

What is a Franchise?

A franchise is a method of distributing goods and services by licensing a business idea or concept to another. The "Franchisor" is the legal owner of the franchised business concept and ideas, including names and logos. The "Franchisee" is the individual or entity that purchases the right to use these concepts and ideas from the "Franchisor". A "franchise Agreement" grants to the "Franchisee" a limited license and right to use and operate a recognizable outlet within a defined "Territory", by utilizing a pre-existing business system and proprietary marks. The franchise agreement allows the franchisor to carefully control the obligations and responsibilities of the franchisee.

Benefits

Studies reveal that franchised businesses experience lower default rates than independent businesses and generally have a somewhat easier time securing financing because the Franchisor typically has an established trademark and goodwill, as well as marketplace experience. Although franchises usually require upfront fees and are heavily regulated by Federal and State agencies because of their inherent risks, a Franchisee operating under one trademark can achieve levels of brand awareness, market penetration and purchasing power that business people operating individually could not ordinarily achieve.

Engagement

Franchisor names Franchisee for the purpose of operating a single franchise in the Territory.

Franchise Fee

This is the initial fee charged by the Franchisor to initiate a franchisor/franchisee relationship. Continuing fees are usually required.

Proprietary Marks

Franchisor grants to Franchisee a license, to use the Franchisor's trademarks, trade names and service marks in connection with operating the franchise. Franchisor will probably want to strictly limit Franchisee's right to use its marks. The Franchisee should be prohibited from changing or diluting the composition of the Products as furnished to the Franchisee by Franchisor unless expressly authorized by Franchisor.

Training and Assistance

Franchisor promises to offer guidance to the franchisee pursuant to manuals and/or courses and/or on-going consultation services. The greater the assistance provided, the greater the cost to the franchisor, but this is usually better for the franchisee.

Advertising

Franchisor wants to control the content and nature of any advertising conducted by the Franchisee. The franchisor may provide specific advertising materials and/or require the franchisee to receive franchisor approval and comply with strict advertising guidelines. Franchisor also wants to control the frequency of advertising and will require, based on costs in a given market, specific advertising spending budgets for each franchisee.

Confidential Operating Manuals

As a part of training the franchisee, the franchisor provides a manual detailing how the franchise will be operated. Since this proprietary information is inherently valuable, the franchisee promises to keep it private and confidential. Copying is strictly prohibited and all manuals should be immediately returned if the relationship is terminated.

Confidential Information

In addition to the operating manual, the franchisee will be exposed to various proprietary information related to the operation of the franchise that the franchisor will want to remain confidential. As such, the franchisee expressly warrants that they will not divulge any information related to the franchise or franchisor's business.

Maintenance

In an effort to promote and reinforce the strength of the franchise's proprietary marks, many franchisors require the use of special uniforms, equipment and vehicles. Since the appearance of these items is an important function of the franchise, the franchisee must promise to keep them all in good appearance and working condition.

Accounting and Records

The most important aspect of any business is profitability. This is even more important with a franchise because the entire agreement is usually predicated on achieving sales numbers derived from previous experiences. The only way to ensure the franchise is meeting these thresholds is for the franchisor to authenticate the accounting and records from each franchise. In addition, because of the importance of accounting and records, the franchisor will often implement a special accounting and record-keeping system to ensure consistency and accuracy.

Standards of Quality

As stated, the success of a franchise depends on the strength of reputation and marks associated with the franchise. Therefore, the franchisor has an increased incentive to demand that franchisees comply with strict standards of quality and use. The franchisee should be prohibited from changing or diluting the composition of the marks or products unless authorized by the franchisor. In addition, the franchisor will want to specify in what manner and at what cost they will distribute/supply identifiable products to the franchisee.

Modification of System

The Franchisor must retain the authority to make changes to the system in order to update protocols and ensure that operating standards are keeping up with industry standards. In addition, the franchisor may want to gradually update or even change its image and marks over time.

Royalty & Percentage Fees

The benefit of using a historically successful branded system does not come without a price. Usually this benefit is paid for over the life of the franchise through royalties and continuing services percentage fees. These fees are generally adaptable, but are usually derived from gross sales.

Warranties and Representations of Franchisor

Favors Franchisee. Franchisee wants express representations from Franchisor that they will abide by the terms of the agreement according to certain expectations. Franchisor should be bound by a provision restricting all attempts to circumvent or bypass the activities of Franchisee.

Warranties and Representations of Franchisee

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over how its products are marketed to customers. Franchisor will also want to control how the Franchisee makes use of promotional materials that are supplied by Franchisor from time to time in promoting the Franchise.

Rights of First Refusal

Favors Franchisee. If the Franchisor at any time hereafter decides to sell franchises in additional territories outside of the Territory, then the existing Franchisee should be given the first opportunity to accept the right to operate a franchise in said territories.

Indemnification

Each party indemnifies and holds harmless the other party, its officers, and directors against all claims, obligations or liabilities including court costs and attorneys' fees, arising out of either party's tortious or unauthorized acts, misrepresentations, omissions, failure to perform his/her obligations hereunder, or any acts not expressly authorized in writing, related to or beyond the scope of this Agreement.

Independent Contractor

Favors Franchisor. Important to distinguish this relationship from that of an employee to avoid any tax liability in the future. The onus of responsibility falls onto the franchisee for payment of social security or federal or state income taxes. franchisee acknowledges that it is his/her legal responsibility to pay and withhold all applicable federal and state income taxes (including estimated taxes), social security, Medicare and all applicable federal and state self-employment taxes.

Severability

In the event any part, portion or provision or paragraph of this Agreement is declared void or invalid, the remaining portions of this Agreement are not affected and remain in full force and effect.

Mediation and Arbitration

Mediation and Arbitration should always specify a location in a convenient jurisdiction for the Franchisor (preferably, in the same county where they run their business). Mediation is a non-binding way to settle the dispute quickly and amicably. If unable to settle in mediation, arbitration is first option available. Arbitration is the preferred alternative to litigation because of speed, cost, and ability to maintain low profile (no info is publicly available).

No Modification or Waiver

No modifications except those specifically agreed upon by the parties in writing. Any waiver of a term or provision will not act as a waiver of any other provision.

Entire Agreement

This agreement constitutes the entire agreement of the parties and may be modified only in a writing executed by both parties.

Notices

Notices should always list the current and best addresses where each party may contact the other for whatever reason.

Franchise Rights

The rights to provide Jaikisan.org services in a particular territory granted under the Indian Post Kisan Soochna Kendra-CSC "Franchise Agreement."

Franchisee

A person or corporation that is granted franchise rights to a particular territory or territories.

Kiosk

Small area set off by walls for special use.

Payment "in a timely manner"

"Unless otherwise noted, payments to JAIKISAN.ORG (or payments to JAIKISAN.ORG related suppliers) are due and payable within a period of _ _ _ _ days from the date that the service or product was provided by JAIKISAN.ORG or by its JAIKISAN.ORG related suppliers; if payments that are not made within this _ _ _ day time period, those payments deemed NOT to have been made in a timely manner.

Territory

A particular geographical area (or, in some cases, a particular Place) in which a Franchisee may operate his/her Jaikisan.org Franchise. The territory is defined by the Franchise Agreement.