

ITEM 12 TERRITORY

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Your Location

Under the Franchise Agreement, we will grant to you the right to develop and operate one Center at a specific Center Location. If the location is not known at the time you sign a Franchise Agreement, then your Center Location is subject to our approval.

Grant of Territory

Once you identify a site that we approve for your Center Location we will designate an area around your site as your designated territory (the “Designated Territory”). While there is no minimum size for a designated territory, the scope and size of the area comprising your Designated Territory will, generally, be the smaller of a distance of ten miles from the Center Location in all directions travelable by road or, a territory encompassing a population of 250,000 people as of the date of the Franchise Agreement. If your Center is located within a shopping mall or a similar facility with a captive market, your Designated Territory may be limited to the physical boundaries of the mall or facility. Depending on the demographics and geography we may designate your Designated Territory where your Center is located at the center of the Designated Territory or where your Center is located elsewhere within the Designated Territory. We may identify your Designated Territory by zip code, boundary streets, highways, county lines, designated market area, and/or other recognizable demarcations. Your Designated Territory will be determined by us, in our sole discretion, using the mapping service, program and/or software selected by us, in our sole discretion. We reserve the right to grant you a Designated Territory of less than ten miles or 250,000 people based on the demographics of the area in which you wish to open your Center.

Relocation

Your right to relocate your Center is not guaranteed and approval of a request by you to relocate your Center is completely at our discretion. We evaluate relocation requests on a case-by-case basis and consider factors such as operational history, the location of other Centers, our expansion plans, the designated territory, demographics and other factors that, at the time of a relocation request, are relevant to us.

Establishment of Additional Centers

You do not have the right to establish additional Centers unless you sign a Multi-Unit Development Agreement. If we enter into and sign a Multi-Unit Development Agreement you will have the right to develop a mutually-agreed upon number of additional Centers within a specified Development Area. The size of your Development Area will vary significantly from other franchisees and your right to develop additional Centers under a Multi-Unit Development Agreement will be subject to your timely compliance with the agreed upon development schedule, your compliance with the terms of your Multi-Unit Development Agreement, and your compliance with all other agreements with us and our affiliates, including all Franchise Agreements. Our approval of future Center Locations and their respective designated territories will be based on our then current site and territory criteria.

Options and Rights of First Refusal to Acquire Additional Franchises

You are not granted any options, rights of first refusal, or similar rights to acquire additional franchises.

Territory Rights

~~During~~ You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. ~~However,~~ ~~during~~ the term of the Franchise Agreement, provided that you are not in default of your obligations to us

		expense must complete our training programs; we waive our right of first refusal; and we approve of the transfer and transferee in writing and subject to our discretion; and you pay the Transfer Fee (subject to applicable state laws).
n. Franchisor's right of first refusal to acquire franchisee's business	14.F.	We have the right to match any offer to purchase your Center or the Corporate Entity operating your Center.
o. Franchisor's option to purchase franchisee's business	Not applicable	Not applicable.
p. Death or disability of franchisee	14.D.	If you are an individual, within 30 days of the death or permanent disability of Franchisee, your executor and/or legal representative must appoint an Operating Manager approved by us and within 60 days of such appointment the Operating Manager must complete, to our satisfaction, our initial training program. Within 12 months of the date of death or disability, the Franchise Agreement must be transferred to a transferee approved by us and otherwise transferred in accordance with the terms of the Franchise Agreement. If the franchisee is a Corporate Entity, within 30 days of the death or permanent disability of your Managing Owner, if there are other Owners, must appoint a replacement Operating Manager approved by us and within 60 days of such appointment the replacement Operating Manager must complete, to our satisfaction, our initial training program.
q. Non-competition covenants during the term of the franchise	6	No involvement in any competitive business and must comply with confidentiality, non-disclosure and non-solicitation covenants- <u>(subject to state law)</u> .
r. Non-competition covenants after the franchise is terminated or expires	6, 17.E.	No involvement, ownership or interest whatsoever for 24 months in any competing business in: your Designated Territory; a 25-mile radius of your Designated Territory; a 10-mile radius of the Designated Territory of any other Center; and you must comply with confidentiality, non-disclosure and non-solicitation covenants- <u>(subject to state law)</u> .
s. Modification of the agreement	18.L.	Requires writing signed by you and us, except for unilateral changes that we may make to the Manuals or our unilateral reduction of the scope of a restrictive covenant that we may make in our discretion.
t. Integration/merger clauses	18.M.	Only the terms of the Franchise Agreement and schedules to the Franchise Agreement and the respective signed exhibits to the Franchise Agreement are binding, subject to state law. Nothing in any agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.

