

New York Franchise Regulations
Proposed 11/10/2009 by the Legislation Subcommittee
of the
Franchise Distribution and Licensing Committee
of the
New York State Bar Association's Business Law Section

Department of Law, Bureau of Investor Protection and Securities – Codes, Rules and Regulations of the State of New York, Title 13, Chapter VII, Part 200

200.1 New York Franchise Regulations

These regulations have been promulgated by the New York Attorney General under authority vested by Article 33, Section 694, of the General Business Law of New York (the “New York Franchise Act” or the “Act”)

200.2 Franchise Registration Application

A. Forms

In order to register a franchise in this state, the following application documents must be used by a franchisor:

1. Uniform Franchise Registration Application (**Form A**);
2. Franchisor's Costs and Sources of Funds (**Form B**);
3. Uniform Franchise Consent to Service of Process (**Form C**);
4. Franchise Seller Disclosure Form (**Form D**);
5. Franchise Disclosure Document (**see Section 200.3 below**);
6. Application Fee (**see Section 200.8 below**);
7. Guarantee of Performance (if required) (**Form E**); and
8. Consent of Accountant (or a photocopy of the consent) to the use of the latest audit report in the Franchise Disclosure Document (**Form F**).

Copies of **Forms A, B, C, D, E** and **F** are set forth in Section 200.5 of these regulations. Instructions for preparation immediately follow each Form.

B. Form of Initial Application

1. An application for an initial registration must contain both:
 - (a) One copy of a complete franchise registration application, including the Franchise Disclosure Document, on paper; and
 - (b) One copy of the complete franchise registration application, including Franchise Disclosure Document, on a CD-ROM, in Portable Document Format (PDF) format.
2. The cover letter submitting the filing must contain a representation that all of the information contained in the electronic file is identical to the paper documents. In addition, the electronic version of the Franchise Disclosure Document should be text searchable.
3. If an examiner from the department (an “Examiner”) requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the Examiner directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor must include copies on a CD-ROM, in PDF format.
4. Do NOT use margin balloons or color highlights to show changes.

C. Form of Amendment Application

1. An application to amend a franchise registration must contain both:
 - (a) One copy of a complete franchise amendment application, including two copies of a complete amended Franchise Disclosure Document on paper. One paper copy of the complete amended Franchise Disclosure Document must be black-lined to show all additions, deletions and other changes from the applicant’s previous submission; and
 - (b) One copy of the complete franchise amendment application, including a clean and black-lined copy of the Franchise Disclosure Document on a CD-ROM, in PDF format.
2. The cover letter submitting the filing must contain a representation that all of the information contained in the electronic file is identical to the paper documents. In addition, the electronic version of the Franchise Disclosure Document should be text searchable.
3. If an Examiner requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the Examiner directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor must include copies on a CD-ROM, in PDF format.

4. Do NOT use margin balloons or color highlights to show changes.

D. Form of Annual Report

1. A franchisor whose franchise offering is registered in this state shall file, within one hundred twenty days of the close of its fiscal year, an annual report to the department in the form of an amendment application.
2. The amended disclosure document submitted as an annual report shall include:
 - (a) the name, address and telephone number of each franchise sold during the last fiscal year; and
 - (b) a copy of the annual audited financial statements of the franchisor.

E. Department Action

The department shall, not later than 30 days after the submission for filing of an application to register a franchise offering or not later than 15 days after the submission for filing of an amendment application, issue a letter stating that the disclosure document or amendment has been accepted for filing, or in the alternative, indicating the deficiencies or failures to provide adequate disclosure. In the event that the franchisor corrects such deficiencies or failures, the department shall, not later than 15 days following the resubmission, issue a letter stating that the disclosure document or amendment has been accepted for filing. In the event that the franchisor's resubmission to the department fails to correct all of the deficiencies or failures, the department shall issue a letter indicating the remaining deficiencies or failures within 15 days following the resubmission. This procedure shall be followed until the submission has been accepted for filing or the franchisor has withdrawn or abandoned its application for registration or amendment.

F. Sales Pending Amendment

1. A franchisor may continue to offer and sell franchises notwithstanding the occurrence of an event that would require an amendment to its offering, so long as an application to amend is made as required by law and the regulations, unless the department advises the franchisor otherwise.
2. A franchisor that offers or sells a franchise following the occurrence of an event that would require an amendment to its offering shall advise the offeree in writing, at the time it delivers the disclosure document to the offeree, that an event requiring amendment has occurred and that an amendment application has been submitted or will be submitted to the department. The franchisor shall deliver to the offeree a copy of the amended disclosure document that the franchisor has submitted to the department, marked to show the changes from the registered disclosure document. Any funds paid by the offeree to the franchisor shall, upon their receipt, be held in trust in a separate bank account. Upon the department's acceptance of the amendment for filing, the franchisor shall so notify the offeree. If the document disclosed to the offeree is the same as the document accepted for filing, then the franchisor may transfer the funds out of the trust account. If the document disclosed to the offeree differs from the document accepted for filing, then the franchisor will notify the offeree in

writing of the revisions and the offeree will have the right, for a period of 14 calendar days, to rescind the agreement upon notice to the franchisor, in which event the franchisor will return the funds held in trust to the offeree. If the offeree does not rescind, then its acceptance shall remain in force and the funds shall be released from trust and their disposition shall be subject to the agreement made between the franchisor and offeree. If the department refuses to register the amended prospectus then the franchisor shall, upon such refusal, immediately pay the trust funds to the offeree.

