

INSTRUCTIONS FOR USE OF SBA FORM 2462 ADDENDUM TO FRANCHISE AGREEMENT

SBA has issued a revised version of the Addendum to Franchise Agreement (SBA Form 2462) which became effective January 1, 2018. SBA’s Standard Operating Procedure (SOP) 50 10 5(J) explains updates made to the franchise review process for the 7(a) and 504 loan programs. By executing this Addendum, the franchisor agrees that any terms in its franchise agreement or any other document the franchisor requires the franchisee to sign that are related to control by the franchisor or its franchisees (resulting in a determination by SBA of affiliation between the Franchisor and its franchisees, as defined in 13 CFR part 121 and SBA’s Standard Operating Procedure 50 10) will not be enforced against the franchisee during the life of the SBA-guaranteed loan.

SBA Form 2462 has **three** locations with drop down menu options at the beginning of the form (see example below). Once a drop down option is chosen (i.e. #1 “Franchise” #2 “Franchisor” and #3 “Franchisee”), the user must hit the “tab” key to automatically populate the appropriate term in all fields.

Example of Drop-Down Options

The image shows a portion of the SBA Form 2462. At the top left is the Small Business Administration logo. The main title is "ADDENDUM TO Franchise AGREEMENT". A dropdown menu is open, showing options: Franchise, License, Distributor, Membership, and Other. A red box labeled "1" points to the dropdown arrow. Below the title, the text reads: "THIS ADDENDUM ("Addendum") is made between _____, 20____, by and located at _____, and _____, ("Franchisor" dropdown), _____, ("Franchisee" dropdown), located at _____." Red boxes labeled "2" and "3" point to the "Franchisor" and "Franchisee" dropdown menus respectively.

Once the drop down options have populated in all three locations, the remaining fillable fields must be completed manually (see example below). These fields will either be blank or contain the language “(Enter type of)” or “(type of agreement).” In each of these fields, enter the type of agreement, e.g., franchise, license, dealer, membership, etc. When completing SBA Form 2462, the text may not be altered except to insert the information required to complete the form.

Example of Fillable Fields to be Completed Manually

FORCED SALE OF ASSETS

- If Franchisor _____ has the option to purchase the business personal assets upon default or termination of the Franchise _____ Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the Franchisee _____ owns the real estate where the franchisee _____ location is operating, Franchisee _____ will not be required to sell the real estate upon default or termination, but Franchisee _____ may be required to lease the real estate for the remainder of the (enter type of) _____ term (excluding additional renewals) for fair market value.

Note to Parties: This Addendum only addresses “affiliation” between the Franchisor _____ and Franchisee _____. Additionally, the applicant Franchisee _____ and the (type of agreement) _____ system must meet all SBA eligibility requirements.





ADDENDUM TO _____¹ AGREEMENT

THIS ADDENDUM (“Addendum”) is made and entered into on _____, 20____, by and between _____ (“_____”), located at _____, and _____ (“_____”), located at _____.

_____ and _____ entered into a _____ Agreement on _____, 20____, (such Agreement, together with any amendments, the “_____ Agreement”). _____ is applying for financing(s) from a lender in which funding is provided with the assistance of the U. S. Small Business Administration (“SBA”). SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

In consideration of the mutual promises below and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties agree that notwithstanding any other terms in the _____ Agreement or any other document _____ requires _____ to sign:

CHANGE OF OWNERSHIP

- If _____ is proposing to transfer a partial interest in _____ and _____ has an option to purchase or a right of first refusal with respect to that partial interest, _____ may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of _____. If the _____’s consent is required for any transfer (full or partial), _____ will not unreasonably withhold such consent. In the event of an approved transfer of the _____ interest or any portion thereof, the transferor will not be liable for the actions of the transferee _____.

FORCED SALE OF ASSETS

- If _____ has the option to purchase the business personal assets upon default or termination of the _____ Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the _____ owns the real estate where the _____ location is operating, _____ will not be required to sell the real estate upon default or termination, but _____ may be required to lease the real estate for the remainder of the _____ term (excluding additional renewals) for fair market value.

¹ While relationships established under license, jobber, dealer and similar agreements are not generally described as “franchise” relationships, if such relationships meet the Federal Trade Commission’s (FTC’s) definition of a franchise (see 16 CFR § 436), they are treated by SBA as franchise relationships for franchise affiliation determinations per 13 CFR § 121.301(f)(5).

COVENANTS

- If the _____ owns the real estate where the _____ location is operating, _____ has not and will not during the term of the _____ Agreement record against the real estate any restrictions on the use of the property, including any restrictive covenants, branding covenants or environmental use restrictions. If any such restrictions are currently recorded against the _____'s real estate, they must be removed in order for the _____ to obtain SBA-assisted financing.

EMPLOYMENT

- _____ will not directly control (hire, fire or schedule) _____'s employees. For temporary personnel franchises, the temporary employees will be employed by the _____ not the _____.

As to the referenced _____ Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the _____.

Except as amended by this Addendum, the _____ Agreement remains in full force and effect according to its terms.

_____ and _____ acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. 1001 and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729 - 3733.

Authorized Representative of _____:

By: _____

Print Name: _____

Title: _____

Authorized Representative of _____:

By: _____

Print Name: _____

Title: _____

Note to Parties: This Addendum only addresses "affiliation" between the _____ and _____. Additionally, the applicant _____ and the _____ system must meet all SBA eligibility requirements.