l. Franchisor's approval of transfer by franchisee	6	You have no right to transfer the Multi-Unit Development Agreement.
m. Conditions for franchisor's approval of transfer	6	You have no right to transfer the Multi-Unit Development Agreement.
n. Franchisor's right of first refusal to acquire franchisee's business	Not applicable	Not applicable.
o. Franchisor's option to purchase franchisee's business	Not applicable	Not applicable.
p. Death or disability of franchisee	Not applicable	Not applicable.
q. Non-competition covenants during the term of the franchise	Not applicable	Not applicable as to Multi-Unit Development Agreement. However, each Center developed pursuant to Multi-Unit Development Agreement will be subject to non-competition covenants set forth in each respective Franchise Agreement- (subject to state law) .
r. Non-competition covenants after the franchise is terminated or expires	Not applicable	Not applicable as to Multi-Unit Development Agreement. However, each Center developed pursuant to Multi-Unit Development Agreement will be subject to non-competition covenants set forth in each respective Franchise Agreement- (subject to state law) .
s. Modification of the agreement	5.4, 7.11	Only by written agreement between you and us or if governing law requires a modification. We can change the form of the Franchise Agreement for future Centers which will not alter your obligations under the Multi-Unit Development Agreement.
t. Integration/merger clauses	7.12	The Multi-Unit Development Agreement is the entire agreement between you and us relating to the development of the Exclusive Territory. Notwithstanding the foregoing, nothing in any agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.
u. Dispute resolution by arbitration or mediation	7.5, 7.6	Except for certain claims for injunctive relief, all disputes must first be submitted to non-binding mediation in Monroe County, New York and, if mediation is unsuccessful, then to binding arbitration in Monroe County, New York. This provision is subject to applicable state law.
v. Choice of forum	7.5, 7.6	All mediation, arbitration and, if applicable, litigation proceedings must be conducted in, or closest to, New

California FDD Amendment
Amendments to the iSmash
Franchise Disclosure Document

The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.

1. Item 17 “Renewal, Termination, Transfer and Dispute Resolution: The Franchise Relationship,” is supplemented by the addition of the following:

A. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

B. The franchisor, any person or franchise broker in Item 2 of the FDD is not subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling such persons from membership in such association or exchange.

C. California Business and Professions Code Sections 20000 through 20043 establish the rights of the franchisee concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

D. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law. (11 U.S.C.A. Sec. 101 *et seq.*)

E. The Franchise Agreement contains a covenant not to compete, which extends beyond the termination of the franchise. ~~This provision may not be enforceable under California law~~A contract that restrains a former franchisee from engaging in a lawful trade or business is to that extent void under California Business and Professions Code Section 16600.

F. The Franchise Agreement requires binding arbitration. The arbitration will occur in New York with the costs being borne by the franchisee and franchisor.

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a Franchise Agreement restricting venue to a forum outside the State of California.

G. The Franchise Agreement requires application of the laws of the State of Delaware. This provision may not be enforceable under California law.

2. Section 31125 of the California Corporations Code requires us to give you a Disclosure Document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.

3. You must sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516).
4. Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).
5. Item 6 “Other Fees.” is supplemented by the addition of the following statement: “The highest interest rate allowed by law in the State of California is 10%.”
6. The following URL address is for the franchisor’s website: www.ismashusa.com.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT www.dfpi.ca.gov.

