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# Hidden Gems or Devils in the Details: The Gift (or Curse) of Oft-Ignored Franchise Agreement Provisions

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## **I. INTRODUCTION**

Franchise relationships all share one very important thing in common: they are governed by the terms of the parties' franchise agreement. The franchise agreement covers all manner of dealings concerning the relationship—from fees and term to the parties' rights and remedies when things may go awry. While many parties focus on the headline terms, such as fees, territory, and duration, there are numerous often overlooked provisions that can have significant, long-term impacts on the success and obligations of both parties. Moreover, these franchise agreements can also be dense legal documents filled with a variety of provisions that can go frequently overlooked in both the drafting (by or on behalf of franchisors) and the review (by or on behalf of franchisees). These provisions are not just boilerplate but have real-world implications that can cause significant concerns for the parties if and when legal disputes arise.

This paper examines these provisions not as abstract drafting considerations, but rather through the lens of how courts have actually interpreted and enforced them in disputes. By examining case law across a range of commonly overlooked provisions, the discussion highlights how courts resolve ambiguities, enforce (or decline to enforce) contractual language, and, in many instances, rely on seemingly minor drafting distinctions to determine outcomes. This approach underscores that careful attention to these provisions at the drafting and review stage can help avoid unintended consequences and reduce the likelihood that these clauses will disrupt the parties' expectations during the franchise relationship.

## **II. OBT-OVERLOOKED FRANCHISE AGREEMENT PROVISIONS**

### **A. *Contractually Shortened Limitations of Actions***

Franchise agreements frequently include provisions reducing the statute of limitations below the period prescribed by state or federal law—typically to only one or two years from the event giving rise to a claim. While enforceable under many states' laws, these clauses are also sometimes voided by statute in a growing number of jurisdictions. Franchisors should take care when including such provisions to ensure it is not in conflict with the law that will ultimately govern a dispute between the parties—whether that be the governing law dictated elsewhere in the contract, or the various states in which the franchisor may seek to establish new franchises. Likewise, franchisees should ensure that they are familiar with any shortened limitations period to ensure that they do not end up “sleeping on their rights” if they believe grounds for a legal claim have occurred. Given that most states provide a limitations period between three to five years to bring a claim for an alleged breach of contract, the reduction in many franchise agreements to around a quarter of the typical time can easily go unnoticed.

When drafting contractual limitations periods in franchise agreements, drafters should be aware of and must account for state laws that prohibit or restrict efforts to shorten statutory filing deadlines. In some jurisdictions, such provisions are not merely disfavored—they are void as a matter of law.

For example, Florida expressly invalidates contractual provisions that shorten the time to bring a claim below the applicable statutory limitations period.<sup>1</sup> Courts applying § 95.03, Fla. Stat., have consistently refused to enforce such clauses in franchise agreements.<sup>2</sup> Similarly, Missouri takes a categorical approach.<sup>3</sup> Under Mo. Rev. Stat. § 431.030, any contractual term that directly or indirectly limits the time to bring suit is deemed “null and void,” leaving no room for negotiated shortening of limitations periods. Several states as well as some federal regulations prohibit parties to an agreement to agree to shorten a statute of limitations by contract in general, or in specific situations.<sup>4</sup> Other states, while not having specific statutes barring such conduct, place limitations on the power of parties to contractually shorten a limitations period, or require that such provisions as “reasonable.”<sup>5</sup>

Given this landscape, drafters should avoid assuming that contractual limitations provisions will be enforceable across jurisdictions. Instead, agreements should be tailored to comply with applicable state law, potentially through savings clauses or jurisdiction-

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<sup>1</sup> See Fla. Stat. § 95.03.

<sup>2</sup> See, e.g., *Beaver v. Inkmart, LLC* No. 12-60028, 2012 WL 3822264, at \*7 (S.D. Fla. Sept. 4, 2012) (invalidating a one-year contractual limitations period) and *Randall v. Lady of America Franchise Corp.*, 532 F. Supp. 2d 1071, 1093 (D. Minn. 2007) (invalidating a two-year limitation)

<sup>3</sup> Mo. Rev. Stat. § 431.030.

<sup>4</sup> See, e.g. Ala. Code 6-2-15 (“Except as may be otherwise provided by the Uniform Commercial Code, any agreement or stipulation, verbal or written, whereby the time for the commencement of any action is limited to a time less than that prescribed by law for the commencement of such action is void.”); Fla. Stat. § 95.03 (“Any provision in a contract fixing the period of time within which an action arising out of the contract may be begun at a time less than that provided by the applicable statute of limitations is void.”), Idaho Code Ann. § 29-110(1) (“Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho.”); Miss. Code. Ann. § 15-1-5 (“The limitations prescribed in this chapter shall not be changed in any way whatsoever by contract”); *Lillibridge v. Nautilus Insurance Co.*, No. CIV. 10-4105, (D.S.D. Mar. 7, 2013) (“The South Dakota Legislature has stated that parties may not shorten the length of time a party has to bring a cause of action by contractual agreement and any provision in a contract that does so is void.”); Missouri (Mo. Rev. Stat. § 431.030). See also 48 C.F.R. 2852.212-4 (prohibiting provisions in federal commercial supplier agreements that purport to shorten the time to bring an action).

<sup>5</sup> Tex. Civ. Prac. & Rem. Code Ann. § 16.070(a) (“a person may not enter a stipulation, contract or agreement that purports to limit the time in which to bring suit on the stipulation, contract or agreement to a period shorter than two years. A stipulation, contract, or agreement that establishes a limitations period that is shorter than two years is void in this state.”); see also *Stellar J. Corp. v. Argonaut Insurance Co.*, No. 3:12-CV-05982, (W.D. Wash. Apr. 16, 2014) (“Under Washington Law, a limitation period cannot be less than one year from the date the cause of action accrued”)( citing R.C.W. 48.18.200 which governs insurance contracts)); *Gilman v. Maine Mutual Fire Insurance Co.*, 830 A.2d 71, 75 (Vt. 2003) (“Policy provisions establishing limitation periods by contract are valid and enforceable against an insured if the limitation period is not less than “twelve months from the occurrence of the loss, death, accident or default.”); *Moreno v. Sanchez*, 106 Cal. App. 4th 1415, 1430 (2003) (noting that contractually shortened limitations periods are enforceable if “reasonable”).

specific carve-outs. At a minimum, drafters should confirm whether the governing law permits modification of limitations periods and ensure that any such provision aligns with statutory requirements, particularly in regulated areas like franchising where statutory claims may override contractual terms.

### **B. Indemnification**

Indemnification provisions are among the most important risk allocation mechanisms in franchise agreements. Their primary function is to protect the franchisor from liabilities arising out of the franchisee's ownership and operation of the franchised business. Because franchisees operate under the franchisor's brand, third-party claimants often name both parties in litigation regardless of the franchisor's involvement. These provisions are intended to shift that operational risk back to the franchisee, but also often provide franchisees with protection against claims arising from their authorized use of the franchisor's intellectual property, shifting that risk to the franchisor.

From a drafting perspective, indemnification provisions are typically broad and favorable to franchisors. In most systems, the franchisor has greater bargaining power, and these provisions are rarely heavily negotiated absent significant franchisee leverage. As a result, they are often treated as boilerplate and carried forward without careful consideration. This can lead to gaps that only become apparent when a claim arises, at which point the parties' expectations about risk allocation may not align with the contractual language.

Courts generally enforce indemnification provisions according to their plain language. In *Aaron's Inc. v. MKW Investments, Inc.*, 786 F. App'x 190 (11th Cir. 2019), the court enforced a broad clause requiring the franchisee to indemnify the franchisor for defense and settlement costs arising from an employment dispute, including allowing the franchisor to replace the franchisee's selected counsel where the agreement permitted such action. Similarly, in *Philadelphia Indemnity Insurance Co. v. Markel Insurance Co.*, 649 F. Supp. 3d 84 (D. Md. 2023), a franchisor recovered a \$2 million settlement from the franchisee based on "arising out of" language in the indemnification provision tied to franchise operations.

