



# FRANCHISE ASSOCIATION OF NEW ZEALAND INCORPORATED

## CODE OF PRACTICE AND ETHICS (Revised 1 December 2024)

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### FRANCHISE ASSOCIATION OF NEW ZEALAND INC. ("Association")

### FRANCHISING CODE OF PRACTICE AND ETHICS ("Code")

#### 1. NAME AND PURPOSE

- 1.1. This Franchising Code of Practice and Ethics has been established by and is administered by the Franchise Association of New Zealand Incorporated. It is a regulation of the Association.
- 1.2. The purpose of this Code is to promote high standards of Franchising conduct and procedure in accordance with the objects of the Association.

#### 2. INTERPRETATION

##### Definitions

- 2.1. In this Code the following terms shall have the following meanings:

"**Association**" means the Franchise Association of New Zealand Incorporated.

“**Code**” means this Code of Practice and Ethics and includes all its parts.

“**Disclosure Document**” means a document providing the information and supplied in accordance with the provisions of clauses 14 and 15 and Schedule A.

“**franchise**” means a business operated as a franchise, as that term is further defined in the Rules.

“**franchise agreement**” means an agreement to grant and accept the grant of a franchise, as further described in the Rules.

“**Franchisor Members**” includes all members of the Association who grant franchises including Master Franchisees / Sub-Franchisors and others fulfilling a similar role, however described, where they, or their Franchisor is a member of the Association.

“**Member**” and “**Members**” means members of the Association.

“**preliminary agreement**” means an agreement to enter into a franchise agreement.

“**Rules**” means the Rules of the Association.

“**Scrutineer**” means the independent person or persons appointed by the Association to review and scrutinise applications for membership and the documentation used by Members, and prospective members, for compliance with this Code.

2.2. Other terms and expressions used in this Code which are defined or explained in the Rules shall be interpreted and defined and have the same meanings as provided for in the Rules.

2.3. In this Code, references:

2.3.1. To clause numbers shall be to clauses of this Code.

2.3.2. In the singular number shall include plural, and vice versa.

2.3.3. In any one gender shall include all genders.

### 3. STANDARDS OF CONDUCT AND ETHICS

3.1. All Members shall act in an ethical, honest, and lawful manner and endeavour to pursue best franchise business practice.

3.2. Franchisors and Franchisees shall act fairly in their dealings with one another, which shall include avoiding the following conduct:

- a) Conduct which is unfair or unreasonable.
- b) Conduct which is arbitrary and which causes detriment to the other party or the franchise network.
- c) Unreasonably or arbitrarily withholding or delaying the giving of consent or approval where a franchise agreement expressly includes a requirement for Franchisor consent, approval or similar before either the Franchisee may take specified action or inaction, or before a specified event or thing may occur in respect of the Franchisee (this subclause is subject to any express contractual provisions to the contrary).
- d) Any other conduct which is in breach of this Code.

Any assessment of an alleged breach of this clause 3.2 must take into account the legitimate commercial interests of the Franchisor, Franchisee, and the franchise network.

*[Explanatory note: While clause 3.2 requires a Franchisor and a Franchisee to each have regard to the rights and interests of the other party, it does not require them to act in the interests of the other party. Nor does it prevent them from acting in their own legitimate commercial interests and/or the legitimate commercial interests of the franchise network.]*

### 4. CONTINUING COMPLIANCE

All Members shall comply with this Code and the Rules at all times.

### 5. SUPPLY OF CODE

5.1. Before granting a franchise, a Franchisor Member will either supply to each prospective Franchisee a copy of this Code or ensure that the prospective Franchisee already has a copy of this Code or has direct and immediately

available electronic access to a copy of this Code (such as by providing a hyperlink to this Code on the Association's website).

- 5.2. If a current copy of this Code is not held by a prospective Franchisee, then a copy shall be supplied to the prospective Franchisee at least seven (7) days prior to the signing by the Franchisee of the franchise agreement (or, if preceded by the signing of a preliminary agreement, seven (7) days before the Franchisee becomes bound by the preliminary agreement to proceed). A copy may be supplied or made available in hard copy or electronically (including by providing a hyperlink to this Code on the Association's website).
- 5.3. Where a new franchise agreement is granted to the transferee or assignee of a franchise the Franchisor Member must either supply to the prospective Franchisee a copy of this Code or ensure that it is available in the same way.

