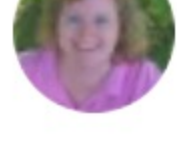


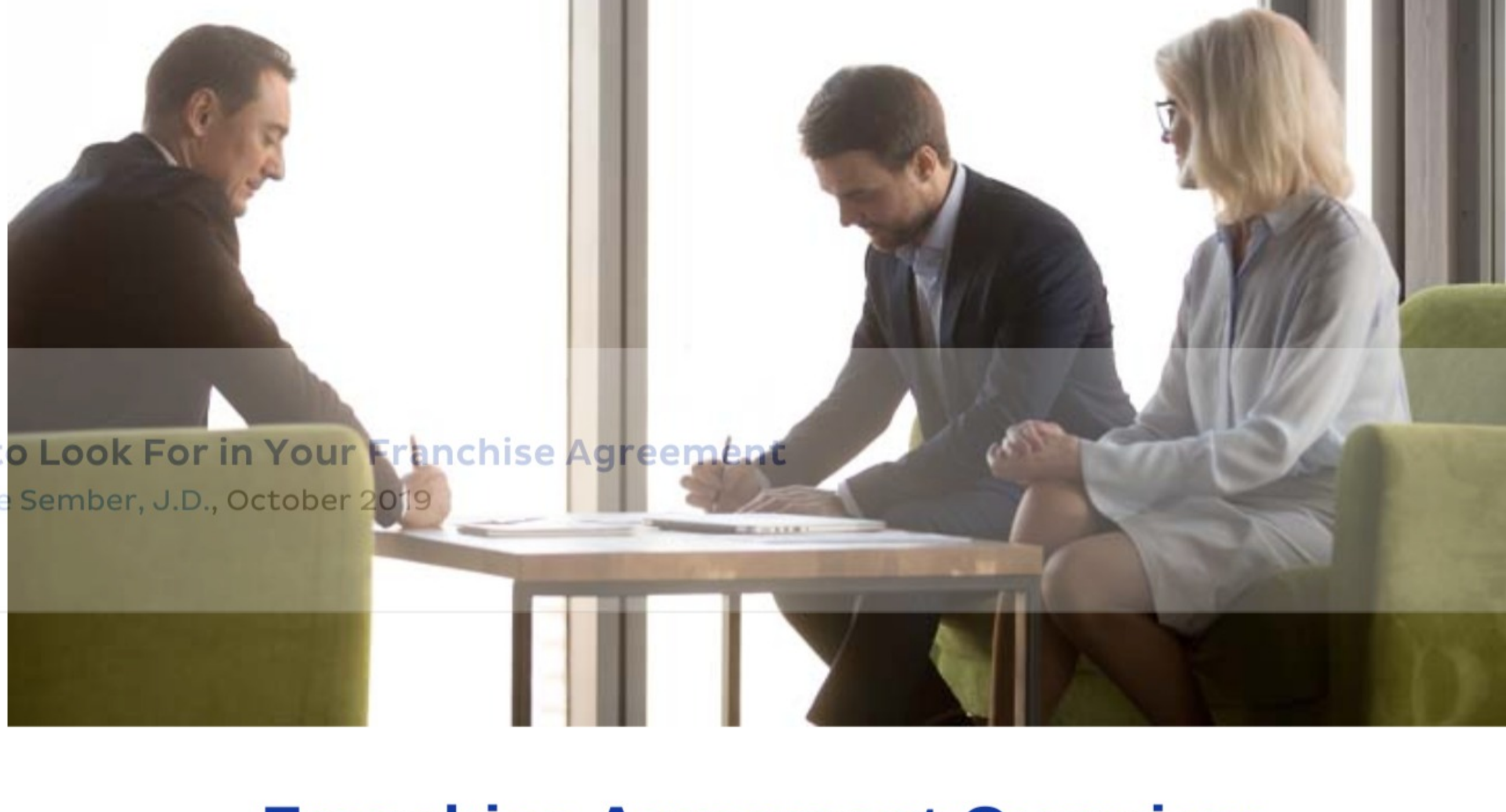


What to Look For in Your Franchise Agreement



by **Brette Sember, J.D.**
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If you're hoping to be one of the quarter million franchise businesses in the U.S., you should make sure you fully understand your franchise agreement, which is perhaps the most important document you will sign. Making sure the agreement is fair, complete, and detailed will help you start your business off on the right foot.