A recurring issue arises when indemnification provisions do not expressly address attorneys' fees. Courts generally will not shift fees without clear contractual language. In *Patel v. 7-Eleven, Inc.*, 648 F. Supp. 3d 297 (D. Mass. 2023), a clause covering "all losses arising out of or relating to your Store and its operation" was held not to include attorneys' fees because the provision did not specifically reference them, even though the clause was otherwise broad.

Other courts have reached similar conclusions, emphasizing that indemnification provisions do not shift first-party attorneys' fees in the absence of clear and unequivocal language.<sup>6</sup> By contrast, where the language expressly encompasses costs and

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<sup>6</sup> See, e.g., *Hastings Funeral Home, Inc. v. Hastings*, No. 2021-0983, 2022 WL 16921785 (Del. Ch. Nov. 14, 2022).

expenses, courts are likely to interpret the provision to include attorneys' fees.<sup>7</sup> Some jurisdictions may be more forgiving with respect to specificity<sup>8</sup>, but drafters should not rely on that minority position. To avoid uncertainty, agreements should expressly address whether attorneys' fees are recoverable and whether they apply to disputes between the parties or only to third-party claims.

Another significant issue is how indemnification provisions address the indemnitee's own conduct. Broad language that does not address the indemnitee's contributory fault may expose the indemnitor to paying the indemnitee for its own negligence. For example, in *Cohen v. Steve's Franchise Co.*, 927 F.2d 26 (1st Cir. 1991), a broadly worded indemnification provision without any carve-out for the franchisor's negligence required the franchisee to indemnify the franchisor even when the franchisor's own negligence was the sole cause of an injury to the franchisee's employee. More recently, in *Sunoco (R&M), LLC v. Pennsylvania National Mutual Casualty Insurance Co.*, 322 A.3d 930 (Pa. Super. Ct. 2024), a carve-out for claims "caused solely by the negligence" of the franchisor did not eliminate the franchisee's obligation to indemnify where the franchisor was only partially negligent. By contrast, in *Myrick v. Walker*, No. CV085020932, 2010 WL 3447984 (Conn. Super. Ct. Aug. 10, 2010), an indemnification carve-out for the franchisor's willful misconduct and gross negligence with an allocation of liability based on comparative fault, limited the franchisor's ability to obtain full indemnification. These cases demonstrate that subtle drafting differences can significantly alter the allocation of risk. To avoid any unexpected outcomes, franchisors should ensure that the issue of the indemnitee's contributory fault is explicitly addressed in the indemnification provision.

Disputes also frequently arise over control of the defense and settlement of claims. Even where an agreement includes the formulation "indemnify, defend, and hold harmless," it may not clearly define who controls litigation or settlement decisions. Courts may therefore apply default principles that may not align with the parties' expectations. In *AXIS Insurance Co. v. American Specialty Insurance & Risk Services, Inc.*, 111 F.4th 825 (7th Cir. 2024), for example, the court held that an indemnitor that received notice but declined to participate could not later challenge the indemnitee's settlement because the agreement did not require formal tender to or consent of the indemnitor. This highlights the importance of clearly addressing control of defense, notice, and settlement rights in the agreement.

Similarly, settlement agreement language also requires care, as such agreements may inadvertently extinguish indemnification rights if not drafted carefully. In *Philadelphia Indemnity Insurance Co. v. Markel Insurance Co.*, 649 F. Supp. 3d 84 (D. Md. 2023), the court allowed recovery of a substantial settlement paid by the franchisor where the indemnification right had been preserved under a settlement agreement. By contrast, in *Kenworth of South Louisiana, LLC v. Bristow*, 34 So. 3d 380 (La. Ct. App. 2010), a broadly drafted settlement agreement was held to extinguish potential indemnification rights.

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<sup>7</sup> See *Richardson v. Econo-Travel Motor Hotel Corp.*, 553 F. Supp. 320 (E.D. Va. 1982).

<sup>8</sup> See *Plaia v. Stewart Enterprises, Inc.*, 229 So. 3d 480 (La. Ct. App. 2016).

Indemnification provisions should also address whether obligations survive termination or expiration of the franchise agreement. Many indemnification claims arise after the relationship ends, particularly where third-party claims are based on events occurring during the term. Courts will enforce survival provisions where clearly stated.<sup>9</sup> Absent such language, parties may face uncertainty as to whether indemnification rights remain available.

Finally, agreements often fail to clearly define the procedures required to invoke and preserve indemnification rights. Where provisions do not specify notice requirements, timing, or whether formal tender of defense is required, courts may apply minimal standards that differ from the parties' expectations. As illustrated in *AXIS*, silence on procedural requirements may allow an indemnitee to proceed without formal tender or consent, effectively shifting control of the dispute. To avoid these outcomes, agreements should clearly define notice, tender, participation, and cooperation requirements.

In sum, indemnification provisions should not be treated as boilerplate. Minor variation in language can materially affect the allocation of risk, control of litigation, and ultimate financial exposure of the parties. When carefully drafted, these provisions can provide substantial protection to franchisors and create a more predictable allocation of risk. When overlooked or imprecisely drafted, however, they can produce unintended and sometimes significant negative consequences. Careful attention to scope, fees, fault allocation, control of defense, vicarious liability, survival, and procedural mechanics can significantly reduce uncertainty and improve enforceability.

### **C. Ownership/Control Over Online Content**

As franchise systems increasingly depend on digital presence, ownership and control of social media accounts, websites, and online directories have become active sources of dispute—particularly at termination. Courts are only beginning to develop frameworks for these questions, and existing doctrine derives largely from non-franchise contexts.

When drafting provisions addressing social media accounts and digital assets in franchise agreements, clarity around ownership, control, and post-term rights is critical, as courts increasingly treat these issues as determinative rather than incidental. Courts have begun grappling with the foundational question of who owns a social media account when a business relationship ends, and the drafter should foresee what problems may arise without adequate control over social media and other online content.

First, drafters should expressly define ownership of social media accounts and related digital assets. The framework articulated in *In re Vital Pharmaceutical*, 652 B.R. 392 (2023), demonstrates that courts will analyze (i) documented property interests, (ii) control over access, and (iii) actual use of the account. To avoid uncertainty, agreements should clearly state whether accounts are owned by the franchisor, the franchisee, or held in a hybrid or licensed capacity, and should specify how ownership is evidenced. Without

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<sup>9</sup> See, e.g., *In re Bath Junkie Franchise, Inc.*, 246 S.W.3d 356 (Tex. App. 2008).

this clarity, control over login credentials or day-to-day use may shift the presumption of ownership.

Second, control over access should be addressed explicitly. Agreements should identify who maintains login credentials, who has the authority to grant or revoke access, and whether the franchisor retains administrative control. Because courts evaluating “control” consider exclusive access and the ability to exclude others, franchisors seeking to preserve ownership should ensure they retain ultimate administrative rights or, at minimum, shared control mechanisms.

Third, define permitted use of social media accounts during the term and allocate rights to content. Provisions should address whether accounts are used solely for system promotion, how trademarks may be displayed, and whether franchisees may post independent or non-commercial content.

Fourth, include robust post-termination provisions. Agreements should clearly require cessation of trademark use across all digital platforms—including social media, websites, and online directories—and specify whether accounts must be transferred, deactivated, or rebranded upon termination. Courts have upheld broad contractual grants of digital platform authority, including the right to establish websites “in its sole discretion.” *H.H. Franchising Systems, Inc. v. Aronson*, 2015 WL 401375, at \*5, n.5 (S.D. Ohio Jan. 28, 2015). However, Franchisees may argue that trademark quality control requires only minimum standards, not complete franchisor domination of every aspect of online content—particularly non-commercial speech that could not mislead consumers about product quality.

Fifth, drafters should confirm the franchisor’s authority to establish and control digital platforms in the franchise agreement. Regarding the control over access to the account, continued use of franchisor marks on social media, websites, or directories after termination can constitute breach of the franchise agreement’s post-termination obligations. *BrightStar Franchising, LLC v. Foreside Management Company*, 808 F.Supp.3d 870 (N.D. Ill. 2025). Courts readily grant injunctions to enforce post-termination obligations to cease using brand marks online, with social media evidence being particularly probative of ongoing violations. Franchisees may argue that post-termination restrictions on online content must be expressly designated as surviving termination; otherwise, courts will not read such restrictions into standard non-compete or goodwill-protection clauses. *Rescuecom Corp. v. Hyams*, 477 F.Supp.2d 522 (N.D.N.Y. 2006).

In sum, drafters should treat social media provisions as core operational and intellectual property terms, not ancillary issues. Clear allocation of ownership, access, use, and post-termination obligations—paired with express survival language—will significantly reduce disputes and align the agreement with emerging case law.

#### **D. Survival/Merger and Integration**

An important drafting consideration that is frequently overlooked is what defines

the scope of the parties' agreement, and what happens once that agreement ends—either upon natural expiration or termination. Notably, drafters should not assume that “expiration” and “termination” will be treated as interchangeable. Courts routinely give effect to those distinctions where the agreement does so. Indeed, imprecise drafting can cause post-contractual obligations to lapse unintentionally. *Hamden v. Total Car Franchising Corp.*, 548 Fed. Appx. 842 (4th Cir. 2013); *Frye v. Wild Bird Centers of America, Inc.*, 237 F. Supp. 3d 302 (D. Md. 2017). As demonstrated in *Hamden v. Total Car Franchising Corp.* and *Frye v. Wild Bird Centers of America, Inc.*, restrictive covenants tied only to “termination” may not be enforceable following mere expiration if the contract does not expressly include that event as a trigger. To avoid this result, drafters should clearly specify that post-term obligations apply upon termination, expiration, non-renewal, and any other form of relationship end.

Equally important is the use of clear survival language. The consequences of that precision are illustrated in *Alonso-Llamazares v. Int'l Dermatology Research, Inc.*, 339 So. 3d 385 (Fla. 3d DCA 2022) where the court enforced a non-compete years after the stated term expired, relying on an express survival clause and the agreement's deliberate distinction between termination of the “Term” and termination of the “Agreement.” This illustrates that carefully structured definitions and survival provisions can preserve enforceability well beyond the contract's nominal duration.

Accordingly, drafters should: (i) define “Term,” “termination,” and “expiration” with precision; (ii) expressly identify all triggering events for restrictive covenants; and (iii) include robust survival clauses that unambiguously extend those obligations beyond the end of the agreement. Attention to these drafting details is often dispositive of whether post-term covenants remain enforceable.

### **E. Severability**

Severability provisions are often treated as standard boilerplate, but they can have significant consequences when portions of a franchise agreement are challenged as invalid or unenforceable. At a high level, severability allows a court to carve out an offending provision while preserving the remainder of the agreement. In practice, however, whether a provision is severed, narrowed, or creates a broader unenforceability issue depends on both the agreement language and applicable state law. Courts typically frame this inquiry by asking whether the invalid provision is collateral or instead integral to the central purpose of the agreement.

Recent cases illustrate that courts focus on whether the invalid provision undermines the central purpose of the agreement. In *Siert v. Spiffy Franchising, LLC*, 758 F. Supp. 3d 1142 (N.D. Cal. 2024), franchisees challenged an entire arbitration provision that included out-of-state forum selection and choice-of-law clauses that were deemed invalid. The court severed those provisions and compelled arbitration, reasoning that they could be removed without disrupting the core purpose of the arbitration provision—to arbitrate disputes arising from the franchise relationship. The presence of an express severability clause reinforced the court's conclusion. This outcome demonstrates that,

where a provision is discrete and does not affect the fundamental bargain of the parties, courts are inclined to preserve the agreement and enforce the remaining terms.

The opposite result can occur where invalid provisions are pervasive. In *Castillo v. CleanNet USA, Inc.*, 358 F. Supp. 3d 912 (N.D. Cal. 2018), the court refused to sever multiple unconscionable provisions in a janitorial services franchise arbitration clause, including a 180-day pre-arbitration negotiation requirement that shortened the statute of limitations, a \$7,700 arbitration filing fee (nearly the franchisee's entire life savings), a cost-splitting provision requiring the franchisee to pay approximately \$30,000, and a cost-shifting provision that could impose \$60,000 in costs on the losing party. Applying California's "permeated by unconscionability" standard, the court held the arbitration agreement unenforceable in its entirety, emphasizing that the relevant inquiry is the contract the parties actually agreed to, not a hypothetical revised version that the franchisor is now willing to offer. This case highlights the risk that overreaching provisions can render an entire clause unenforceable and not salvageable through severance. It also reflects a broader principle that severance is inappropriate where the challenged provisions operate as an integrated scheme rather than discrete terms.<sup>10</sup>

Practitioners also need to pay attention to the scope of a severability clause and potential limitations. In *Pugh v. Lady Jane's Haircuts for Men Holding Co., LLC*, 660 F. Supp. 3d 712 (M.D. Tenn. 2023), the court found an arbitration provision unenforceable due to cost-splitting embedded in third-party arbitration rules incorporated by reference, unless those rules could be severed from the agreement itself. The court questioned whether a standard severability clause permitted excision of terms incorporated by reference, as opposed to provisions contained directly in the agreement. The court found that under the facts and applicable state law, severing the commercial arbitration rules was permissible, although the same may not be true in another case and jurisdiction. When drafting severability provisions, counsel should consider including specific reference to any terms incorporated by reference.

Even with a valid severance provision, courts may also prefer narrowing or reforming provisions in an agreement rather than severing them entirely. In *Rooterman, LLC v. Belegu*, 778 F. Supp. 3d 298 (D. Mass. 2025), the court enforced a broad non-compete provision in a franchise agreement by limiting its geographic scope to specific franchise territories, consistent with Massachusetts law allowing courts to "blue pencil" overbroad restrictions. This approach reflects a judicial preference in some jurisdictions to preserve as much of the parties' contractual intent as possible, even if modification is required.

Parties may also draft around severability through the use of anti-severability provisions. In *Securitas Security Services USA, Inc. v. Superior Court*, 234 Cal. App. 4th 1109 (2015), the agreement provided that if a representative action waiver was held invalid, the entire arbitration provision would be unenforceable. The court enforced that provision and declined to sever the offending term, instead invalidating the arbitration agreement as written. This illustrates that severability ultimately turns on contractual

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<sup>10</sup> See, e.g., *Graham Oil Co. v. ARCO Products Co.*, 43 F.3d 1244 (9th Cir. 1994).

intent, and that parties can elect to accept or avoid the risks of partial enforcement through careful drafting.

Taken together, these cases show that severability is not a simple safety valve that ensures enforceability. Courts will examine whether the invalid provision is central to the agreement, whether multiple defects indicate systemic overreach, and whether applicable law permits modification or requires invalidation. As a result, franchisors should draft severability clauses with specificity, ensure that key provisions can stand independently if challenged, and avoid including multiple aggressive terms that could collectively jeopardize enforceability. Careful drafting in this area increases the likelihood that a court will preserve the agreement and enforce its intended risk allocation.

#### **F. Notice**

Notice provisions are often treated as routine boilerplate, but they can have significant consequences when parties seek to exercise contractual rights or enforce obligations. Courts consistently enforce notice provisions according to their precise terms, including requirements as to timing, method of delivery, recipient, and content. As a result, relatively minor deviations from the contractual framework can determine whether a party's rights are exercisable or forfeited.

One recurring issue is the method of notice and whether modern communication practices satisfy contractual requirements that were drafted for more formal delivery mechanisms. Courts routinely reject informal or electronic communications where the agreement specifies particular methods or recipients. In *Road King Development, Inc. v. JTH Tax LLC*, 657 F. Supp. 3d 780 (E.D. Va. 2023), the agreement required that notice be in writing and delivered by specified methods to a designated executive. A franchisee's attempt to provide notice through an internal electronic portal, addressed to no one in particular, was held insufficient to satisfy the contractual requirement. The court also rejected arguments that internal responses constituted waiver, emphasizing that waiver must be established by clear and unequivocal conduct of an authorized representative. Parties should ensure they are following the specified method and recipient of notice so that otherwise substantive communications are not invalidated. When drafting new agreements, parties should also ensure they are incorporating modern communication methods.

Similarly, courts will strictly enforce requirements that notices be in writing and will not treat oral communications as substitutes. In *Mister Softee, Inc. v. Amanollahi*, 2016 WL 5745105 (D.N.J. Sept. 30, 2016), a franchisee's oral complaints over the course of the relationship were held insufficient to satisfy a contractual requirement that notice be provided in writing. The court emphasized that written notice provisions serve an important function in franchise relationships by ensuring clarity and creating a reliable record.

Notice provisions also frequently govern the exercise of contractual rights such as renewal or extension options, where strict compliance is typically required. In *Pizza Inn*,

*Inc. v. Clairday*, 979 F.3d 1064 (5th Cir. 2020), the court refused to excuse a franchisee’s renewal notice that was two months late, even where the franchisee argued that strict enforcement would result in significant economic loss. The court held that option provisions must be exercised in exact accordance with their terms and declined to apply a narrow equitable exception (where delay was slight, the loss to the franchisor was small, and strict enforcement would cause “unconscionable hardship”). The practical lesson is that parties with renewal options must carefully calendar and strictly observe notice deadlines, as courts will not rescue them from the ordinary consequences of late notice based on economic loss alone.

Several states impose notice requirements that overlay, and sometimes exceed, the franchise agreement provisions. Even with a well-drafted notice provision, parties need to determine whether any state statutory notice requirements apply and comply accordingly. In *Dunkin’ Donuts Franchising LLC v. C3WAIN Inc.*, 677 F. App’x 779 (3d Cir. 2017), the court held that a written termination notice that identified specific fraudulent conduct by the franchisee satisfied the New Jersey Franchise Practices Act statutory notice requirements and established sufficient grounds for evaluating good cause. Franchisors especially need to understand that under this and similar statutory regimes, the content of a notice is also important and can shape the issues that may be asserted and defended in subsequent litigation.

Finally, some agreements include provisions requiring a party to provide notice of a breach within a set period of time as a condition to asserting claims. In *Coyote Portable Storage, LLC v. PODS Enterprises, Inc.*, 618 F. App’x 525 (11th Cir. 2015), the court considered a clause requiring written notice of breach within a specified timeframe. Although the court found such provisions generally reasonable, it declined to enforce the limitation absent a showing of prejudice under applicable state law. This case illustrates that notice provisions can function as claim-limiting mechanisms, but their enforceability may vary by jurisdiction.

These cases illustrate that notice provisions are not merely administrative, unimportant details. They define how and when contractual rights may be exercised and preserved, and courts will enforce them strictly. Franchisors should therefore draft notice provisions carefully, specifying acceptable methods of delivery, authorized recipients, timing requirements, and the content necessary to trigger or preserve rights. Particular attention should be given to aligning notice provisions with modern communication methods and practices and to avoiding ambiguity that could invite disputes over compliance with the notice requirements. Careful drafting in this area reduces the risk that substantive rights will be lost due to technical defects in notice.

### **III. COMMON PROVISIONS THAT MAY HAVE UNIQUE TERMS OVERLOOKED**

#### **A. *Renewal***

Renewal provisions determine whether—and on what terms—a franchisee may

continue operating under once the initial term ends. Because renewal clauses are frequently litigated, franchisors should draft them with precision. Provisions governing “termination” and “expiration” are frequent sources of dispute. If the agreement treats the two terms as distinct concepts, then a refusal to renew a franchise agreement is distinct from termination: termination ends the relationship before its anticipated term, whereas expiration occurs at the agreed-upon end of the contract. Where an agreement expressly distinguishes between the two, that distinction can be consequential—particularly in determining whether post-termination restrictive covenants are triggered.

For example, in *Hamden v. Total Car Franchising Corp.*, 548 Fed.Appx. 843 (4th Cir. 2013), the court held that a franchise agreement’s restrictive covenants were unenforceable after expiration because the covenants were triggered only by “termination”—defined in the agreement as an affirmative act ending the relationship early—not by “expiration,” which arose passively at the end of the agreement’s natural term. When the franchisee declined to renew after the agreement expired, the franchisor attempted to enforce the post-termination covenants. Applying Virginia law, the court refused, reasoning that the agreement’s failure to indicate that termination arises passively through expiration indicated that expiration did not trigger the restrictive covenants.

A common problem arises when agreements fail to specify what “current terms” mean. If the agreement does not expressly require the franchisees to sign the franchisor’s then-current franchise agreement, franchisees may argue that the original contract terms continue into the renewal period even if the franchisor has updated royalties, technology, or operational requirements.

The risk of ambiguity is illustrated in *Home Instead, Inc. v. Florance*, 721 F.3d 494 (8th Cir. 2013). In this case, the original franchise agreement required the businesses to maintain a minimum gross sales of \$30,000.00 after year five of operations. The renewal clause allowed renewal if the franchisee complied with “specifications and standards then applicable for new franchised businesses,” while also permitting the franchisee to retain its original royalty rate if the then-current franchise agreement required a higher one. The court found the provisions ambiguous, noting two reasonable readings: either the franchisee-specific \$30,000 requirement carried forward into renewal, or the franchisor could impose higher performance standards consistent with those applied to new franchisees. Therefore, to avoid litigation over ambiguity at the point of renewal, franchisors should unequivocally state that renewal requires execution of the “then-current” franchise agreement in its entirety.

Additionally, franchisors should take care to make explicit that renewal is conditional—not automatic—and does not create a perpetual franchise relationship. The agreement should require affirmative steps, such as timely notice, payment of renewal fees, execution of updated agreements, compliance with system standards, and satisfaction of any default cure obligations. For example, in *AAMCO Transmissions, Inc. v. Romano*, 42 F.Supp.3d 700 (E.D. Penn. 2014), the franchise agreement automatically renewed unless one of the parties gave written notice of its intention not to renew by the

initial term's expiration. Given that the franchise agreement's initial term had lapsed, and no such written notice of non-renewal was provided, the original franchise agreement remained operative during the relevant time that gave rise to the litigation. To avoid this possibility, franchise agreements should include clear term limits and specify that renewal is conditioned upon franchisees meeting requirements, like executing the then-current franchise agreement.

Renewal provisions should also clearly enumerate the franchisor's right to impose updated or different terms at renewal. This includes revised royalties, operational requirements, non-compete obligations, and system standards. For example, in *Robinson v. Charter Practices International, LLC*, the franchisee purchased a veterinary hospital franchise from Charter Practices International, LLC, while at the same time the franchisee owned and operated independent clinics that were not part of the franchise system. The franchise agreement contained a non-competition clause, which the franchisor did not enforce during the term of the agreement. When the franchisee sought to renew, the franchisor notified the franchisee of "its intent to enforce the non-competition provision in the renewal agreement, meaning the then-current form of the franchise agreement." The court upheld the franchisor's right to condition renewal on compliance with a non-compete provision contained in the then-current agreement—even though it had not been enforced during the original term.

Similarly, *Terrier, LLC v. HCA Franchise Corp.*, confirms that courts will enforce provisions allowing franchisors to include materially different terms at renewal where the contract clearly provides for that discretion. In *Terrier, LLC*, the plaintiffs argued that the defendant breached the franchise agreement "by including substantially and materially different terms in the renewal contract." Defendant countered, pointing to the express language of the existing franchise, which stated that the franchisor may "at [its] sole and absolute discretion, include substantially different terms than those contained in [the original Agreement]." The court enforced the franchise agreement by its plain terms and rejected the plaintiffs' attempt to argue that the defendant's "take or leave" approach violated the covenant of good faith and fair dealing.

Moreover, renewal provisions should address ancillary renewal conditions in detail. These often include required remodels or upgrades, execution of general releases, and confirmation of compliance with all system obligations. Renewal provisions function as a reset point in the franchise relationship, and the agreement should make that intent explicit.

In sum, well-drafted renewal provisions should: (i) precisely define key terms like termination and expiration; (ii) require execution of the then-current agreement if a franchisor wishes to reserve the right to modify relationship terms following completion of the initial agreement; (iii) impose clear, objective conditions to renewal; and (iv) expressly preserve the franchisor's ability to update system requirements, if desired. Careful drafting in these areas significantly reduces ambiguity and strengthens enforceability at the critical juncture of renewal.

Franchisors should also ensure transparency during the renewal process to avoid facing claims that renewal agreements were induced by misrepresentation or nondisclosure. In *Hopkinton Friendly Service, Inc. v. Global Companies LLC*, 490 F. Supp. 3d 421 (D. Mass. 2020), a franchisee alleged fraudulent inducement in connection with a renewal agreement because the franchisor concealed redevelopment costs and increased rent prior to renewal. The court rejected the claim on grounds that the franchisee did not rely on any alleged misrepresentation in deciding to enter into the new agreement. However, the outcome may be different when the franchisee does rely on the franchisor's representations at the point of renewal.

## **B. Remodel**

Remodeling provisions are among the most operationally consequential—and litigation-prone—provisions in the franchise agreement. The law is clear that a franchisor's ability to enforce remodeling obligations through termination depends on procedural compliance with notice-and-cure provisions and the contractual clarity of the underlying remodeling requirements. Thus, when drafting remodeling and upgrade provisions in franchise agreements, precision in both substantive standards and procedural requirements is essential to ensure enforceability.

First, clearly define the scope and timing of remodeling obligations. Ambiguities arising from multiple agreements, amendments, or informal communications can undermine enforcement. Courts have made clear that a franchisor's ability to enforce remodeling obligations—including through termination—depends heavily on procedural compliance with the franchise agreement's notice and cure provisions, as well as the clarity of the contractual terms at issue.

In *KFC Corp. v. JRN, Inc.*, 2012 WL 170196 (W.D. Ky. Jan. 19, 2012), the Western District of Kentucky denied KFC's motion for a preliminary injunction seeking to enforce its termination of ten franchise agreements based on the franchisee's failure to meet remodeling obligations. The central obstacle was ambiguity in the governing contract terms. The case arose from a multi-stage remodeling history: under early renewal agreements signed in 1997, JRN was obligated to remodel restaurants by 2008; a 2001 Remodel Agreement replaced those terms with a phased annual schedule; and subsequent letter agreements and email exchanges were disputed as to whether they eliminated JRN's credit for already-meeting certain image standards. The court held that "the uncertainty concerning these key contract terms alone is a sufficient roadblock to granting the preliminary injunction," because "establishing such terms is a prerequisite to finding a strong likelihood KFC will prove a breach of contract and proper termination of the Franchise Agreements." As demonstrated in *KFC Corp. v. JRN, Inc.*, inconsistent or unclear remodeling schedules—particularly where obligations evolve over time—may prevent a court from finding a likelihood of breach or upholding termination. Drafters should consolidate all remodeling obligations into a single, integrated framework and expressly address how later modifications affect prior commitments.

Second, ensure strict alignment with notice and cure provisions. Courts closely

scrutinize whether the franchisor has complied with contractual procedures before enforcing remedies such as termination. The agreement should specify detailed notice requirements, cure periods, and the consequences of noncompliance, leaving little room for dispute.

Third, articulate objective and measurable standards for required upgrades. References to “current system standards” or “image requirements” should be tied to identifiable benchmarks that are consistent across the entire system, such as specifications applicable to new franchised or company-owned locations. This reduces the risk of factual disputes, including whether the franchisee has met all applicable standards.

Fourth, address economic burden limitations with care. Clauses that require compliance only if remodeling does not impose an “undue economic burden” can significantly qualify enforcement rights. An early KFC case, *KFC Corp. v. Hooten*, 1982 WL 51090 (E.D. Mich. Sept. 16, 1982), addressed the “undue economic burden” provision in franchise upgrade requirements. The court rejected the franchisee’s argument that the economic burden of upgrading excused compliance, holding that “the G & K Amendment does not excuse a franchisee from complying with KFC’s upgrading requirements merely because of the economic burden this might put on him.” The court concluded that “Once such national standards are in place, the benefits which follow to the franchise system as well as the potential benefits to the affected franchisee by a requirement to upgrade an existing facility must be considered to outweigh any potential detriment caused by the franchisee having to invest capital to complete upgrading.”

*KFC Corp. v. Hooten* reflects that courts may still enforce system-wide upgrade requirements despite financial impact when tied to legitimate brand standards. Drafters should define—or limit—the meaning of “undue economic burden,” or consider objective financial thresholds or safe harbors to reduce uncertainty.

Finally, clarify enforcement rights and remedies. The agreement should explicitly state whether failure to meet remodeling obligations constitutes a material default, the circumstances under which termination is permitted, and whether alternative remedies (such as phased compliance or deferrals) are available.

By drafting remodeling provisions with clear timelines, objective standards, well-defined economic qualifiers, and strict procedural compliance requirements, franchisors can better preserve their ability to enforce system-wide upgrades while minimizing litigation risk.

### **C. Transfer**

Similar to remodel requirements, transfer provisions are among the most contentious areas of franchise law. Their interpretation turns on four central questions: (1) what transactions constitute a “transfer” triggering the provision; (2) what standard governs the franchisor’s right to withhold consent; (3) whether and how state franchise relationship statutes supplement the contractual framework; and (4) what conditions the

franchisor may lawfully impose. When preparing these provisions, drafters should ensure that the agreement clearly defines the scope of transactions constituting a “transfer.” This should extend beyond direct asset sales to include assignments, indirect transfers, and changes in control of the franchisee entity.

Whether a transfer of equity interests in the franchisee entity—rather than a direct transfer of franchise assets—triggers the franchise agreement's transfer provision depends principally on the agreement's language. In *In re Chicago Investments, LLC*, 470 B.R. 32 (Bankr. D. Mass. 2012), a federal bankruptcy court held that a proposed equity transfer to a third-party acquirer constituted a “transfer” within the meaning of the franchise agreements' right of first refusal provisions and that the franchisor was entitled to exercise its RFR before the debtor could complete the transaction. By contrast, in *UST-Mamiya, Inc. v. True Sports, Inc.*, 441 F.Supp.3d 382 (N.D. Tex. 2020), the Northern District of Texas held that a stock transfer did not trigger the franchisor's right of first refusal because the agreement referred only to a “transfer of an ownership interest,” not to a “change in stockholders”—two distinct legal concepts under Texas law. Consequently, franchisors wishing to capture equity transfers must expressly include change-of-control language.

As illustrated by *In re Chicago Investments, LLC* and *UST-Mamiya, Inc. v. True Sports, Inc.*, failure to expressly include equity transfers or change-of-control language can lead to unintended limitations on the franchisor’s rights.

Drafters should also articulate the standard governing the franchisor’s consent. While some agreements purport to grant “sole and absolute discretion,” courts and state franchise relationship statutes may impose an overlay requiring that consent not be unreasonably withheld or conditioned without good cause. Accordingly, the agreement should identify objective, consistently applied criteria for approval, such as the transferee’s financial capacity, operational experience, creditworthiness, and ability to meet system standards. Embedding these criteria strengthens enforceability and aligns the contract with statutory regimes that evaluate refusals based on legitimate business reasons.

It is equally important to draft transfer conditions with precision. Provisions should specify required notice periods, documentation, training obligations, equity contribution thresholds, and any restrictions on competitive affiliations. The dispute in *Picktown Foods, LLC v. Tim Hortons USA, Inc.*, 2018 WL 11664213, at \*11 (S.D. Fla. Sept. 11, 2018) demonstrates how clearly stated conditions—such as minimum equity investment, limits on purchase price, and prohibitions on conflicting business interests—can provide a solid basis for denying a proposed transfer when those conditions are not met.

In *Picktown Foods*, the dispute over the transfer provision in the Franchise Agreements centered on the franchisor’s refusal to approve the sale of five Tim Hortons Restaurants for \$4.4 million. The franchisee claimed this refusal constituted a breach of contract. The Franchise Agreements granted franchisor “sole and absolute discretion” to approve or disapprove any sale based on the sales price and other factors.

The franchisor did not approve the sale because the proposed sales price exceeded the depreciated value of the "personalty and inventory," which was within its discretion. The Franchise Agreements imposed several conditions on any transfer, including that the sales price must not exceed the depreciated value of the equipment, and the buyer must make a minimum equity payment of 30% of the sales price. However, the proposed buyers intended to invest only 20 to 25% in equity. Additionally, the agreements prohibited buyers and their immediate family members from having conflicting or competing business interests. Yet, one of the proposed buyer's brother owned 10 Dunkin Donuts restaurants, a competitor, which the franchisor argued also violated the agreements. The franchisor's refusal to approve the transaction was based on these contractual terms and its discretion under the agreements. While the franchisee argued that franchisor acted with an improper motive, the court found that the motive was irrelevant given the legitimate grounds for refusal. Ultimately, the court concluded that the franchisor was entitled to judgment in its favor because it acted within its contractual rights.

Moreover, because state franchise relationship statutes may override or supplement contractual language, drafters should account for jurisdiction-specific requirements, including statutory timelines for responding to transfer requests, "deemed approval" provisions, and potential remedies such as specific performance for wrongful refusal. Incorporating compliance mechanisms—such as mandatory response periods and acknowledgment of applicable law—can help harmonize the agreement with these statutory frameworks.

Finally, the provision should address ancillary but critical elements, including rights of first refusal, obligations to cure defaults prior to transfer, treatment of partial transfers and transfers by operation of law, and the consequences of unauthorized transfers. By structuring transfer provisions around clear definitions, objective standards, and enforceable conditions—while anticipating statutory constraints—drafters can reduce disputes and better protect both franchisor control and franchisee transferability.

#### ***D. Choice of Law/Venue/Dispute Resolution***

Choice-of-law and forum-selection clauses are frequently treated as boilerplate, but imprecise terminology in these provisions can have significant jurisdictional consequences—including dictating whether a case may be heard in federal or state court.

For example, in *JHRV Enters., Inc. v. Edible Arrangements*, 2010 WL 11598040, at \*2 (C.D. Cal. June 30, 2010), the agreement's forum-selection specified that "Los Angeles County, California" had sole jurisdiction to hear the case. The court focused on the terms "jurisdiction" and "county" and held that the clause mandated litigation in state court, not federal court. This distinction is critical: "jurisdiction" refers to a court's authority to adjudicate a matter, while a "county" denotes a subdivision of a state—typically corresponding to the territorial reach of state courts. By contrast, federal jurisdiction is defined by judicial districts, which may encompass multiple counties or an entire state.

When drafting choice-of-law and forum-selection provisions, precision in terminology is critical, as seemingly minor wording choices can dictate the forum in which disputes must be litigated. As illustrated by *JHRV Enters., Inc. v. Edible Arrangements*, specifying that a particular “county” has exclusive “jurisdiction” may be interpreted to require litigation in state court only, excluding federal courts altogether.

Drafters should define how broadly the provision applies. Narrow phrases like “arising out of” may be limited to contract claims, while broader language such as “arising out of or relating to” can capture tort, statutory, and quasi-contract claims. Using broader language helps avoid parallel proceedings under different laws.

It is critical to specify whether the chosen law applies without regard to conflict-of-laws principles. Without this qualifier, a court could apply another jurisdiction’s law through *renvoi* analysis, undermining predictability. Additionally, drafters should include explicit consent to personal jurisdiction and waiver of objections (e.g., *forum non conveniens*) to prevent later challenges to the selected forum. Lastly, a wise drafter would be sure to clarify that the choice-of-law provision survives termination of the agreement and applies to post-termination disputes.<sup>11</sup>

Taken together, these elements ensure the provision is not only enforceable but also aligned with the parties’ expectations, particularly in regulated areas like franchising where statutory overlays may limit contractual freedom.

### ***E. Termination***

Termination provisions are among the most consequential clauses in a franchise agreement, but their most important effects often turn on drafting details that receive less attention than the headline concepts of good cause, material breach, or the lengthy and detailed lists of termination triggers. Courts generally enforce termination provisions as written (subject to applicable state laws), and relatively small differences in how those provisions are structured, beyond the identification of termination events themselves, can materially affect when termination is an available remedy and what consequences follow.

One occasionally overlooked issue is the use of cumulative or repeat-default provisions to define “cause.” Rather than tying termination to a single material breach, many agreements permit termination after a specified number of defaults within a defined period. Courts routinely enforce these provisions according to their terms. In *7-Eleven, Inc. v. CJ-Grand, LLC*, 517 F. Supp. 3d 688 (E.D. Mich. 2021), the agreement allowed termination after four material breaches within a two-year period, and the franchisor was able to document ten such breaches. The court enforced the termination right and rejected arguments that the provision was unconscionable or inconsistent with Michigan’s franchise law. The practical implication for both franchisors and franchisees is that

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<sup>11</sup> Another critical consideration is permissive language versus mandatory language. Words like “shall” (mandatory) versus “may” (permissive) determine whether the clause is exclusive. Ambiguity here can open the door to litigation in unintended jurisdictions.

cumulative default provisions can substantially lower the threshold for termination and may allow termination based on repeated conduct that, viewed individually, would not justify termination. Practitioners should therefore evaluate not only what constitutes a “material breach,” but also whether the agreement aggregates defaults in a way that effectively expands termination rights.

One of the most litigated drafting issues concerns whether a termination provision requires advance notice and an opportunity to cure, or whether it permits immediate termination. Franchise agreements often include tiered termination provisions, but the interaction among those provisions is not always carefully considered. In *Steak n Shake Enterprises, Inc. v. Globex Company, LLC*, 110 F. Supp. 3d 1057 (D. Colo. 2015), the court examined a franchise agreement that allowed “immediate termination” for violations committed “knowingly,” while other breaches were subject to a notice and cure process. After significant discussion of the facts and evidence, the court upheld immediate termination for two violations that fell within this provision, holding that such violations were sufficient to trigger the contractual right to terminate without any notice or cure period. Conversely, in *CorpCar Services Houston, Ltd. v. Carey Licensing, Inc.*, 325 A.3d 1235 (D.C. 2024), the agreement permitted termination “for cause” only after providing a 30-day opportunity to cure. The franchisor attempted to characterize the franchisee’s conduct as an incurable breach and terminate immediately. But the court rejected that approach, holding that the contractual language required an opportunity to cure, and did not recognize an implied exception for “incurable or vital” breaches. The court further explained that “cure” does not necessarily require full restoration of the status quo ante or repair of all harm done by the breach, but rather means engaging in subsequent conduct that substantially performs without a material failure. These cases illustrate that immediate termination rights will be enforced where clearly articulated but not necessarily where merely implied, and that ambiguity in defining breaches can create unnecessary litigation risk. From a drafting perspective, franchisors should clearly define which events fall within each category and avoid overlap that could invite disputes over whether a breach is subject to immediate termination or additional procedural requirements.

Termination provisions also interact with waiver principles in ways that may get overlooked. A franchisor’s continued performance (such as supplying products or accepting payments) after identifying a franchisee’s default could be argued to waive the right to terminate based on the default, unless the agreement or related communications preserve that right. In *Little Caesar Enterprises, Inc. v. Little Caesars ASF Corp.*, 842 F. App’x 955 (6th Cir. 2021), the franchisees argued that the franchisor waived its termination rights by continuing to supply ingredients after issuing default notices. The court rejected that argument and awarded approximately \$2.6 million in liquidated damages, relying in part on the franchisor’s express reservation of rights in its termination correspondence, which warned the franchisees not to construe continued dealings as a waiver. The case demonstrates that waiver risk can be managed through careful drafting and consistent use of reservation-of-rights language, particularly in situations where business realities require continued interaction after a default.