California’s Franchise Investment Law (Corporations Code sections 31512 and 31512.1) states that any provision of a franchise agreement or related document requiring the franchisee to waive specific provisions of the law is contrary to public policy and is void and unenforceable. The law also prohibits a franchisor from disclaiming or denying (i) representations it, its employees or its agents make to you, (ii) our ability to rely on any representations it makes to you, or (iii) any violation of the law.

For franchisees operating outlets located in California, the California Franchise Investment Law and the California Franchise Relations Act will apply regardless of the choice of law or dispute resolution venue stated elsewhere. Any language in the Franchise Agreement or any amendment thereto or any agreement to the contrary is superseded by this condition.

No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Connecticut FDD Amendment
Amendments to the iSmash
Franchise Disclosure Document

1. Item 3 “Litigation.” is supplemented by the addition of the following:
 - A. Neither the Franchisor nor any person identified in Items 1 or 2 above has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against him alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, business opportunity law, securities law, misappropriation of property or comparable allegations.



Minnesota FDD Amendment
Amendments to the iSmash
Franchise Disclosure Document

As to franchises governed by the Minnesota franchise laws, if any of the terms of the Disclosure Document are inconsistent with the terms below, the terms below control.

- Minn. Stat. §80C.21 and Minn. Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce (1) any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or (2) franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.
- With respect to franchises governed by Minnesota law, the franchisor will comply with Minn. Stat. Sec. 80C.14 Subds. 3, 4, and 5 which require (except in certain specified cases), that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement and that consent to the transfer of the franchise will not be unreasonably withheld.
- The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
- Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes 80C.12, Subd. 1(g).
- Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release.
- NSF checks are governed by Minnesota Statute 604.113, which puts a cap of \$30 on service charges.
- The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J.

Also, a court will determine if a bond is required.

Any Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.

~~The Minnesota Department of Commerce requires that the franchisor defer the collection of all initial fees from Minnesota franchisees until the franchisor has completed all its pre-opening obligations and franchisee is open for business.~~

Franchisor has posted a surety bond with the State of Minnesota equal to the Initial Franchise Fee multiplied by the number of franchises that Franchisor projects to open this fiscal year in Minnesota. This financial assurance requirement was imposed by the State of Minnesota Department of Commerce Securities Section due to the Franchisor's financial condition.



MINNESOTA FRANCHISE AND DEVELOPMENT AGREEMENT AMENDMENT

Amendments to the iSmash Franchise Agreement

If any of the terms of the Franchise Agreement or Development Agreement are inconsistent with the terms below, the terms below control.

- Minn. Stat. §80C.21 and Minn. Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce (1) any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or (2) franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.
- With respect to franchises governed by Minnesota law, the franchisor will comply with Minn. Stat. Sec. 80C.14 Subds. 3, 4, and 5 which require (except in certain specified cases), that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement and that consent to the transfer of the franchise will not be unreasonably withheld.
- The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
- Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes 80C.12, Subd. 1(g).
- Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release.
- NSF checks are governed by Minnesota Statute 604.113, which puts a cap of \$30 on service charges.
- The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J.

Also, a court will determine if a bond is required.

Any Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.

~~The Minnesota Department of Commerce requires that the franchisor defer the collection of all initial fees from Minnesota franchisees until the franchisor has completed all its pre-opening obligations and franchisee is open for business.~~

Franchisor has posted a surety bond with the State of Minnesota equal to the Initial Franchise Fee multiplied by the number of franchises that Franchisor projects to open this fiscal year in Minnesota. This financial assurance requirement was imposed by the State of Minnesota Department of Commerce Securities Section due to the Franchisor's financial condition.

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any



State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the states, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<u>Effective Dates</u>	
California	<u>August 19, 2024</u>
Hawaii	
Illinois	
Indiana	July 3, 2024
Maryland	
Michigan	<u>June 17, 2024</u>
Minnesota	<u>August 9, 2024</u> Pending
New York	
North Dakota	
Rhode Island	
South Dakota	July 12, 2024
Virginia	July 11, 2024
Washington	
Wisconsin	July 3, 2024

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.