## **6. AGREEMENTS TO REQUIRE OBSERVANCE**

- 6.1. To promote the observance of their obligations where a Franchisor Member grants a franchise to a Franchisee (and whether directly or through a Master Franchisee/Sub-Franchisor) then each franchise agreement shall contain provisions requiring both the Franchisor (and/each Master Franchisee/Sub-Franchisor) and the Franchisee to use reasonable endeavours to comply with the provisions of the Rules and this Code (with the Franchisee required to comply with those provisions as if it were a Member).
- 6.2. Where a Franchisor Member grants a master franchise then each master franchise agreement shall contain provisions requiring both the Franchisor Member and the Master Franchisee/Sub-Franchisor to use reasonable endeavours to comply with the provisions of the Rules and this Code (with the Master Franchisee/Sub-Franchisor required to comply with those provisions as if it were a Member).
- 6.3. To promote the observance of their obligations, where a Franchisor member grants a franchise to a Franchisee (and whether directly or through a Master Franchisee/Sub-Franchisor) then each franchise agreement shall contain provisions requiring the Franchisee to comply with the laws of New Zealand. Specific reference is to be included to "including all laws relating to Employment, Health and Safety, Fair Trading and Tax" (or words to that effect).
- 6.4. Where a Franchisor member grants a master franchise then each master franchise agreement shall contain provisions requiring the Master Franchisee/Sub-Franchisor to comply with the laws of New Zealand. Specific reference is to be included to "including all laws relating to Employment, Health and Safety, Fair Trading and Tax" (or words to that effect).

## **7. DOCUMENT COMPLIANCE CHECKS AND THE SCRUTINEER**

- 7.1. To ensure initial compliance with the Rules and this Code, the Association requires that, before acceptance for membership, prospective Members supply to the Scrutineer copies of their franchise agreements, master franchise agreements, preliminary agreements, independent advice certificates and Disclosure Documents and certain accounting and other information as referred to in more detail in the Rules and elsewhere in this Code.
- 7.2. To ensure subsequent compliance by each Member with relevant obligations:
  - a) Each Franchisor Member or Franchisor Multi Brand Member must each second year (or when a material change is made) supply to the Scrutineer (or to the Association's executive officer) an up-to-date Disclosure Document and all current forms of franchise agreement being issued;
  - b) No Franchisor Member shall remove from any approved document any provision which is required by this Code to be contained within it;
  - c) No Franchisor Member shall use documents (whether in addition to or in place of existing approved documents) which do not contain the provisions required by this Code to be contained within them; and
  - d) Each Member shall, where requested by notice in writing by the Association to do so, supply to the Association (or the Scrutineer) within one month a copy of any of the types of documents referred to in clause 7.1 in their current forms.
- 7.3. Where a franchise agreement, or a preliminary agreement (if used), or a master franchise/sub-franchise agreement (if used) is supplied to the Scrutineer or to the Association's executive officer and the applicant or other party supplying the document requires that the contents of the document be kept in confidence then the applicant or other party supplying them should advise the Scrutineer or the Association's executive officer of this requirement at the time the document is supplied. Confidentiality should not be required for documents which are in the public domain (including by being available on websites or by other generally available electronic means).
- 7.4. The Scrutineer shall be entitled to report to the Board of the Association with respect to the existence, and if appropriate with extracts of relevant portions and provisions of the contents of all documents supplied where they relate to issues of compliance with this Code. No Member shall endeavour to claim confidentiality (including by claim

against third parties) for any document of the type referred to in clause 7.1 or take any action for the purpose or having the effect of preventing its examination by the Scrutineer.

- 7.5. The provisions as to confidentiality and return apply both in relation to documents supplied on application for membership and in relation to any subsequent compliance review.

## **8. COOLING OFF PERIOD AND PREPAYMENTS**

- 8.1. To ensure that new Franchisees have an opportunity at the outset to reconsider their decision to enter a franchise every franchise agreement granted by a Member (and whether granted directly or through a Master Franchisee/Sub-Franchisee) must contain a "cooling off" provision as described in clause 8.2, unless entry into the franchise agreement is preceded by seven (7) days or more by entry into a preliminary agreement which contains a "cooling off" provision.
- 8.2. A "cooling off" provision for the purposes of this Code is a provision allowing the Franchisee a period of not less than seven (7) days from the date of entry into the franchise agreement (or preliminary agreement as the case may be) during which the Franchisee may, by formal notice to the Franchisor (or Master Franchisee/Sub-Franchisor as the case may be) elect to withdraw from the agreement at its discretion.
- 8.3. If a Franchisee or prospective Franchisee gives notice to withdraw during the cooling off period, then the Franchisee shall not be obliged to proceed further and shall not be bound by any provisions of the franchise agreement (or preliminary agreement as the case may be) except provisions relating to confidentiality and the protection of intellectual property and other proprietary rights. In addition, the Franchisee or prospective Franchisee shall not be obliged to pay any further monies and shall be entitled to be promptly refunded all monies already paid except for certain expenses as provided in clause 8.4.
- 8.4. The Franchisor (and/or Master Franchisee/Sub-Franchisor as the case may be) shall be entitled to retain reasonable expenses incurred in relation to the proposed grant of a franchise to the extent clearly provided for in the franchise agreement (and/or in the preliminary agreement) and/or in the Disclosure Document.
- 8.5. If contained in the preliminary agreement the "cooling off" provision does not need to be contained in the franchise agreement.
- 8.6. Where a Franchisor requires any payment prior to the signing of a franchise agreement, the Franchisor shall clearly specify in writing to the prospective Franchisee the purpose for which the moneys are required, the terms and conditions governing the refunding or application of such moneys and identify who shall hold such moneys.
- 8.7. Agreements in renewal or extension of a franchise agreement, including replacement franchise agreements, are not required to contain a "cooling off" provision.
- 8.8. Franchise agreements granted to the transferee or assignee of a franchise, including replacement franchise agreements, are not required to contain a "cooling off" provision.

## **9. DISPUTE RESOLUTION**

- 9.1. To assist the readier resolution of any dispute which may arise, every franchise agreement shall contain alternative dispute resolution provisions.
- 9.2. The alternative dispute resolution provisions shall be either as follows, or to similar effect:

*Subject to subclause (9), unless a party has complied with the following subclauses (1) to (8) that party may not commence court proceedings or arbitration relating to any dispute with any other party to this Agreement.*

- (1) *Where a dispute arises between the Franchisor and the Franchisee ("the parties"), the complainant will set out in writing the nature of the dispute.*
- (2) *Both parties will make every effort to resolve the dispute by mutual negotiation.*
- (3) *In the event that the parties are unable to reach a resolution of the dispute within twenty one (21) days of the dispute first being raised by one party with the other, either party may by notice in writing ("the Mediation Notice") notify the other party that it seeks to have the dispute resolved by mediation.*
- (4) *If the parties have not agreed within ten (10) days of the issue of the Mediation Notice on the choice of a mediator, then either of them may at any time apply to either the Chairperson or other proper officer of the Franchise Association of New Zealand Inc or to the Chairperson for the time being or other proper officer of the New Zealand Law Society to nominate a Mediator for the purpose of the dispute. Such Mediator may be*

*(but is not required to be) chosen from any panel of mediators from time to time nominated for the purpose by the Franchise Association of New Zealand Inc.*

- (5) The proceedings of the Mediator will be as informal as is consistent with the proper conduct of the matter and shall allow the Mediator to communicate privately with the respective parties and their lawyers and the parties shall be entitled but not obliged to be legally represented. The Mediator may co-opt other expert assistance.*
- (6) In any mediation the following shall apply:*
  - (a) everything that occurs before the Mediator will be in confidence and in closed session;*
  - (b) all discussions will be on a "without prejudice" basis;*
  - (c) no documents brought into existence specifically for the purpose of the mediation process shall be called into evidence in any subsequent litigation by either party;*
  - (d) each party to the mediation shall be given proper opportunity to present its case;*
  - (e) the Mediator shall be required to act fairly, in good faith and without bias for the purpose of seeking a resolution of the dispute and to treat all matters in confidence and to have regard to the fairness and reasonableness of all matters relating to the dispute including the need for the Franchisor to maintain the integrity of its name, image and the System and the reasonable interests of other franchisees and members of the System;*
  - (f) the parties to the mediation and the Mediator shall co-operate with a view to the mediation being determined as speedily as possible and within fourteen (14) days after referral to the Mediator;*
  - (g) the costs of the mediation will be borne by the parties equally unless otherwise agreed or determined by the Mediator and the parties shall grant immunity from liability to the Mediator;*
  - (h) the parties to the mediation shall each report back to the Mediator within fourteen (14) days of the end of the mediation hearings on actions taken, based on the outcome of the mediation; and*
  - (i) subject to the other provisions of this clause, the Mediator shall have the right to determine procedures relating to the conduct of the mediation.*
- (7) If the dispute is not resolved within forty five (45) days of referral to mediation any party which has complied with the provisions of this clause may by written notice terminate the dispute resolution process and may then commence Court proceedings and/or take any other action it sees fit relating to the dispute.*
- (8) The parties may by agreement in writing between them agree to extend any of the time periods referred to in the previous provisions of this clause and, if they do, the extended time periods shall apply and be binding on the parties in substitution for the relevant time period contained in this clause.*
- (9) Nothing contained in these provisions shall prevent a party from seeking injunctive relief from an appropriate Court, where failure to obtain such relief would cause irreparable damage to the party concerned or the franchise system. Further, these dispute resolution procedures will not apply to events giving rise to rights to the immediate termination of the franchise agreement where such events are clearly specified in the franchise agreement.*

## **10. IDENTIFICATION AS A FRANCHISE**

So that those with whom they deal are informed that they are dealing with a Franchisee, every franchise agreement granted by a Franchisor Member (and whether granted directly or through a Master Franchisee/Sub-Franchisee) should contain a provision requiring each Franchisee to use reasonable endeavours to clearly identify that the Franchisee's business is being operated under franchise from the Franchisor, including in all written contracts entered into with customers of the Franchisee. The Franchisor Member should (in the franchise agreement or elsewhere) set out clear guidelines for what a Franchisee should or must do to identify itself as a franchisee.

## **11. CERTIFICATION**

11.1. Before the execution of any franchise agreement Franchisor Members shall require each Franchisee to certify that the Franchisee has received and has read the following documents:

- (a) The Disclosure Document.

- (b) A copy of this Code.

11.2. Before the execution of any franchise agreement, Franchisor Members will require each Franchisee to either:

- (a) Produce a certificate from a solicitor certifying that the solicitor is acting independently for the Franchisee and has explained the franchise agreement (and preliminary agreement if there is one) to the Franchisee. Franchisor Members may require a certificate from an accountant certifying that the accountant is acting independently for the Franchisee and has explained the accounting and financial aspects of the franchised business opportunity under the franchise agreement to the franchisee; or
- (b) Sign a statement that the franchise agreement has been explained by a solicitor or that the Franchisee has been advised to take independent legal advice from a qualified professional and has declined to take that independent legal advice. Franchisor Members may also require the Franchisee to sign a statement that the accounting and/or financial aspects of the franchised business opportunity under the franchise agreement have been explained to the Franchisee by a qualified professional or that the Franchisee has been advised to take independent accounting and/or financial advice from a qualified professional and has declined to take that independent advice.

## 12. AFFILIATE MEMBERS

12.1. Affiliate Members shall in the course of their franchising business or practice:

- (1) Provide clients and prospective clients on request with a written resume or profile showing any relevant qualifications franchising education and experience of the Member (or those of the senior or other relevant nominated franchise adviser within the Member);
- (2) Respect the confidentiality of all information received concerning a client's business which is not in the public domain and not disclose or permit disclosure of any such information without the client's prior written permission;
- (3) Disclose to clients and prospective clients details of any personal or financial interests or other material circumstances which may create a conflict of interest in respect of that client and in particular without derogating from the generality of the foregoing:
  - (a) Any directorship or significant interest in any business which competes with the client;
  - (b) Any financial interest in goods or services recommended by the Member for use by the client;
  - (c) Any personal relationship with any individual in the client's employment;
  - (d) The existence but not the name of any existing franchise client of the Member whose business may directly compete with that of the client or prospective client;
- (4) Not advise any Franchisee or prospective Franchisee in relation to any franchise opportunity offered by any Franchisor for whom the Member has acted without full disclosure of relevant circumstances.

12.2. Where an Affiliate Member is a firm and not an individual the Affiliate shall nominate the individual or individuals within the firm who are their senior nominated franchise adviser or advisers.

## 13. COMPLAINTS AND NON-COMPLIANCE

13.1. The Board will establish a process ("**Complaints Process**") for the receipt of, review and action in respect of complaints against Members as to breaches of this Code. Complaints may be initiated by a Member, a Franchisee of a Member and by the Board itself. The Complaints Process is not intended to be used to decide who is right or wrong in a dispute between a Franchisor member and a Franchisee, that is the purpose of the franchise agreement alternative dispute resolution provisions required by clause 9.

13.2. The Complaints Process will be documented by the Board and maintained by the Association's executive.

13.3. Complaints will be reviewed in accordance with the Complaints Process, good complaints practice as determined by the Board, or the Complaints Panel appointed in accordance with clause 13.4 and in accordance with such guidelines as may be specified by the Board.



- 13.4. The Board may appoint a panel (“**Complaints Panel**”) to review and make recommendations to the Board in respect of complaints received by the Association or as required by the Board. Such appointment will be done annually but the Board may also appoint panel members and special subcommittees of the panel on a temporary basis. The Complaints Panel may comprise a practicing solicitor (not being the Association’s Honorary Solicitor), a Board member and such other individuals as the Board may determine.
- 13.5. The purpose of a review will be to ascertain, as far as is reasonably practicable, the validity of the complaint, the circumstances and facts giving rise to the complaint, the breach or breaches of this Code which may have occurred. and to then report to the Board as to such complaint and to make such recommendations in respect of the complaint as the Complaints Panel considers appropriate. The Complaints Panel is not a judicial body and may decline to review a complaint where the subject of the complaint (or a material part of it) is the subject of legal proceedings.
- 13.6. Members must cooperate with the Complaints Panel in its review and provide all information requested by the Complaints Panel. Any request to a Member, the subject of a complaint, for information and/or explanation as to matters touching or including the complaint must be responded to promptly by the Member.
- 13.7. The complaint, the fact of the complaint, the outcome of the complaint, all materials received by the Association and the Complaints Panel and its report to the Board will be kept confidential to the parties concerned. The Association may keep a register of complaints for internal purposes only. The Association may, however, disclose the existence of complaints and the general nature of complaints on an anonymised basis.
- 13.8. From the Complaints Panel’s report and recommendations, if any, the Board will determine whether the Member complained of has failed to comply with this Code or not. If the Board’s determination is that the Member has failed to comply with this Code, the Member will be notified requesting that the Member, within 14 days of such notice, submit as to why the Member should not face sanction by the Association.
- 13.9. The Board may refer the Member’s response to its notice to the Complaints Panel for further review/ report/recommendation to the Board. If the Member concerned does not respond to the notice within 14 days or fails in its response to the notice to satisfy the Board otherwise then the Board may impose such sanction as may be appropriate including: written censure of the Member (confidential to the Member, Franchisee and the Board), suspension or removal from membership, a direction to undertake such remedial action in respect of the Member’s business conduct as may assist in preventing further breaches of this Code, a written apology to the complainant and the recovery of reasonable costs incurred by the Association.
- 13.10. The Board’s decision, and whether for suspension or removal from membership or some other sanction, will come into effect 21 days after notice has been given to the Member of the Board’s decision or such other date as is determined by the Board in its discretion.
- 13.11. If the Member disputes the Board’s decision, then the Member may, within 21 days of having received notice of the decision appeal in writing to the Association. The Board may consider such appeal itself or may refer the appeal for expert opinion and/or recommendation to the Board. If the Board does not accept such appeal the Member shall be so notified, and the Member will be removed or suspended (if applicable), and all other sanctions imposed will come into effect seven days after notice from the Board.
- 13.12. Following removal from membership of the Association for whatever reason a member may apply for reregistration as a member 12 months following the date of removal provided such former member can demonstrate, to the satisfaction of the Board in its discretion, that it will and can comply with the Rules and this Code in all respects.
- 13.13. Following suspension of or removal from membership of the Association a Franchisor Member must promptly notify all of its Franchisees (and Master Franchisees/Sub–Franchisors) in writing that it has been so suspended or removed and must make no further representation that it is a member of the Association during the period of such suspension or, if removed from membership, thereafter.

## **14. DISCLOSURE DOCUMENTS**

- 14.1. Franchisor Members will provide disclosure by way of a Disclosure Document in accordance with the provisions of this Code.
- 14.2. The Disclosure Document will be updated at least annually and be provided to all prospective Franchisees at least fourteen (14) days prior to signing a franchise agreement (or, if preceded by the signing of a preliminary agreement, fourteen (14) days before the prospective Franchisee becomes bound by the preliminary agreement to proceed). A Disclosure Document is required to be provided to an existing Franchisee in conjunction with the renewal of the franchise agreement within one month of being requested by the Franchisee.