200.3 The Franchise Disclosure Document

A. Format

The Franchise Disclosure Document must be prepared in the format required below by these regulations.

B. State Cover Page

The Franchise Disclosure Document must include the following State Cover Page prepared in accordance with these Instructions, which must immediately follow the FTC required Cover Page. (See Section 200.7 below):

1. State the following legend:

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 [LITIGATE/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 an Examiner.
5. If one or more risk factors applies, also state:

THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

6. If you use the services of a franchise broker or referral source, 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: _____

(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 which is to be inserted immediately following the State Cover Page.

A sample State Cover Page and State Effective Date page are attached as **Form G** of these regulations.

200.4 Instructions for Preparation of the Franchise Disclosure Document

A. Preparation of Disclosure Documents

1. Disclose all required information clearly, legibly, and concisely in a single document using plain English. *Plain English* means the organization of information and language usage understandable by 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.
2. The disclosure must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.
3. The disclosure for each Item must be separately titled and in the required order. Do not repeat the question in the disclosure document. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required “if applicable,” or “to the extent known,” respond only if the requested information applies. Do not qualify a response with a

reference to another document unless permitted by the instructions to that Item. Precede each disclosure Item with the appropriate heading.

4. Franchisors may prepare multi-state disclosure documents by including non-preempted, state-specific information in the text of the disclosure document or in State Addenda attached to the disclosure document. The State Addenda may be included in an exhibit attached to the Franchise Disclosure Document. Any amendments to the franchise agreement may be included in the State Addenda exhibit or in a separate exhibit immediately following the franchise agreement or document being amended.
5. The two copies of the Item 23 Receipt pages must be the last two pages of the Franchise Disclosure Document and attached after all the exhibits.
6. Before furnishing a disclosure document, the franchisor must advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.
7. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features (*e.g.*, multimedia tools such as audio, video, animation, pop-up screens, or links to external information) are prohibited.
8. Franchisors must retain, and make available to the department, upon request, a sample copy of each materially different version of their disclosure documents for a period of six years following the period in which such disclosure document was the registered and current.
9. For each completed franchise sale, franchisors must retain a copy of the signed receipt for a period of three years following the date of signature or the date of the franchise sale, whichever occurs later.
10. For each Item, type the Item's Arabic numbers and title. Identify Exhibits by a letter of the alphabet.
11. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the Franchise Disclosure Document.
12. Use 8½ by 11 inch paper for the Franchise Disclosure Document and other forms submitted to the department. The text of the Franchise Disclosure Document must be clearly readable and presented in at least 11 point type. Tables in the Franchise Disclosure Document, the receipt pages and separately attached documents not prepared by the franchisor may be presented in less than 11 point type as long as the text is clearly readable.
13. When the applicant is a master franchisor seeking to sell master franchises with the right to sell subfranchises, references in these requirements and instructions to "franchisee" include the master franchisee (subfranchisor).
14. The offer of master franchises is an offer separate from the offer of franchises and may require a separate registration or exemption. A single application may register the sale of single unit and master franchises if the disclosure document is not confusing.

15. In an offering by a master franchisee (subfranchisor), “franchisor” means both the master franchisor and master franchisee (subfranchisor).
16. Master franchisees (subfranchisors) must disclose the required information about the master franchisor, and to the extent applicable, the same information concerning the master franchisee (subfranchisor).
17. If the franchise agreement requires a franchisee to sign a release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of the document the franchisee will be asked to sign. This requirement does not apply to negotiated releases or waivers that a franchisee may sign to resolve a dispute with a franchisor.
18. In a multi-state offering, an exhibit may list all agents for service of process. The following additional statement may be used if accurate:

“If a state is not listed, **[franchisor]** has not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which **[franchisor]** has appointed an agent for service of process.

There may also be additional agents appointed in some of the states listed.”

19. Grossly deficient applications may be rejected summarily by the Examiner as incomplete for filing. It is not the function of the Examiner to prepare, in effect, an applicant’s Franchise Disclosure Document application. The additional Examiner time reviewing the grossly deficient product delays the processing of diligently prepared and pursued applications.