Termination provisions also interact with state franchise relationship statutes in

ways that may be underappreciated at the drafting or implementation stages. While agreements typically focus on defining termination triggers, many state franchise relationship laws impose minimum notice and opportunity to cure requirements that cannot be waived and may be more generous than the contractual cure rights. In addition, statutory protections in some jurisdictions may delay or effectively suspend termination even where contractual grounds for termination exist. The New Jersey Franchise Practices Act is especially impactful in this regard, as a franchisor generally may not terminate without providing at least 60 days' notice, and the franchisee may obtain injunctive relief preventing termination pending resolution of a dispute. For example, in *Atlantic City Coin & Slot Service Co. v. IGT*, 14 F. Supp. 2d 644 (D.N.J. 1998), the court allowed the franchisee to continue operating during litigation, effectively preserving the franchise relationship despite the franchisor's attempt to terminate.<sup>12</sup> This dynamic can significantly alter the leverage of the parties, as termination rights that appear clear on paper may be subject to extended judicial review in practice. Practitioners should therefore consider not only whether termination triggers are properly defined, but also how applicable statutory regimes may affect the timing and enforceability of termination in a dispute.

Another often overlooked aspect of termination provisions is that their practical value frequently depends on the clarity and enforceability of the post-termination obligations they trigger. While agreements typically focus on when termination may occur, less attention is sometimes paid to how effectively the agreement compels the franchisee to cease operations and comply with system exit requirements. Courts consistently enforce these provisions where they are clearly drafted and tied to a valid termination. For example, recently in *Pizza Inn, Inc. v. Odetallah*, 631 F. Supp. 3d 1051 (W.D. Okla. 2022), the court held that a franchisee's continued use of the franchisor's marks after termination constituted both trademark infringement and breach of the agreement's post-termination provisions. Similarly, in *BrightStar Franchising, LLC v. Foreside Management Co.*, 808 F. Supp. 3d 870 (N.D. Ill. 2025), the court granted injunctive relief enforcing obligations including transfer of telephone numbers, ceasing use of confidential information, and de-identification. These cases illustrate that termination provisions are only as effective as the post-termination obligations they activate, and that any ambiguity in those post-term provisions can undermine the franchisor's ability to secure meaningful relief following termination.

Similarly, termination provisions often incorporate or trigger liquidated damages provisions. These can be easy to overlook when drafting or analyzing the termination provisions, but they are critical to the economic consequences and leverage in a dispute. Courts routinely enforce liquidated damages provisions where they represent a reasonable estimate of anticipated harm. For example, recently in *Ramada Worldwide Inc. v. Keys Hospitality, LLC*, 761 F. Supp. 3d 771 (D.N.J. 2024), the court upheld a liquidated damages formula based on a fixed amount per guest room, while in *Little Caesar Enterprises, Inc. v. Little Caesars ASF Corp.* the court enforced a formula tied to future royalties (a common structure for liquidated damages calculations). These

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<sup>12</sup> See also *Mall Chevrolet, Inc. v. General Motors LLC*, 99 F.4th 622 (3d Cir. 2024) (addressing "good cause" requirement under the New Jersey Franchise Practices Act).

provisions might be analyzed separately from the termination clause itself, but in practice they operate as an integral part of the termination framework. Practitioners should evaluate termination provisions together with any related damages formulas to ensure that the financial consequences of termination are reasonable and enforceable.

Taken together, these cases confirm that termination provisions are not defined solely by whether “good cause” exists. Instead, they operate through a network of interrelated drafting choices, including how defaults are defined and aggregated, how different categories of termination are structured, how waiver is addressed, how statutory requirements are incorporated or observed, and how post-termination obligations and damages are enforced. Careful attention to these details can significantly affect both the enforceability of termination rights and the practical outcome of disputes.

#### **F. Supplier Exclusivity/Sourcing Requirements**

Supplier exclusivity and sourcing provisions are common in franchise agreements, but their enforceability often turns on drafting details that are easy to overlook at the time of contracting. While these provisions are typically justified as necessary to maintain system standards and uniformity, courts generally enforce them based on how clearly the franchisor’s authority is defined and disclosed in the agreement. As a result, minor differences in wording can determine whether sourcing restrictions are upheld as a straightforward contractual obligation or become the basis for breach or antitrust claims.

One frequently overlooked issue is whether the agreement clearly communicates the extent of the franchisor’s control over sourcing decisions, including the possibility of exclusive suppliers. Courts consistently enforce broad sourcing provisions where that authority is unambiguously disclosed. In *Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430 (3d Cir. 1997), the franchise agreements required franchisees to purchase ingredients and supplies only from approved sources. The court rejected claims that the arrangement violated antitrust laws, emphasizing that the restrictions were disclosed at the outset and were part of the contractual bargain accepted by the franchisees. Similarly, in *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2016 WL 6242945 (N.C. Bus. Ct. Oct. 25, 2016), the agreement required franchisees to purchase “only and exclusively” from approved vendors. The court rejected arguments that the use of the plural term “vendors” guaranteed multiple suppliers, holding that the language simply preserved the franchisor’s discretion to approve any number of vendors, including one. These cases demonstrate that clear, affirmative reservation of exclusivity rights and broad approval authority will generally be enforced.

By contrast, the risk of disputes increases where the agreement’s language suggests flexibility or supplier competition, but the franchisor later imposes exclusivity or materially restricts sourcing. For example, in *Burda v. Wendy’s International, Inc.*, 659 F. Supp. 2d 928 (S.D. Ohio 2009), the franchise agreement permitted purchases from approved suppliers and included a process for proposing alternatives, which the court found could reasonably suggest that supplier competition was contemplated. When the franchisor later designated a single supplier and imposed surcharges, the court held that

the franchisee had plausibly alleged antitrust claims based on lack of notice and post-contract “lock-in” sufficient to survive Wendy’s motion to dismiss. The case illustrates that ambiguity in drafting can create expectations that could limit the franchisor’s ability to impose stricter sourcing requirements later.

Another common source of dispute is the degree of discretion reserved to the franchisor in approving suppliers. Agreements that grant “absolute” or “sole” discretion to approve, deny, or revoke suppliers are more likely to foreclose claims based on implied duties of good faith. In *Yumilicious Franchise, L.L.C. v. Barrie*, 2014 WL 4055475 (N.D. Tex. Aug. 14, 2014), the franchise agreement required franchisees to obtain products from Yumilicious-approved and designated suppliers, explicitly allowed Yumilicious to designate itself as the sole approved supplier, and gave Yumilicious “absolute discretion to approve, deny, or revoke its prior approval of an alternative supplier.” The court enforced this provision and rejected a franchisee’s counterclaim that Yumilicious had breached the agreement by failing to provide adequate approved suppliers, finding the contractual language unambiguous. Similarly, in *DavCo Acquisition Holding, Inc. v. Wendy’s International, Inc.*, 2008 WL 755283 (S.D. Ohio Mar. 19, 2008), the court held that where the agreement expressly stated that the franchisor was not required to approve any particular supplier, there was no basis to impose additional obligations through the implied covenant of good faith. These cases demonstrate that the scope of discretion granted in the agreement is important and may decide the outcome of a dispute.

Taken together, these cases reflect the fact that supplier exclusivity and sourcing provisions are not defined solely by whether exclusivity is permitted. Instead, their enforceability turns on how clearly exclusivity is disclosed, whether the agreement preserves flexibility or discretion, and whether subsequent conduct aligns with the expectations created at the time of contracting. Careful drafting can significantly reduce the risk of disputes and strengthen the enforceability of sourcing requirements.

### **G. Construction/Definitions**

Contract construction principles and defined terms are often treated as background rules rather than substantive provisions of the agreement, but they frequently influence the outcome of franchise disputes. Courts generally apply the plain meaning of contractual language and enforce defined terms as written, even where the result may not align with one party’s expectations. As a result, small, specific drafting choices, such as how a term is defined, where it is used, or whether it is expressly limited, can have outsized consequences.

