

**APPENDIX 10: ANNUAL FRANCHISOR CERTIFICATION (SBA FORM 2464)
AND INSTRUCTIONS
INSTRUCTIONS FOR “ANNUAL FRANCHISOR CERTIFICATION” (SBA FORM 2464)**

The Annual Franchisor¹ Certification (SBA Form 2464) is to be used only if the Franchisor is listed on the SBA Franchise Directory as using no addendum (when not required) or using an SBA Negotiated Addendum. To continue using no addendum or its SBA Negotiated Addendum, the Franchisor must submit the Certification each year, as soon as it updates its franchise agreement² (referred to as the “current agreement”), but in no event later than April 30. If the Certification is not received by SBA by April 30, SBA will change the franchise listing on the SBA Franchise Directory and the Franchisor must use the SBA Addendum to Franchise Agreement (SBA Form 2462) for all SBA-guaranteed loans.

The Certification requires a duly authorized representative of the Franchisor with the authority to sign the Certification to represent that (1) the terms of the Franchisor’s current agreement that relate to control by the Franchisor of 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) have not substantively changed from those appearing in the most recent franchise agreement reviewed by SBA for placement on the SBA Franchise Directory; and (2) if the Franchisor is using an SBA Negotiated Addendum, no changes have been made to its SBA Negotiated Addendum.

SBA has determined that each of the following provisions in a franchise agreement results in affiliation between a franchisor and a franchisee:

TRANSFER OR CHANGE OF OWNERSHIP

- Franchisor has the option or right of first refusal (ROFR) to purchase an interest in the franchise and become a partial owner of the Franchisee.
- Franchisor’s consent to the sale or transfer of any interest in the franchise (full or partial) is based on the Franchisor’s “sole discretion” or “reasonable business judgment” or the agreement is silent on the standard for consent.
- Franchisee remains liable for the actions of the transferee after transfer of the franchise.

SALE OF ASSETS

Franchisor or an appraiser selected by the Franchisor solely controls the valuation of assets when the Franchisor has the option or ROFR to purchase assets, including real estate, upon default or termination of agreement.

- Franchisor has the right to force the Franchisee to sell the Franchisee’s real estate upon default or termination of agreement.

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).

² The term franchise agreement includes all addenda, amendments and other documents the franchisor requires the franchisee to sign.

COVENANTS OR USE RESTRICTIONS

- Franchisor has recorded or has the right to record against the Franchisee's real estate any restrictive covenants, branding covenants or environmental use restrictions (e.g., restricting the use of the property upon sale).

CONTROL OF EMPLOYEES

- Franchisor has the authority to directly control (hire, fire or schedule) Franchisee's employees.
- For temporary personnel franchises, Franchisor (not the Franchisee) employs the temporary employees.

By executing its SBA Negotiated Addendum, the Franchisor agrees that any provision identified above that is in the franchise agreement or any other document the Franchisor requires the Franchisee to sign will not be enforced against the Franchisee during the life of the SBA-guaranteed loan.

Franchisors should determine which one of the following three paragraphs is appropriate to their situation:

If your current franchise agreement, including your SBA Negotiated Addendum (if applicable), has not substantively changed with respect to any of the provisions listed above or does NOT contain any of the provisions listed above, you should complete the Certification and submit it to SBA at franchisorcertification@sba.gov. You may continue to use no addendum or your SBA Negotiated Addendum, as applicable, for all SBA-guaranteed loans once you have submitted your signed Certification to SBA.

If your current franchise agreement, including your SBA Negotiated Addendum (if applicable), has substantively changed with respect to any of the provisions listed above, you cannot complete the Certification. Instead, you must either (1) submit a copy of the franchise agreement, your SBA Negotiated Addendum (if applicable), the Franchise Disclosure Document (FDD) (if applicable) and any other documents the franchisee will sign to SBA at franchise@sba.gov for review or (2) use the SBA Standard Addendum (SBA Form 2462) for all SBA-guaranteed loans.

If you would like to amend your current SBA Negotiated Addendum, you cannot complete the Certification and instead must submit the current franchise agreement, your SBA Negotiated Addendum, the FDD (if applicable) and any other documents the franchisee will sign to SBA at franchise@sba.gov for review.

To ensure the effectiveness of the certification process, SBA intends to inspect, on a periodic basis, a sample of updated franchise agreements where a Certification has been submitted. Therefore, SBA may request from the Franchisor copies of the current franchise agreement and related documents.

For further information contact: franchise@sba.gov.

ANNUAL FRANCHISOR¹ CERTIFICATION (SBA Form 2464)

Full legal name of Franchisor and SBA Franchise Code as listed on SBA Franchise Directory:

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The Small Business Administration (SBA) has reviewed and listed on its SBA Franchise Directory (<https://www.sba.gov/for-lenders>) the franchise identified above (“Franchisor”). The purpose of this Certification is to ensure that the current franchise agreement², including an SBA Negotiated Addendum (if applicable), has not substantively changed as it relates to SBA’s provisions on control of a franchisee by a franchisor (resulting in a determination by SBA of affiliation between a franchisee and a franchisor). In the Instructions to this Certification, SBA has identified the provisions of a franchise agreement that it has determined result in affiliation between a franchisee and a franchisor.

In order to continue using no addendum (when not required), or using an SBA Negotiated Addendum (if applicable), Franchisor certifies that:

1. The terms of Franchisor’s current agreement (insert year) that affect affiliation between the Franchisor and its franchisees (as defined in 13 CFR part 121 and SBA’s Standard Operating Procedure 50 10) have not substantively changed from those appearing in the most recent franchise agreement reviewed by SBA for placement on the SBA Franchise Directory; and
2. No changes have been made to the SBA Negotiated Addendum Franchisor is using.

Franchisor certifies, under penalty of perjury, that all of the statements and information provided in this Certification are true, accurate and complete, and Franchisor understands and acknowledges that SBA will rely upon this Certification for the purpose of determining eligibility of its franchisees for SBA financial assistance. Franchisor acknowledges 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. Franchisor agrees that upon SBA request it will provide copies of the current franchise agreement and related documents.

I am a duly authorized representative of Franchisor and have the authority to sign this Certification on its behalf.	
Signature	Date __/__/__
Print Name (First, Middle, Last)	
Title	
Company Name	

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 purposes of affiliation determinations per 13 CFR §121.301(f)(5).

² The term franchise agreement includes all addenda, amendments and other documents the franchisor requires the franchisee to sign.