B. Updating Disclosures

1. In compliance with Section 683.6 of the General Business Law, a franchisor shall promptly notify the department, by application to amend its offering, of any material changes in the information contained in the registered franchise disclosure document. “Material change,” as used in Section 683.6 of the General Business Law, includes but is not limited to:
 - (1) The termination, closing, or failure to renew; during a 3-month period, of the lesser of 10 or 10% of the franchises of a franchisor, regardless of location.
 - (2) A purchase by the franchisor in excess of 5% of its existing franchises during 6 consecutive months.
 - (3) A change in the franchise fees charged by the franchisor.
 - (4) Any significant adverse change in the business condition of the franchisor or in any of the following:
 - (i) The obligations of the franchisee to purchase items from the franchisor or its designated sources.
 - (ii) Limitations or restrictions on the goods or services which the franchisee may offer to its customers.

- (iii) The obligations to be performed by the franchisor.
 - (iv) The franchise contract or agreements, including amendments thereto.
 - (v) The franchisor's accounting system resulting [in] a 5% or greater change in its net profit or loss in any 6 month period.
 - (vi) The service, product, or model line.
- (5) Audited financial statements of the preceding fiscal year.
2. When submitting amendments and annual reports, mark the Application Page “Amendment” or “Annual Report”, as appropriate. Submit all documents required for an initial application with additions to the previously filed documents black-lined. Changes must be clearly marked so that each change is noticed easily. Do NOT use margin balloons or color highlights to show changes. Do not use less than 11 point type for changed text. Use a black-lining system that underlines changes and shows deletions by a strike through.
 3. File the annual report within one hundred twenty days of the close of the franchisor’s fiscal year.
 4. Follow the form of amendment application instructions in Section 200.2.C of these regulations.

200.5 Forms

The following forms are to be used in preparation of applications and Franchise Disclosure Documents:

- Form A:** Uniform Franchise Registration Application
- Form B:** Franchisor’s Costs and Sources of Funds
- Form C:** Uniform Franchise Consent to Service of Process
- Form D:** Franchise Seller Disclosure Form
- Form E:** Guarantee of Performance
- Form F:** Consent of Accountant
- Form G:** Sample State Cover Page and Sample State Effective Dates
- Form H:** Sample Receipt Page

Instructions for preparing **Forms A, B, C, D, E, F, G** and **H** follow each of those forms.

Form A – Uniform Franchise Registration Application

UNIFORM FRANCHISE REGISTRATION APPLICATION

File No. _____
(Insert file number of immediately preceding filing of Applicant)

State: _____

Fee: _____

APPLICATION FOR (Check only one):

_____ **INITIAL REGISTRATION OF AN OFFER AND SALE OF FRANCHISES**

_____ **RENEWAL APPLICATION OR ANNUAL REPORT**

_____ **PRE-EFFECTIVE AMENDMENT**

_____ **POST-EFFECTIVE MATERIAL AMENDMENT**

- 1. Full legal name of Franchisor:**
- 2. Name of the franchise offering:**
- 3. Franchisor's principal business address:**
- 4. Name and address of Franchisor's agent in this State authorized to receive service of process:**
- 5. The states in which this application is or will be shortly on file:**
- 6. Name, address, telephone and facsimile numbers, and e-mail address of person to whom communications regarding this application should be directed:**

Certification

I certify and swear under penalty of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of _____ attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

Signed at _____, _____, 20__

Franchisor:

By: _____

Name: _____

Title: _____

**Instructions for Preparing
Form A – Uniform Franchise Registration Application**

The Uniform Franchise Registration Application must be used for all initial, renewal and amendment filings.

1. Insert “New York” in the first line.
2. For franchisors previously registered, insert the file number of the immediately preceding filing of the applicant in “File No.”
3. Fill in the amount of the filing fee. A check in U.S. funds drawn on a U.S. bank should accompany the Application.
4. Check one of the lines in the “Application For” section to indicate the type of filing.
5. Line 1: Insert the full legal name of the franchisor.
6. Line 2: Insert the trade name of the franchise being offered.
7. Line 3: Insert the franchisor’s principal business address in the U.S. If a foreign franchisor does not have a U.S. business address, insert its principal business address in its home jurisdiction.
8. Line 4: Insert the name and address of the Secretary of State of New York.
9. Line 5: Insert the Franchise Filing States in which the application is or will soon be filed.
10. Line 6: Insert the names, address, telephone and facsimile numbers, and e-mail address of the person to whom communications regarding the Application should be directed. Identify only one individual. Confirmation of effectiveness will be sent to this address.
11. Certification: Insert the issuance date of the disclosure document, the city and state in which the Application was signed, and the date of signing. Insert the franchisor’s name in the signature block and print or type the name and title of the authorized signer. The authorized signer should sign on the “By:” line.

