principal is hereto affixed and the corporate seal and the name of said surety is hereto affixed and attested by its duly authorized officers at \_\_\_\_\_, California, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety