



FRANCHISE ASSOCIATION OF NEW ZEALAND INCORPORATED

CODE OF PRACTICE (Revised April 2018)

CONTENTS

1. NAME AND PURPOSE
2. INTERPRETATION
3. STANDARDS OF CONDUCT
4. CONTINUING COMPLIANCE
5. SUPPLY OF CODE OF PRACTICE AND CODE OF ETHICS
6. AGREEMENTS TO REQUIRE OBSERVANCE
7. DOCUMENT COMPLIANCE CHECKS AND THE SCRUTINEER
8. COOLING OFF PERIOD AND PREPAYMENTS
9. DISPUTE RESOLUTION
10. IDENTIFICATION AS A FRANCHISE
11. CERTIFICATION
12. AFFILIATE MEMBERS
13. NON-COMPLIANCE
14. DISCLOSURE DOCUMENTS
15. DISCLOSURE DOCUMENT CONTENTS

APPENDIX A
Disclosure Document Contents

APPENDIX B
Franchisor Financial Data Certificates

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

FRANCHISING CODE OF PRACTICE
("the Code")

1. NAME AND PURPOSE

- 1.1. The Franchising Code of Practice 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 the 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 meaning:

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

"**Code**" means this Code of Practice and includes all its parts.

"**Code of Ethics**" means the Code of Ethics of the Association.

"**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 the Code.

2.2. Other terms and expressions used in the 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

All Members shall act in an ethical, honest and lawful manner and endeavour to pursue best franchise business practice of the time and place. Franchisors and Franchisees shall in their dealings with one another avoid the following conduct where such conduct would cause significant detriment to either party's business:

- (a) Conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party.
- (b) Conduct that is not reasonably necessary for the protection of the legitimate business interests of the Franchisor, Franchisee or franchise system.
- (c) Any other conduct which is in breach of the Code of Ethics or of this Code.

4. CONTINUING COMPLIANCE

All Members of the Association shall comply with the Codes and Rules at all times.

5. SUPPLY OF CODE OF PRACTICE AND CODE OF ETHICS

- 5.1. Before granting a franchise, a Franchisor Member will either supply to each prospective Franchisee a copy of the Code and of the Code of Ethics or ensure that the prospective Franchisee already has copies of the Code and the Code of Ethics or has direct and immediately available electronic access to copies of them.
- 5.2. If current copies of the Codes (or either of them) are not held by a prospective Franchisee then copies 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). Copies may be supplied or made available in hard copy or electronically.
- 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 copies of both Codes or ensure that they are 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 observe and comply with the provisions of the Rules, the Code, and the Code of Ethics.
- 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 observe and comply with the provisions of the Rules, the Code, and the Code of Ethics.
- 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 (and/ each Master Franchisee/Sub Franchisor), to observe and 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.

- 6.4. 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 observe and 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

7. DOCUMENT COMPLIANCE CHECKS AND THE SCRUTINEER

- 7.1. To ensure initial compliance with the Rules, the Code, and the Code of Ethics 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:
- 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;
 - No Franchisor Member shall remove from any approved document any provision which is required by this Code to be contained within it;
 - 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
 - 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 document 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 the Code or the Code of Ethics. 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 the 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.
- 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) must contain a provision requiring each Franchisee to clearly identify, both within its business premises and on appropriate stationery and on its websites, that the Franchisee's business is being operated under franchise from the Franchisor.

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 the Code of Practice.
- (c) A copy of the Code of Ethics.

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; or
- (b) Sign a statement that the franchise agreement has been explained by a solicitor or that the Franchisee declined to take independent legal 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. NON-COMPLIANCE

13.1. For the investigation of possible non-compliance with the Code and so as to seek compliance the Association, through the Board, may pursue the following procedures, in addition to any other entitlements it may have under the Rules or at law.

13.2. In the event that the Board has reason to believe that a Member has failed to comply with the Code, it may notify the Member concerned in writing requesting that the Member respond in writing within fourteen (14) days of the date of the notice showing why the Member should not face sanction by the Association. Both prior to issuing this notice and after receiving the Member's response, if any, the Association may make such informal investigations as to the allegations of non-compliance as (in its unfettered discretion) it thinks appropriate.

13.3. In the event that the Member to whom notice has been given under clause 13.2 fails to respond within the fourteen (14) day response period or the response made does not satisfy the Board, then the Board may impose such sanctions as the Regulations of the Association allow. These may include removal, or suspension of that Member from membership of the Association and the recovery of reasonable costs incurred by the Association.

13.4. A sub-committee of the Board comprising a solicitor who shall be a FANZ Member but not the Honorary Solicitor and such other members as the Board may from time to time appoint will consider all issues relating to the matter, including any response received from the Member and will determine if the Member has failed to show cause why it should not be removed or have other sanctions applied. In the event that the sub-committee determines that the Member has failed to show cause why it should not be removed from membership or otherwise be sanctioned the Member will be notified of that decision in writing and of the right to appeal to the Board. If the decision is suspension or removal from membership, then in either case membership shall be suspended immediately. If the decision is removal, then the Member's name will be removed from the membership of the Association, within twenty one (21) days after written notice has been given to the Member. Any other sanctions shall not come into effect until twenty one (21) days after written notice has been given to the Member.

13.5. In the event that the Member disputes the findings of the sub-committee it may within the twenty one (21) day period lodge a written appeal with the Association. The matter will then be referred to the Board for its deliberation. The members of the sub-committee referred to in clause 13.4 shall not vote in relation to any resolution in relation to the appeal. The Board may refer this appeal to an independent third party for expert opinion and/or recommendation to the Board. In the event that the Board determines that the Member has failed to show cause why it should not be removed from the membership of the Association and or face other sanction then the Board shall notify the Member accordingly and the Member's name will be removed, and/or any other sanctions imposed will come into effect seven (7) days after the date of the notice from the Board.

13.6. A Member which has been removed from membership of the Association for any reason may apply for re-registration after twelve (12) months from the date of removal from the membership of the Association provided it can demonstrate to the satisfaction of the Board that it is prepared and able to comply with the Rules and the Code in all respects.

13.7. Where a Member has been removed from membership of the Association:

- (1) If it is a Franchisor Member, it must promptly notify all of its Franchisees (and Master Franchisees/Sub-Franchisors) in writing that it has been so removed.
- (2) It must make no further representation that it is a member of the Association.

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. Franchisors shall be at liberty to 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 present the financial position most appropriately.
- 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.
- 14.8. Financial disclosure shall be provided by a vendor Franchisee which is a member of the Association to an approved purchaser of that Franchisee's business and such financial disclosure will include the accountant's or auditor's reports as the case may be.

15. DISCLOSURE DOCUMENT CONTENTS

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

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
- (2) Names, job descriptions, qualifications (if any) of the Franchisor's directors/executive officers/principals.
- (3) A detailed resume of the business experience of the Franchisor (and any related entities) and its directors/secretary/executive officers/principals including:
 - (a) Length of experience in the type of business offered in the franchise.
 - (b) Length of experience in operating or offering the franchise.
 - (c) Length of experience in operating or offering other franchises and a description of those franchises.
- (4) A viability statement with key financial information in respect of the Franchisor from the Franchisor's directors/principals in accordance with Appendix B (provided that the requirement to supply the information specified in paragraph of Appendix B does not apply if the statement provided in paragraph (b) of Appendix B is supported by an independent audit provided by an auditor within the preceding 12 months and a copy of the auditor's report is supplied). The information and statements set out in Appendix B shall not be required to be provided by a Franchisor which is a wholly owned subsidiary of a public company whose shares are publicly traded on the New Zealand Stock Exchange where:
 - (a) The Franchisor or its parent company has obtained from the New Zealand Securities Commission an exemption for the provision of separate accounts for subsidiary companies; and
 - (b) The Franchisor provides in place of the information and statements set out in Appendix B the audited annual report of the parent company containing consolidated financial statements including those of the Franchisor.
- (5) As an alternative to the viability statement referred to in clause 4, a current signed and dated solvency certificate in the form set out in item c) of Appendix B.
- (6) 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.
- (7) 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 trade mark, 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 and details of any threatened or pending litigation in relation to these.
 - (c) Details of 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.
 - (f) The basis of Franchisor's involvement/approval for site selection.
 - (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).
- (8) 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.
 - (9) Details of any financial requirements by the Franchisor of the Franchisee, e.g. a specific amount of non-borrowed capital towards the franchise purchase price.
 - (10) Regarding franchises, Franchisees, and outlets:

- (a) The number of existing franchises, the number of outlets, and details of Franchisor owned outlets. A list of existing Franchisees (including address and phone number of each and year commenced business) should be available for reference purposes. Should a full list be impractical then a list of all Franchisees in each city or town or region (as appropriate to the circumstances) should be provided.
- (b) The number of franchises terminated or not renewed over the past two (2) years.
- (c) Details of any current unresolved litigation with any existing or former Franchisees.

(11) Regarding financial projections 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.
- (12) 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.
- (13) 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 required to have the Franchise Agreement explained to you by a solicitor experienced in franchising and you should seek financial advice on the franchise proposition from an accountant experienced in franchising."*
- (14) A Certificate in the following form or to the same effect *"The Directors (or, if the Franchise is not owned by a Company, the "Proprietors") of the Franchisor have reasonable grounds to believe that the Franchisor will be able to pay its debts as and when they fall due and the Franchisor is solvent as at today's date."* Each Director or Proprietor providing the certificate should sign it, date it and add his or her name legibly underneath their signatures and their office (e.g. "Director" or "Proprietor").
- (15) 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").

APPENDIX B

Franchisor Financial Information

(a) Franchisor Financial Data

The Franchisor will supply the Franchisee with at least the following minimum Key Financial Data extracted from accounts prepared in accordance with generally accepted accounting practice, together with a signed Statement as below:

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

Table with 2 columns for financial years and rows for Current Assets, Non-current tangible assets, Non-current intangible assets, Total Assets, Current liabilities, Non-current liabilities, and Shareholders' equity.

(b) Franchisor Financial Information

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

We certify that there have been no significant material changes [or as the case may be] in the Franchisor's financial position since the (latest date above) and the Franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due and the Franchisor is solvent as at today's date.

Dated

Signed for and on behalf of the Franchisor

Signature: _____
Position*: _____
Signature: _____
Position: * _____

- Note: The position of all signatories must be shown e.g. "Director" or "Proprietor":
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;
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.
Where the Franchisor is a sole trader he or she must sign.

(c) Franchisor Certificate

[INSERT NAME OF COMPANY] (the Franchisor)

FRANCHISOR 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:

- (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])

Signed:

Director

Director

Dated:

[Drafting note: this Franchisor certificate must be signed by two directors unless the Franchisor has only one Director, in which case that Director must sign]