Form B – Franchisor’s Costs and Sources of Funds

FRANCHISOR’S COSTS AND SOURCE OF FUNDS

- 1. Disclose the Franchisor’s total costs for performing its pre-opening obligations to provide goods or services in connection with establishing each franchised business, including real estate, improvements, equipment, inventory, training and other items stated in the offering:**

Category	Costs
Real Estate	_____
Improvements	_____
Equipment	_____
Inventory	_____
Training	_____
Other (describe)	
_____	_____
_____	_____
_____	_____
Totals	_____

- 2. State separately the sources of all required funds:**

**Instructions for Preparing
Form B: Franchisor's Costs and
Source of Funds**

The Franchisor's Costs and Source of Funds form should accompany each initial or renewal filing (if required by the Franchise Filing State). Do not use with amendments.

1. In Section 1, estimate the franchisor's total costs to perform its pre-opening obligations to provide goods or services for establishing a new, typical franchised business.
2. Provide only incremental cost estimates; i.e., expenses incurred that are independent of salaries and overhead for the franchisor's own employees or employees of affiliates that may provide these services.
3. In Section 2, state separately the sources of all required funds. For example, this could include the franchisor's operating funds, initial franchise fees collected, etc.

Form C – Uniform Franchise Consent to Service of Process

UNIFORM FRANCHISE CONSENT TO SERVICE OF PROCESS

(Name of Franchisor) _____, a _____ (form of entity)
organized under the laws of _____ (state of formation) (the “Franchisor”), irrevocably appoints the officers of the States designated below and their successors in those offices, its attorney in those States 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 that State, and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within that State by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of that State and had lawfully been served with process in that State. We have checked below each state in which this application is or will be shortly on file, and provided a duplicate original bearing an original signature to each state.

_____ California: Commissioner of Corporations

_____ North Dakota: Securities Commissioner

_____ Hawaii: Commissioner of Securities

_____ Rhode Island: Director, Department of Business Regulation

_____ Illinois: Attorney General

_____ South Dakota: Director of the Division of Securities

_____ Indiana: Secretary of State

_____ Virginia: Clerk, Virginia State Corporation Commission

_____ Maryland: Securities Commissioner

_____ Washington: Director of Financial Institutions

_____ Minnesota: Commissioner of Commerce

_____ Wisconsin: Administrator, Division of Securities, Department of Financial Institutions

_____ New York: Secretary of State

Please mail or send a copy of any notice, process or pleading served under this consent to:

(Name and address)

Dated: _____, 20__.

Franchisor:

By: _____

Name: _____

Title: _____

**Instructions for Preparing
Form C – Uniform Franchise Consent to Service of Process**

The Uniform Franchise Consent to Service of Process form should accompany each initial or renewal filing. Do not use with amendments.

1. Insert the correct legal name of the franchisor, the type of entity it is (*e.g.*, corporation, limited liability company, etc.), and the state of formation.
2. Check the line for each state in which the Application will be filed.
3. Insert the name and address of the person to whom the New York Secretary of State should provide a copy of any notice, process or pleading served on the state agency.
4. Insert the date of signing.
5. In the signature block, insert the correct legal name of the franchisor, and print or type the name and title of the authorized signer. The authorized signer should sign on the “By:” line.
6. Provide an original signed copy for each Franchise Filing State in which the application is filed (if required by the Franchise Filing State).

Form D – Franchise Seller Disclosure Form

FRANCHISE SELLER DISCLOSURE FORM

1. List who will solicit, offer or sell franchises for the Franchisor in this state:

A. Name:

B. Business address and telephone number:

C. Present employer:

D. Present title:

E. 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 the person identified in 1 above:

A. Has an administrative, criminal or material civil action pending against that person alleging a violation of franchise, antitrust or securities law, or alleging fraud, unfair or deceptive practices, or any comparable allegations?

YES _____ NO _____

If you answered “yes”, please provide:

1. Names of the parties:

2. Forum, nature and current status of the pending action:

3. Case or proceeding identification number:

B. Had during the 10-year period immediately before the disclosure document’s issuance date been convicted of or pleaded nolo contendere to a felony charge; or been held liable in a civil action involving an alleged violation of a franchise, antitrust or securities law, or allegations of fraud, unfair or deceptive practices, or comparable allegations?

YES _____ NO _____

If you answered “yes”, please provide:

1. Names of the parties:

2. The forum:

3. Case or proceeding identification number:

- C. Is subject to a currently effective injunction 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.

YES _____ NO _____

If you answered “yes”, please provide:

1. Name of the person:
2. Public agency or court:
3. Case or proceeding identification number:

**Instructions for Preparing
Form D – Franchise Seller Disclosure Form**

Complete one Franchise Seller Disclosure Form for each person who may be engaged in soliciting or offering or selling the franchises for the Franchisor submitting the Application. A form should be submitted for the franchisor's own employees, for the employees of its parent(s) or affiliates, and for any independent third party (*e.g.*, broker) who may be providing sales services on its behalf in New York. Do not submit a form for the franchisor entity or master franchisee/subfranchisor entity.

1. Only provide the department with Franchise Seller Disclosure Forms for those franchise sellers who will be acting on behalf of the Franchisor in New York.
2. In Section 1, insert the name, business address and telephone number, present employer, present title and employment of the franchise seller for the past 5 years.
3. In Section 2, answer “yes” or “no” to each question (A, B and C). If the answer is “yes” to any question, provide the requested additional information.
4. For purposes of Section 2 B., “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 interest. Accordingly, dismissals concluding an adversary proceeding need not be disclosed, but a settlement resolving an adversary proceeding must be disclosed if the person is held liable as defined above.
5. If a franchise seller is no longer soliciting or offering or selling franchises on behalf of the Franchisor, promptly notify the department by letter of the termination of that relationship.
6. As new franchise sellers who will be soliciting, offering or selling franchises in New York for the Franchisor are added, promptly submit Franchise Seller Disclosure Forms for those new franchise sellers to the department.

**Instructions for Preparing
Form E - Guarantee of Performance**

The Guarantee of Performance form must be used if the franchisor's parent or affiliate will be guaranteeing the franchisor's performance under the Franchise Agreement. Personal guarantees of individuals are not acceptable.

1. In the opening lines, insert the correct legal name of the guarantor, its state of formation and form of the entity (*e.g.*, a Delaware corporation), and its principal business address.
2. Insert the correct legal name of the franchisor and its principal business address.
3. Insert the year corresponding to the issuance date of the Franchise Disclosure Document.
4. Insert the city and state where the Guarantee of Performance is executed and date of execution.
5. In the signature block, insert the correct legal name of the guarantor and print or type the name and title of the authorized signer. The authorized signer should sign in the "By:" line.
6. Attach a copy of the signed Guarantee of Performance to the financial statement exhibit of the Franchise Disclosure Document.

Form F – Consent of Accountant

CONSENT

 (Name of Accountant) consents to the use in the Franchise Disclosure Document issued by (name of Franchisor) (“Franchisor”) on (issuance date of Franchise Disclosure Document), as it may be amended, of our report dated (date of accountant’s report) , relating to the financial statements of Franchisor for the period ending .

[Manual or Digital Signature of Accountant]

**Instructions for Preparing
Form F- Consent of Accountant**

A Consent of the accountant whose audited financial statements for the last fiscal year are disclosed in the Franchise Disclosure Document must be provided with each initial or renewal filing Application. This form is a guide to drafting.

1. Prepare the Consent on the accountant's letterhead.
2. Insert the correct name of the franchisor and the Federal Trade Commission issuance date of the Franchise Disclosure Document.
3. Insert the date of the audit report for the audited financial statements.
4. Copies of signed Consents may be filed.

Form G- Sample State Cover Page and Sample State Effective Date Exhibit

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 OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in **Exhibit A** 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 JACKSON COUNTY, 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 MICHIGAN THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT REQUIRES 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 make sure to do your own investigation of the franchise.

Effective Date: See the next page for state effective dates.

STATE EFFECTIVE DATES

The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin

This Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

California	April 15, 2008
Maryland	Pending
Minnesota	May 1, 2008

**Instructions for Preparing
Form G – Sample State Cover Page and
Sample State Effective Date Exhibit**

All Franchise Disclosure Documents must include a State Cover Page, which is to be attached immediately following the FTC cover page.

1. Comply with the State Cover Page instructions at section 200.3(b).
2. In the second paragraph insert the exhibit reference to the exhibit showing the list of state franchise administrators.
3. In paragraph 1 of the “Risk Factors”, insert the name of the state in which litigation or arbitration must be conducted or may be conducted. If the venue provision is not mandatory, revise the first sentence to reflect that litigation or arbitration “may” be conducted in a state other than the franchisee’s home state.
4. In paragraph 2 of the “Risk Factors”, add the name of the controlling state law.
5. Add any other Risk Factors required by a State Administrator on the State Cover Page.
6. Use the paragraph on franchise brokers only if the franchisor uses franchise brokers or sales agents to solicit or offer or sell franchises.
7. If the registration is effective in only one or a few states, the franchisor may insert the state effective dates on the State Cover Page.
8. If the franchise involves a multi-state registration with filings in numerous states, the franchisor may use a State Effective Date exhibit that must follow immediately after the State Cover Page.
 - (a) List the effective date or “pending” only for those Franchise Filing States where a registration, filing or exemption has been made or is pending.
 - (b) Regional franchisors may add a statement to the State Effective Date page that their territory is limited to a specific state or states.
 - (c) As approvals are received, the States Effective Date page can be modified by the franchisor without any refileing with the states.

Form H-Sample Receipt Page

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 Belmont 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.

[Maryland and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]

[Michigan, Oregon, and Washington require that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.]

If Belmont 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, DC 20580 and the state agency listed on Exhibit A.

The franchisor is Belmont Mufflers, Inc., located at 111 First Street, Jackson, MN 55000. Its telephone number is (111) 222-3333.

Issuance date: July 1, 2008.

The franchise seller for this offering is Roger Owens, Franchise Sales Director, Belmont Mufflers, Inc., 111 Capitol Street, Indianapolis, IN (123) 555-5555.

Belmont authorizes the respective state agencies identified on Exhibit B to receive service of process for it in the particular state.

I received a disclosure document dated July 1, 2008 that included the following Exhibits:

- | | |
|----------------------------------|---------------------------|
| A. State Agencies | F. Loan Agreement |
| B. Agents for Service of Process | G. List of Franchisees |
| C. Franchise Agreement | H. Terminated Franchisees |
| D. Equipment Lease | I. Financial Statements |
| E. Lease for Premises | J. State Addenda |

Date: _____
(Do not leave blank)

Signature of Prospective Franchisee

Print Name

You may return the signed receipt either by signing, dating, and mailing it to Belmont Mufflers, Inc. at 111 First Street, Jackson, MN 55000; or by faxing a copy of the signed and dated receipt to Belmont at (111) 223-3344; or, by any other means authorized by applicable federal or state laws governing the offer and sale of franchises.

**Instructions for Preparing
Form H – Sample Receipt Page**

All Franchise Disclosure Documents must include two Receipt Pages, which are to be attached as the last pages of the disclosure document. All Exhibits to the Franchise Disclosure Document must be listed.

200.6 Electronic Delivery of Franchise Disclosure Documents

(a) A franchisor may deliver a franchise disclosure document over the internet or by other electronic means, or in machine-readable media, provided:

- (1) the disclosure document
 - (i) is delivered as a single, integrated, document or file;
 - (ii) has no extraneous content beyond what is required or permitted by law and by these regulations, but which may include customary devices for manipulating electronic documents in machine readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;
 - (iii) has no links to or from external documents or content;
 - (iv) is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document; and
 - (v) conforms as to its content and format to the requirements of law;and
- (2) the franchisor
 - (i) can prove that it delivered the disclosure document electronically in compliance with this section, and that it did so at or before the time required by law; and
 - (ii) keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the department.

(b) "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure document is stored be physically delivered to the prospective franchisee in accordance with subsection (a)(1).

(c) This section does not change or waive any other requirement of law concerning registration or presale disclosure of franchise offerings.

200.7 Disclosure Requirements

This section contains the requirements for preparing the contents of a Franchise Disclosure Document.

Definitions

Unless stated otherwise, the following definitions apply throughout this Section 200.7. Other terms used in this section are defined in Section 681 of the Act.

- (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) Parent means an entity that controls another entity directly, or indirectly through one or more subsidiaries.
- (h) Plain English means the organization of information and language usage understandable by 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.
- (i) Predecessor means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.
- (j) 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.
- (k) 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.
- (l) Trademark includes trademarks, service marks, names, logos, and other commercial symbols.

Contents of the Franchise Disclosure Document

The 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 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 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 the Cover Page: “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.

The 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

The Disclosure Items

(a) 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 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, Instruction (2); 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.

(b) 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.

(c) 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:

- (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 Item, "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.

(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 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 Instructions (1) and (2) of 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 Instruction (4) of 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.¹ 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.²
- (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 Instruction (1) (ii) of Item 3, the franchisor may comply with the requirements of Instruction (3) (i) through (iv) of Item 3 by listing individual suits under one common heading that will serve as the case summary (for example, “royalty collection suits”).

(d) 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

¹ 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.

² 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.

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

(e) 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 Item, “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.

(f) 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.³

³ If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term “gross sales.”

Item 6 Table

OTHER FEES

Column 1	Column 2	Column 3	Column 4
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.

(g) 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.

Item 7 Table:

YOUR ESTIMATED INITIAL INVESTMENT

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Total				

(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-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 for additional details.

(h) 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.⁴ 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.
- (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.

⁴ 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. Do not disclose fees already described in Item 6.

(v) How approvals are revoked.

(5) Whether the franchisor issues specifications and standards to franchisees, subfranchisees, 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.⁵
- (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.

(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.

(i) 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.

⁵ Take figures from the franchisor's most recent annual audited financial statement required in Item 21. 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.

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)		

(j) 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.⁶ 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. 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).⁷
- (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.
- (ix) The franchisee's potential liabilities upon default, including any:
 - (A) Accelerated obligation to pay the entire amount due;

⁶ 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.

⁷ Include sample copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms and conditions.

- (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.

(k) 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.”**

(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 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:
 - (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.
 - (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 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

Column 1	Column 2	Column 3	Column 4
Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location

- (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.
- (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.

(I) 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.
 - (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 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, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

(m) 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.

(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:⁸

- (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.
- (v) The circumstances when the agreement may be canceled or modified.
- (vi) All other material terms.

⁸ 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.

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

(n) 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.⁹

(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.

⁹ If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

- (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.
- (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.

(o) 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).

(p) 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.

(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.

(q) 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		

(r) 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.

(s) 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 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 Instruction (3)(ii)(A) of 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 Instruction (3)(i) through (iv) of this Item 19.
- (iv) Be furnished to the prospective franchisee.

(t) Item 20: Outlets and Franchisee Information.

(1) Disclose, in the following tabular form, the total number of franchised and company-owned outlets for each of the franchisor’s last three fiscal years. For this Item, “outlet” includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20(1) Table is attached as Appendix B.

Table No. 1

**Systemwide Outlet Summary
For years [] to []**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004			
	2005			
	2006			
Company-Owned	2004			
	2005			
	2006			
Total Outlets	2004			
	2005			
	2006			

- (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-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 this Item, “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 is attached as Appendix C.

Table No. 2

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

Column 1 State	Column 2 Year	Column 3 Number of Transfers
	2004	
	2005	
	2006	
	2004	
	2005	
	2006	
Total	2004	
	2005	
	2006	

- (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 is attached as Appendix D.

Table No. 3

**Status of Franchised Outlets
For years [] to []**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations- Other Reasons	Col. 9 Outlets at End of the Year
	2004							
	2005							
	2006							
	2004							
	2005							
	2006							
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 Item, “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 Item, “non-renewal” occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

- (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 Item, 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 is attached as Appendix E.

Table No. 4

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

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
	2004						
	2005						
	2006						
	2004						
	2005						
	2006						
Totals	2004						
	2005						
	2006						

- (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 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 is attached as Appendix F.

Table No. 5

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

Column 1	Column 2	Column 3	Column 4
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.

(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.¹⁰ 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
- (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).

¹⁰ 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.

- (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."

(u) Item 21: Financial Statements.

(1) Include the following financial statements prepared according to United States 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 Instruction (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 Instructions (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 Instructions (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 subfranchisor, 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 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 Instructions (1)(i) and (ii) of this Item 21.

(w) 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.

(x) Item 23: Receipts.

Include two copies of a detachable acknowledgment of receipt in the manner illustrated in Form H of Section 200.5 of these regulations.

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										

Appendix B: Sample Item 20(1) Table – Systemwide Outlet Summary

**Systemwide Outlet Summary
For years 2004 to 2006**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004	859	1,062	+203
	2005	1,062	1,296	+234
	2006	1,296	2,720	+1,424
Company Owned	2004	125	145	+20
	2005	145	76	-69
	2006	76	141	+65
Total Outlets	2004	984	1,207	+223
	2005	1,207	1,372	+165
	2006	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 2004 to 2006**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
NC	2004	1
	2005	0
	2006	2
SC	2004	0
	2005	0
	2006	2
Total	2004	1
	2005	0
	2006	4

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

**Status of Franchise Outlets
For years 2004 to 2006**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Terminations	Col. 6 Non- Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations - Other Reasons	Col. 9 Outlets at End of the Year
AL	2004	10	2	1	0	0	1	10
	2005	11	5	0	1	0	0	15
	2006	15	4	1	0	1	2	15
AZ	2004	20	5	0	0	0	0	25
	2005	25	4	1	0	0	2	26
	2006	26	4	0	0	0	0	30
Totals	2004	30	7	1	0	0	1	35
	2005	36	9	1	1	0	2	41
	2006	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 2004 to 2006**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisees	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisees	Col. 8 Outlets at End of the Year
NY	2004	1	0	1	0	0	2
	2005	2	2	0	1	0	3
	2006	3	0	0	3	0	0
OR	2004	4	0	1	0	0	5
	2005	5	0	0	2	0	3
	2006	3	0	0	0	1	2
Totals	2004	5	0	2	0	0	7
	2005	7	2	0	3	0	6
	2006	6	0	0	3	1	2

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

**Projected New Franchised Outlets
As of December 31, 2006**

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

200.8 Filing Fees

(a) The fee for filing an application for initial registration of a franchise disclosure document under subdivision two of section six hundred eighty-three of the Act is seven hundred fifty dollars.

(b) The fee for filing an amendment to any previously registered franchise disclosure document filed under subdivision two of section six hundred eighty-three of the Act, as required by subdivision six of such section, is one hundred fifty dollars.

(c) The fee for filing an application for exemption under subdivision two of section six hundred eighty-four of the Act is one hundred fifty dollars.

(d) The fee for filing a franchise broker's application for registration as required by subdivision 9 of section six hundred eighty three of the Act is one hundred fifty dollars.

200.9 Interest Rate

The interest rate referred to in subdivisions one and two of section six hundred ninety-one of the Act is six percent per year.

200.10 Impoundment of Funds

(a) If the department finds that the franchisor has failed to make adequate financial arrangements to fulfill its obligation to provide real estate, improvements, equipment, inventory, training, or other items included in its offering, the department may impose an escrow of up to the full amount of the franchise fees and other funds paid by the franchisee or subfranchisor until the franchisor's obligations are fulfilled.

(b) When an escrow is imposed, the franchisor shall be the holder of the escrow funds. It shall place these funds in an escrow account established in a national bank located in New York or a New York bank or trust company. This account shall contain only escrow funds and shall be separate and apart from the franchisor's other accounts.

(c) All proceeds so deposited shall remain the property of the franchisee and shall not be subject to any liens or charges by the franchisor, or judgments, garnishments, or creditor's claims.

(d) The franchisor and the bank or trust company shall, in establishing the franchisor's escrow account, make an agreement which shall authorize the department to inspect the records of the bank or trust company relating to the escrow account and permitting the bank to furnish to the department, at the department's request, a statement of the condition of the escrow account.

(e) When an escrow is imposed, the franchisor shall deliver to each franchisee or subfranchisor a purchase receipt evidencing the receipt of funds from the franchisee on account of the payment of franchise fees, as that term is defined in sec. 681 of the General Business Law, and stating that the funds are to be held in escrow by the franchisor and deposited in an escrow account, setting forth the name of the bank or trust company in which the account is established, the address of the bank or trust company, the name of the account and the account number. Purchase receipts shall be consecutively numbered and prepared in quadruplicate, the original given to the franchisee or subfranchisor, the first copy to the bank or trust company, together with the payment received, the second copy retained by the franchisor, and the third copy sent to the department.

(f) The department shall authorize the franchisor to release those amounts of the escrowed funds applicable to a specified franchisee or subfranchisor upon a showing satisfactory to the department that the franchisor has fulfilled its obligations under the franchise agreement to establish the franchise.

(g) An application for an order of the department authorizing the release of escrowed funds to the franchisor shall be verified and shall contain:

- (1) A statement of the franchisor that required proceeds from the sale of franchises have been placed with the bank or trust company in accordance with the terms and conditions of the escrow agreement.
- (2) A franchisee's verified statement of completion of franchisor's obligations for release of funds from escrow.
- (3) A statement of the bank or trust company signed by an appropriate officer setting forth the aggregate amount of escrowed funds placed with the depository, when required by the administrator.
- (4) The name of each franchisee or subfranchisor and the amount held in escrow for the account of the franchisee or subfranchisor.
- (5) A showing that the franchisor, with respect to a franchise, the funds for which are sought to be released, has completely performed its obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training, or other items.
- (6) Other information the department may reasonably require.

(h) If the Department finds that any conditions of this agreement have not been satisfied or that any provisions of the New York franchise law or regulations have not been complied with, or the registration of the franchises has been revoked, then the department may withhold such authorization for release of funds by the franchisor and may direct the full return of funds by the franchisor to the franchisees.

(i) Surety bond in lieu of escrow.

- (1) In lieu of the imposition of an escrow, a franchisor at its option may post a surety bond of a surety company in the amount required by the department as protection of the franchisees requires.
- (2) The surety company must be authorized to transact business in New York.
- (3) The department shall take into consideration the amount of the franchise fees and other fees to be charged as well as the number of franchises to be offered, granted or sold in determining the initial amount of the surety bond and will amend the amount as public interest requires, using the same factors.
- (4) Should the department so determine that the franchisor failed to complete its obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the surety

company shall pay the amount of the bond to the department, as obligee, for the benefit of all franchisees in accordance with their contribution of franchise fees.

200.11 Applications for Exemption

In compliance with Section 684.2(b) of the General Business Law, an application for an exemption shall contain such information as the department may require in each instance to allow the Department to make a reasoned determination whether approval of the application would further the purposes of Section 684.

200.12. Exemption for Franchise Advertising on the Internet

A communication made through the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, of an offer to sell a franchise that is not registered in New York ("Internet Offer"), is exempt from the registration and disclosure requirements of section six hundred eighty-three of the Act if:

(1) the offer indicates, directly or indirectly, that the franchise is not being offered to residents of this state;

(2) the offer is not otherwise directed to any person in this state by or on behalf of the franchisor or anyone acting with the franchisor's knowledge; and

(3) no franchise is sold in this state by or on behalf of the franchisor until the franchise disclosure document has been registered and has been delivered to the offeree in compliance with the Act.