- 14.3. The Disclosure Document is to comply with such of the contents of this Code as are applicable to the relevant franchise system and the contents of the Disclosure Document shall set a minimum standard which may be exceeded by supplying more information than is necessary.
- 14.4. The financial disclosure contained within the Disclosure Document shall be updated on an annual basis and shall be provided to any existing Franchisee at any time upon request by the Franchisee.
- 14.5. A Franchisor Member may add further comment to further explain or clarify the financial disclosure, e.g. where the Franchisor is a company which is part of a group of companies and the basic information may not adequately disclose the financial position of the Franchisor Member.
- 14.6. Where a Franchisor and a Master Franchisee/Sub-Franchisor both enter into a contractual arrangement with a Franchisee, the Disclosure Document will contain material information in relation to both the Franchisor and Master Franchisee/Sub-Franchisor including financial disclosure relating to both the Franchisor and the Master Franchisee/Sub-Franchisor.
- 14.7. Where the Franchisor is not in a direct contractual arrangement with the Franchisee and the Franchise is granted only by the Master Franchisee/Sub-Franchisor then the Disclosure Document must fully disclose the implications for the Franchise Agreement should the Master Franchisee/Sub Franchisor's agreement with the Franchisor be terminated.

## **15. DISCLOSURE DOCUMENT CONTENTS**

Each Disclosure Document will contain the information required to be shown as set out in Appendixes A and B.

## **16. USE OF ELECTRONIC MEANS FOR DISCLOSURE ETC**

The Association encourages Member initiatives to use technology to reduce their environmental impact. Franchisors may use electronic means to comply with obligations under this Code. For example, a copy of this Code and/or the Disclosure Document may be provided electronically in any usual manner. The Franchisor should check that the recipient is willing to receive the documents electronically or offer to provide a hard copy on request, and the Franchisor should provide a hard copy if requested.

## **17. TRANSITIONAL ARRANGEMENTS**

This Code comes into force on 1 December 2024. The transitional arrangements for Franchisor members implementing the provisions of this Code are as follows:

- 17.1. franchise agreements, master franchise agreements, preliminary agreements, independent advice certificates and Disclosure Documents must be updated to reflect the provisions of this Code by no later than 1 April 2025; and
- 17.2. franchise agreements and master franchise agreements entered into before 1 April 2025 are not required to be updated until they are either renewed or amended. References in such unamended agreements to the Code of Practice and / or the Code of Ethics of the Association are to be deemed to refer to this Code.



## APPENDIX A

### Disclosure Document Contents

Each Disclosure Document will contain the following information (and Members are encouraged to show the information in the following order):

- (1) Name, registered office and physical business address of the Franchisor. State if a member of any other relevant trade or industry association. List or state "not applicable" if there are no such other memberships. Once membership of FANZ approved, add to the list.
- (2) Full names of all directors of the Franchisor, if a company (or all office holders / principals of the Franchisor if the Franchisor is not a company).
- (3) A resume of the relevant business experience of the Franchisor (and any related entities) and each key Franchisor director / executive / manager including:
  - (a) Full name, qualification, and any relevant business and franchising experience.
  - (b) Length of experience in the type of business offered in the franchise.
  - (c) Length of experience in operating or offering the franchise.
  - (d) Length of experience in operating or offering other franchises and a description of those franchises.
- (4) A current signed and dated Franchisor solvency certificate in the form set out in Part 1 of Appendix B. Key financial information in respect of the Franchisor, including relevant optional Franchisor financial data set out in Part 2 of Appendix B may also be included (please ensure it is not confusing or misleading).
- (5) Details of any bankruptcies, receiverships, liquidations, placements in administration or appointment of a statutory manager, or materially relevant debt recovery, criminal, civil or administrative proceedings by a Statutory Public Agency which are current or have occurred or for which judgment has been entered against the Franchisor (and any related entities) or any of its directors/executive officers/principals within the last five (5) years.
- (6) A summary of the main particulars and features of the franchise including:
  - (a) The nature and period of existence of the franchise system and how it has developed.
  - (b) Examples of any relevant registered trademarks, logo, symbol, or other relevant forms of intellectual property used to market or promote any form of intellectual property of the Franchisor's goods or services and steps taken to protect these. If intellectual property is licenced to the Member, briefly explain the Member's right to use the intellectual property and ownership by related/associated companies. Details of any threatened or pending litigation in relation to these.
  - (c) Details of initial and ongoing payments to be made by the Franchisee to the Franchisor (including the method of calculation if applicable, and the amount to be refunded by the Franchisor if the Franchisee terminates the franchise agreement within the cooling off period).
  - (d) Particulars of any restrictions imposed on the Franchisee (e.g. territorial, or the offer of competing franchises).
  - (e) A summary of the terms and conditions for the purchase of services, goods, fixtures, property, etc from the Franchisor and the situation applying if the source of goods/products supplied by the Franchisor fails, plus relevant comments/conditions with respect to rebates etc from suppliers (at a minimum disclose whether the Franchisor is entitled to receive rebates or financial benefit from suppliers, and whether any rebate or financial benefit is shared, directly or indirectly, with Franchisees).
  - (f) The basis of Franchisor's involvement/approval in the selection of the site of any franchisee business premises (where applicable).
  - (g) A summary of the terms and conditions relating to termination, renewal, goodwill, and assignment of the franchise.
  - (h) A summary of the main obligations of the Franchisor (including initial and ongoing training to be provided).