One common issue is an assumption that ambiguity exists whenever parties advance competing interpretations of a provision. Courts consistently reject that approach and instead apply established rules of construction to identify a single reasonable meaning. In *Board of Regents of the University of Texas System v. IDEXX Laboratories, Inc.*, 691 S.W.3d 438 (Tex. 2024), the agreement included tiered royalty provisions that appeared, at first glance, to overlap. The court held that the provisions were not ambiguous, emphasizing that a contract is ambiguous only if, after applying interpretive

rules, the court remains genuinely uncertain which meaning applies. By reading the provisions together and applying the “surplusage” canon (which disfavors interpretations that render provisions meaningless), the court concluded that the parties’ use of “one other” versus “one or more” reflected intentional distinctions that had to be enforced. While precise drafting is the best safeguard, this case demonstrates that courts will resolve apparent inconsistencies through interpretive tools rather than resorting to ambiguity.

Another overlooked drafting issue arises where defined terms are incorporated across multiple related agreements. Franchise systems often rely on a suite of documents, and drafters may assume that undefined terms will be interpreted flexibly. Courts, however, will enforce cross-referenced definitions strictly. In *Road King Development, Inc. v. JTH Tax LLC*, 657 F. Supp. 3d 780 (E.D. Va. 2023), the area development agreement referenced “Royalties” without defining the term, but incorporated the definition from the franchise agreement, which in turn defined royalties as a percentage of “Gross Receipts” and expressly excluded certain fees. The court held that those exclusions controlled in the area development agreement as well, rejecting an attempt to broaden the scope of royalties. The decision underscores that cross-referencing definitions can be an effective drafting tool, but also that any exclusions embedded in those definitions will be enforced literally across all agreements that use the defined term.

A related issue is the effect of silence in a franchise agreement. Parties sometimes assume that rights or restrictions not expressly addressed will be resolved through implication or default rules. Courts generally take the opposite approach. For example, in *D.H. Pace Company, Inc. v. OGD Equipment Company, LLC*, 78 F.4th 1286 (11th Cir. 2023), a licensing agreement did not address whether a licensee could bring trademark claims. The court held that the agreement’s silence did not restrict the licensee’s rights, declining to read in a limitation that was not expressly stated. Thus, silence on an issue does not necessarily operate as a limitation, and parties seeking to restrict rights should do so explicitly.

Defined terms can also create risk where internal inconsistencies arise within the agreement. In *Calzone King, LLC v. Midwest Dough Guys, LLC*, 2025 WL 1137191 (D. Neb. 2025), a franchise agreement defined its term as eight years in one section but referred to a ten-year term in another. The court enforced the defined term and treated the conflicting reference as a scrivener’s error, emphasizing that the agreement must be read as a whole. This illustrates that courts will generally prioritize express definitions over inconsistent references, but also that such inconsistencies invite litigation and uncertainty that could have been avoided through careful drafting.

Finally, contract construction disputes often turn on seemingly minor grammatical choices. Courts routinely apply interpretive canons (such as the last antecedent rule and the series-qualifier canon) to determine how modifiers apply within a provision. For example, in *Days Inn Worldwide, Inc. v. Shri Ganesai LLC*, 791 F. Supp. 3d 540 (D.N.J. 2025), the court denied summary judgment where the franchisor’s grammatical

interpretation of a force majeure provision was not supported by judicial construction canon. The court also noted that, even if ambiguity remained, the provision might also be construed against the franchisor as drafter. This case highlights that sentence structure and punctuation are not merely stylistic choices but can determine how obligations and limitations are applied.

These cases underscore that contract construction principles and defined terms are not passive features of a franchise agreement. Instead, they actively shape how the agreement will be interpreted and enforced. Practitioners should therefore draft definitions with precision, ensure consistency across related agreements, avoid reliance on implied limitations, and carefully structure operative provisions to minimize the risk of unintended interpretations. Careful attention to these details can significantly reduce ambiguity and improve the predictability of outcomes in franchise disputes.

#### **IV. BEST PRACTICES FOR FRANCHISORS AND FRANCHISEES IN DRAFTING AND REVIEWING THESE TERMS**

The foundation of a successful franchise relationship lies in the terms set forth in the franchise agreement. While franchisors and franchisees are undoubtedly concerned with many marquis provisions—such as fees, term length, and post-term restrictions—it is imperative that they afford equal diligence to the commonly overlooked provisions highlighted in this paper. These provisions can wield considerable influence over the operational and legal dynamics of the franchisor-franchisee relationship, the full weight of which can become especially apparent in the event a legal dispute arises between the parties.

The dense nature of franchise agreements can mask these critical details, making it easy for both franchisors and franchisees to overlook how provisions interact with one another and with applicable law. As the cases in this paper demonstrate, courts generally enforce these provisions as written, and will rely on the specific language used by the parties to resolve disputes, even where that language produces a result that one party did not anticipate at the time the agreement was signed. Careful attention to these overlooked provisions at the outset can help avoid unintended consequences and ensure that outcomes adhere to the parties' expectations as much as possible.

To mitigate the risks associated with these overlooked clauses, franchisors must engage in thorough drafting and review processes, with a focus on clarity, consistency, and the ramifications of each provision. This includes using precise language to clearly define the scope of rights and obligations to avoid misunderstandings at the outset of a long-term legal relationship. Franchisors should also account for the limitations provided by any state relationship laws applicable to the territory in which they are selling a new franchise, and whether such laws may impact the effectiveness of the terms of the franchise agreement as written and intended.

Franchisees during their review of the franchise agreement should spend the time to understand these provisions and not treat them as standard boilerplate. They should

think through how these clauses may be applied in different scenarios, including dispute situations, and ask for clarification where language is ambiguous or appears to reserve broad discretion to the franchisor. In particular, franchisees should pay attention to provisions that affect control over disputes, allocation of liability, and post-termination obligations, as these areas often carry significant practical and financial consequences and can be easily glossed over at the beginning of a franchise relationship.

Ultimately, both parties should undertake a meticulous and informed approach to drafting and reviewing franchise agreements, including these often overlooked provisions, to ensure they are aligned on expectations and the framework for resolving issues that may arise. In this way, both franchisors and franchisees can strengthen the foundation of their franchise relationship and reduce the risk that these provisions become sources of conflict rather than tools for clarity and stability for a long and successful relationship.

## AUTHOR BIOGRAPHIES

### **Josh Piper:**

Josh Piper is a partner at the law firm Miller Nash LLP, based in its Seattle office. As co-chair of the firm's Franchise and Distribution Practice Team, Josh assists domestic and international businesses in navigating the complex legal issues associated with franchising, licensing, and distributing products and services. He works with both emerging and established franchise systems, helping to develop their franchise programs, prepare and refine franchise documents, ensure ongoing regulatory compliance, and manage franchise relationship issues. Josh also supports franchisors and other companies with a broad range of business transactions and commercial matters, including advertising compliance, contests, sweepstakes, loyalty programs, outsourcing arrangements, and mergers and acquisitions.

Josh is a frequent speaker and writer on franchise and distribution legal topics, contributing to various forums. He is active in the ABA Forum on Franchising, where he has presented at several annual forums, been published in the Franchise Law Journal, and co-authored a chapter in the ABA book "Exemptions and Exclusions under Federal and State Franchise Registration and Disclosure Laws." Josh is also active in the IFA where he chairs the Seattle, WA and Portland, OR chapters of the Franchise Business Network, and serves on the Membership and Legal Legislative Committees. Since 2018, he has been recognized in the international edition of *Who's Who Legal: Franchising*, and since 2023 has been recognized by *The Best Lawyers in America* for work in Franchise Law.

### **Michael D. Braunstein:**

Michael D. Braunstein is a partner at Zarco Einhorn Salkowski, P.A. Michael focuses his practice on complex commercial litigation specializing in representing franchisees. Michael's representations range from single-unit owners and area developers to large independent franchisee associations. Michael routinely handles franchise disputes nationwide in both state and federal court as well as domestic and international arbitration tribunals.

Michael frequently serves as an author and speaker on various franchise-related topics and has contributed to the Franchise Law Journal as an author and staff editor.

Among other awards and recognitions, Michael is recognized in the *Best Lawyers in America* in the areas of Commercial Litigation and Corporate Law and maintains the

highest peer review rating for legal ability and ethical standards designated by *Martindale-Hubbell*.