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by Brette Sember, J.D., October 2019

Franchise Agreement Overview

A franchise agreement is a contract in which a franchisor grants you, the franchisee, a license to operate under their trademarks and to conduct business using their name. The agreement allows you to open your business under an established name. For example, if you want to open a Taco Bell, Taco Bell would be the franchisor while you would be the franchisee operating one location of the chain.

In some ways, a franchise agreement is similar to a [licensing agreement](#). Both grant the use of a trademark and allow the licensee or franchisee to sell products under the name. However, a franchise goes a step further by giving the franchisee access to business information, training, and a business system. If you open a Taco Bell, you're opening a franchise. If you contract with Disney to use an image from *Frozen* on a t-shirt you're going to sell, you would use a licensing agreement.

Important Elements of a Franchise Agreement

Most of the time, the franchisor provides you with their franchise agreement, which often doesn't allow for much wiggle room for negotiation. However, you should make sure that the agreement contains the following sections and definitions:

- Grant of rights.** The franchisor grants you the right to use their trademarks, service marks, logos, and systems to run your franchise during the term of the agreement. You are not given ownership of these elements, just the right to use them.
- Relationship.** The franchisee is always described as an [independent contractor and not as an employee](#) of the franchisor.
- Schedule.** The agreement lays out the timeline for you to open your franchise, including the date by which you must be operational.
- Fees.** The agreement should detail the upfront fees you will be responsible for, as well as royalties you will be required to pay and expenses, such as advertising, that will be your responsibility. It's essential that you have a complete understanding of all costs. Some franchisors will agree to installment payments or financing as part of the package. The agreement may also require you to have a certain amount of capital on hand so the franchisor is certain you can meet the expenses.
- Personal guarantee.** Most franchise agreements require you to [personally guarantee](#) the financial agreement, in addition to your corporation being liable.
- Franchise territory.** The contract gives you the right to operate your franchise within a certain area and should be specific about the boundaries of that area. You might have shared or exclusive rights to that territory, so be certain you understand what you're being given.
- Length of the agreement.** The agreement should state how long it is in effect for, usually 10 to 20 years. Most franchise agreements include a clause that allows you to renew the contract.
- Ending the agreement.** Your agreement will state when and how you can terminate your franchise. It will also specify how to sell or transfer the franchise and if the franchisor has first right of refusal for a sale. When the franchise agreement ends, there are usually steps the franchisee is required to do to officially separate themselves from the franchise.
- Insurance.** The franchisor will require you to have all necessary types of insurance to run the franchise.
- Training.** The contract will explain the training and support the franchisor will provide for you and your employees.
- Quality control.** The franchisor generally retains the right to monitor and evaluate your performance and the quality of the goods or services you are providing.
- Supplies.** The agreement will state where you must obtain the supplies to run the franchise.
- Operation rules.** The franchisor will likely have very detailed rules you must follow for [operating your franchise](#), such as the products you can sell, your hours of operation, software you must use, required store setup, and employee wages, among others.
- Noncompete clause.** Your agreement might include a [noncompete section](#) that will limit other businesses in which you can work during or after the term of the franchise contract. These clauses are controversial and may be unenforceable, depending on where you live.
- Breaches.** The contract will describe what constitutes [default, or breach, of the contract](#) and the damages that are applicable in such situations.
- Indemnification.** The contract normally requires the franchisee to indemnify the franchisor for losses it suffers due to actions or negligence of the franchisee.
- Applicable law and arbitration.** The state law that will be applied to the contract will be stated. Most franchise agreements require the use of [arbitration to settle any disputes](#).

[Starting a franchise](#) can be an exciting step in your career. To be certain you understand and can comply with all the elements of the agreement, you may want to [consult a franchise attorney](#).

[Get help managing your Franchise Agreement](#)

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