Please ensure your summary provides sufficient information in a clear and concise manner.
- (7) A tabulated list of components making up the franchise purchase eg franchise fee, stock, fixtures/fittings, working capital, etc. with (estimated) individual costs, totalled to reflect the full outlay. A summary of those items which could be leased and (estimated) costs involved.

- (8) Details of the Franchisor's financial requirements for the Franchisee (if applicable), e.g. a specific amount of non-borrowed capital towards the franchise purchase price or a stated ongoing debt to equity ratio in relation to the Franchisee.
- (9) Regarding franchises, Franchisees, and outlets:
- (a) The Franchisor will provide a full list of franchisees where practical, including the number of existing franchisees, the number of outlets, and details of Franchisor owned outlets.
  - (b) If there are 30 or less franchises, then a list of all existing franchisees (including territory or identifier; town or city; business phone number and year commenced business) must be detailed.
  - (c) If there are more than 30 franchises and it is not practical to provide a full list, then in place of the list of all existing franchisees, a summary of the overall system must be detailed and the franchisor must detail the franchisee information specified in (9)(b) above of at least 30 franchisees in the island, region or metropolitan area in which the franchise is to be operated.
  - (d) The number of franchises terminated or not renewed over the past two (2) years or confirmation that there are none.
  - (e) Details of any current unresolved litigation with any existing or former Franchisees or confirmation that there are none.

Information about franchises and franchisees can be provided using a hyperlink or a separate document provided at the same time as the disclosure document.

- (10) If projections are not provided, this should be stated, and Franchisees should be recommended to undertake their own financial projections. If financial projections are provided:
- (a) Where written projections are provided with respect to levels of potential sales, income, gross/net profits, or other financial projections etc. from the franchise or franchises of a similar nature particulars of the basis/assumptions upon which the representations are made shall be provided.
  - (b) Each page of the projections should be qualified with respect to its basis/assumptions, for example:

*These figures represent ACTUAL performance by either the Franchisor or a Franchisee. There is no guarantee that you will achieve these figures and nor is it intended that you should rely on them as a guarantee.*

OR

*These figures indicate the gross profit margins and revenue expenses at stated projected turnover levels which have been experienced by the Franchisor in its own operations at projected turnover levels or (the Franchisees on average in the last profit and loss accounts which have been supplied to the Franchisor). There is no guarantee that you will achieve the same results, nor is it intended that you should rely on them as a guarantee.*

And Franchisors should be aware that the issue of these warnings does not, by itself, provide protection from legal claims.

- (c) A clear statement whether or not depreciation and any salary/wages for the Franchisee and the cost of servicing loans are included.
- (11) A statement as to whether the territory or site to be franchised has been subject to any trading activity, particularly a previous franchise in the same franchise system within the previous 5 years, and if so, the history and details including the circumstance of any cessation of the franchise.
- (12) A statement in it indicating that *"This Disclosure Document should help you make up your mind. While it includes some information about your Franchise Agreement, do not rely on it alone to understand your Franchise Agreement. Read all of your Franchise Agreement carefully. Buying a franchise is a serious undertaking. Take your time to decide. You are also recommended to have the Franchise Agreement explained to you by a lawyer experienced in franchising and you should seek financial and accounting advice on the franchise proposition from an accountant experienced in franchising. If you decline to obtain that independent advice notwithstanding our recommendation, you will need to sign a statement to that effect."* If the Franchisor requires advice to be obtained by the Franchisee from a lawyer and/or accountant, then this should be set out and this statement may be amended accordingly.

