

## 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 SBA Form 2462. On the left is the SBA logo. The main title is "ADDENDUM TO Franchise AGREEMENT". Below this is a drop-down menu with options: "Franchise", "License", "Distributor", "Membership", and "Other". A red box labeled "1" points to this menu. Below the menu, the text reads: "THIS ADDENDUM ("Addendum") is made between \_\_\_\_\_, 20\_\_\_\_, by and \_\_\_\_\_ ("Franchisor"), located at \_\_\_\_\_, and \_\_\_\_\_ ("Franchisee"), located at \_\_\_\_\_." Red boxes labeled "2" and "3" point to the "Franchisor" and "Franchisee" drop-down 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 \_\_\_\_\_<sup>1</sup> 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.

<sup>1</sup> 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.