

With respect to advice for you to provide the Franchisee Association, I have a few things which the franchisees should be aware of.

- 1) The Addendum contains a blank in Section 4.4.3 where a date is to be filled in regarding “for any restaurants acquired after _____”. You have been told that the date to be filled in there is the Effective Date of the Addendum. I do not see why the blank would even exist, since the franchisor could have just said, “The Effective Date of this Addendum” and had no blank. Nevertheless, franchisees signing this document should make sure to fill in the blank with the date that is the Effective Date of the Addendum (the date that the franchisee is signing in 2018 or 2019). Don’t just leave it blank.
- 2) As you and I have discussed, a reasonable franchisee could sign the Addendum thinking that the “Straight Line” payment issue is going to result in a “might be high, might be low” rough estimate that doesn’t ever get “trued up” unless there is a termination or sale. Thom Gilday has now sent to you an email stating that the Straight Line method gets “trued up” at the end of every year, even if there is no termination or transfer. You should forward that email to all franchisees who might be signing this Addendum. I am not sure what pro-franchisee business purpose would be served by using the Straight Line method if it needs to be trued up at the end of every year. Why not just pay the accurate amount monthly according to actual sales?
- 3) Under the newest proposed Addendum, you get certain rights in Section 4.4.3 if your “Minimum Start Date” for your first agency is 10+ years ago. This is really conflating two things: a) when did your first ever Agency open; and b) the concept of “Minimum Start Date” which is actually written into the 2018 contract at Section 1.5 and the Standard Renewal Addendum at Section 1.5 (where there is actually a blank to list what that date is).

You and I have confirmed that (for example) if you have an Agency that had a Minimum Start Date in mid-2008, you get the benefit of 4.4.3 of this Addendum, because the Agency is older than 10 years old (its FIRST Minimum Start Date was 2008). People signing and returning the Addendum should state, “Enclosed is my signed Addendum. My first Agency’s first Minimum Start Date is [fill in that date – in your case I think it was in 2008].” That way we make a record of what we understand the key date to be.