- (13) Each Disclosure Document should also be signed and dated at the end by the same persons as are required to execute any Franchise Agreement for the Franchisor each of whom shall also add his or her name legibly underneath their signatures and their office (e.g. "Director" or "Proprietor"). E.g.

*Signed for and on behalf of the Franchisor.*

*Signature:* \_\_\_\_\_

*Print Name* \_\_\_\_\_

*Position: \** \_\_\_\_\_

*Signature:* \_\_\_\_\_

*Print Name* \_\_\_\_\_

*Position: \** \_\_\_\_\_

*Date:* \_\_\_\_\_

**APPENDIX B**

**Franchisor Financial Information.**

**Part 1 - Compulsory Franchisor Solvency Certificate**

**[INSERT NAME OF COMPANY] (the Franchisor)**

**FRANCHISOR SOLVENCY CERTIFICATE**

**To:** Potential franchisees of the Company

The Franchisor hereby certifies that, as at the date of this certificate:

- (a) the Franchisor has reviewed and considered:
  - (i) the most recent financial statements of the Franchisor; and
  - (ii) the accounting records of the Franchisor (including the Franchisor's most recent [**Drafting note: Insert monthly or other applicable period**] management accounts), and the Franchisor confirms that such records are current or for the immediately previous financial year (as applicable);
- (b) the Franchisor has reviewed and considered all other material circumstances that the Franchisor knows affect (or may affect) the value of the Franchisor's assets and liabilities, including its contingent liabilities.
- (c) the Franchisor has reviewed and considered the financial performance of the Franchisor, the Franchisor's future plans and budget, and the Franchisor's forecast of future conditions of the markets in which the Franchisor operates.

Having conducted the above review the Franchisor is of the view and hereby certifies that the Franchisor is satisfied on reasonable grounds that, as at the date of this certificate:

- (a) The Franchisor is able to pay its debts as they become due in the normal course of business;
- (b) The value of the Franchisor's assets exceed the value of its liabilities, including contingent liabilities; and
- (c) The Franchisor has sufficient resources and infrastructure to fulfil its obligations as Franchisor in accordance with the terms of the Franchisor's franchise agreements to both its current franchisees and any additional franchisees that the Franchisor currently proposes to add within the next financial year (being the year ended [**Drafting note: Set out date**])

Dated:

*Signed for and on behalf of the Franchisor.*

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Position: \* \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Position: \* \_\_\_\_\_

**Note:**

- o *The position of all signatories must be shown e.g. "Director" or "Proprietor":*
- o *Where the Franchisor is a company with two or more directors at least two directors need to sign; where there is only one director, that director must sign:*
- o *Where the Franchisor is a partnership or a trust a minimum of two partners or trustees must sign; where there is only one partner or trustee that partner or trustee must sign.*
- o *Where the Franchisor is a sole trader he or she must sign.*

**Part 2 - Optional Franchisor Financial Data**

The Franchisor may supply the Franchisee with the following minimum Key Financial Data extracted from accounts prepared in accordance with generally accepted accounting practice. If optional Franchisor financial data is included, the certificate at the end of this Part 2 must be included (and it must be signed).

Key Financial Data concerning [name] the franchisor, for the last two financial years, extracted from accounts prepared in accordance with generally accepted accounting practice:

	/ /20	/ /20
Current Assets	\$	\$
Non-current tangible assets	\$	\$
Non-current intangible assets	\$	\$
Total Assets	<u>\$</u>	<u>\$</u>
Current liabilities	\$	\$
Non-current liabilities	\$	\$
Shareholders' equity (proprietors/trust funds, if applicable)	\$	\$

(To be placed at the end of the Franchisor Financial Data section of the Disclosure Document)

We certify that there have been no material changes [or as the case may be] in the Franchisor's financial position since the (latest date above).

Dated

Signed for and on behalf of the Franchisor.

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Position: \* \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Position: \* \_\_\_\_\_

Note:

- o The position of all signatories must be shown e.g. "Director" or "Proprietor":
- o Where the Franchisor is a company with two or more directors at least two directors need to sign; where there is only one director, that director must sign:
- o Where the Franchisor is a partnership or a trust a minimum of two partners or trustees must sign; where there is only one partner or trustee that partner or trustee must sign.
- o Where the Franchisor is a sole trader he or she must sign.