

**EXHIBIT B**  
**FRANCHISE AGREEMENT**

**ESTRADA STRATEGIES FRANCHISE, INC.**

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**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the "Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Effective Date"), by and between:

- ◆ Estrada Strategies Franchise,, a California Corporation whose principal place of business is 3400 Inland Empire Blvd., Suite 101, Ontario, CA 91746 ("Franchisor"); and
  
- ◆ \_\_\_\_\_ a [resident of] [corporation organized in] [limited liability company organized in] [*select one*], having offices at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Franchisee").

**BACKGROUND:**

A. Franchisor owns a format and system (the "System") relating to the establishment and operation of a business designed to provide training and behavioral modification services to entrepreneurs, presidents and other top business executives, primarily through continuing educational forums called Estrada Strategies CEO Clubs (ES CEO Club). The ES CEO Clubs operate through a uniform system which has high standards of services, uses quality products, operates under the business format created and developed by Franchisor and Franchisor's affiliated company Estrada Strategies, LLC. (EE LLC) (the "Services"), and which is known as Estrada Strategies CEO Club System (the ES CEO Club); and feature and operate under the Proprietary Marks (as defined below) (each "ES CEO Club franchise").

B. The distinguishing characteristics of the System include, but are not limited to, the name and mark ES CEO Club together with such other, trade names, services marks, trademarks, copyrights, titles, symbols, trade dresses, emblems, slogans insignias, terms, designations, designs, diagrams, worksheets, techniques, rules, ideas, advertising and promotional materials, and other written materials as Franchisor has developed and designated for use in connection with the franchise and as ES CEO CLUB may hereafter acquire, develop or designate for use in connection with the ES CEO CLUB ("Proprietary Assets"); and

C. Franchisee desires to enter into the business of operating a business as an 'ES CEO Club' franchise under the System and using the Proprietary Marks, and wishes to enter into this agreement with Franchisor for that purpose and to receive the training and other assistance provided by Franchisor in connection therewith.

D. Franchisee understands and acknowledges the importance of the high standards of Franchisor for quality, appearance, and service; and the necessity of operating the business franchised by this Agreement in conformity with the standards and specifications of Franchisor.

**NOW, THEREFORE,** the parties agree as follows:

**SECTION 1 - GRANT**

1.1 **Grant and Acceptance.** Franchisor grants to Franchisee the right, and Franchisee by this agreement undertakes the obligation, on the terms and conditions set forth in this Agreement to: (a) establish and operate a ES CEO Club franchise (the "Franchised Business"), (b) use, only in connection therewith, the Proprietary Marks and the System, as they may be changed, improved, or further developed from time to time by Franchisor; and (c) operate the Franchised Business only within the Demographic Market Area (as defined in Section 1.2 below) in accordance with this Agreement.

1.2 **Demographic Market Area.** Franchisee agrees to develop and operate the Franchised Business within the area specified in Exhibit A to this Agreement as the Demographic Market Area "DMA". Franchisee will

not relocate the Franchised Business without Franchisor's prior written consent and/or otherwise in writing by Franchisor, as provided in Section 8.19 below. The DMA will consist of an area noted by zip codes consisting of approximately 6,500 and be no closer than one mile from any other franchise.

1.3 **Limit on Sales.** Franchisee's rights in this Agreement will be limited to offering and selling the Services of the Franchised Business. Franchisee will not, without the prior written approval of Franchisor, engage in any other type of sale of, or offer to sell, or distribution of Services, including, but not limited to: selling, distributing or otherwise providing, any Services not approved by Franchisor.

1.4 **DMA and Reserved Rights.** Except as otherwise provided in this Agreement, during the term of this Agreement, Franchisor will not establish or operate, nor license more than one (1) franchisee per every 6,500 businesses within any DMA, no closer than one (1) mile apart. Franchisor retains the rights, among others, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights:

1.4.1 To own, acquire, establish, and/or operate and license others to establish and operate, ES CEO Club franchises under the System at any location outside the DMA;

1.4.2 To own, acquire, establish and/or operate and license others to establish and operate, similar businesses under the Proprietary Marks, at any location outside the DMA.

1.4.3 To own, acquire, establish and/or operate, and license others to establish and operate, businesses under proprietary marks other than the Proprietary Marks, whether such businesses are similar or different from the Franchised Business, at any location outside the DMA.

## SECTION 2 - TERM AND RENEWAL

2.1 **Initial Term.** This Agreement will be in effect on its acceptance and execution by Franchisor and, except as otherwise provided in this Agreement, this Agreement will expire five (5) years from the Effective Date.

2.2 **Renewal.** Franchisee may apply to operate the Franchised Business for successive additional terms of five (5) years each if the following conditions are met before each renewal:

2.2.1 Franchisee will give Franchisor written notice of Franchisee's election to renew at least six (6) months, but not more than twelve (12) months, before the end of the term of this Agreement;

2.2.2 Franchisee will not have any past due monetary obligations or other outstanding obligations to Franchisor and its affiliate, the approved suppliers of the System, if any, or the landlord of the Premises if you lease a location to operate the franchise;

2.2.3 Franchisee will not be in default of any provision of this Agreement, or successor of this Agreement, or any other agreement between Franchisee and Franchisor or its affiliate, the approved suppliers of the System, or the landlord of the Premises; and Franchisee will have substantially complied with all the terms and conditions of such agreements during the terms of this Agreement;

2.2.4 Franchisee and Franchisor will execute a mutual general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective officers, directors, agents, and employees;

2.2.5 Franchisee will pay the renewal fee of \$2,500 and execute the then-current form of franchise agreement offered by Franchisor, which will supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including requirements to pay additional and/or higher fees;

2.2.6 Franchisee will comply with the then-current qualification and training requirements of Franchisor;

2.2.7 Franchisee will make or provide for, in a manner satisfactory to Franchisor, such renovation and modernization of the Premises, if a location has been leased; as Franchisor may reasonably require, including installation of new equipment and renovation of signs, furnishings, fixtures, and decor to reflect the then-current standards and image of the System;

2.2.8 Franchisee will present evidence satisfactory to Franchisor that Franchisee has the right to remain in possession of the Premises (or such other location) for the duration of the renewal term;

2.2.9 Franchisee, at the time of renewal, satisfies Franchisor's standards of financial responsibility and, if requested by Franchisor, Franchisee demonstrates to Franchisor that Franchisee has sufficient financial resources and means to continue to operate the Franchised Business during the renewal term.

### SECTION 3 - DUTIES OF FRANCHISOR

3.1 **Initial Business Set-up.** Franchisor will make available, at no charge to Franchisee, specifications for the basic business set-up, fixtures, furnishings and equipment required to operate the business, including suggested equipment manufactures though Franchisee is under no obligation to purchase from any specific supplier or manufacturer. Franchisee acknowledges that such standard specifications will not contain the requirements of any federal, state or local law, code or regulation. Franchisee understands and acknowledges that Franchisor has the right to modify the required equipment specifications as Franchisor deems appropriate from time to time.

3.2 **Initial Training.** Franchisor will provide its initial five (5) day training for Franchisee ("Initial Training"), as described in Section 6 of this Agreement, (unless this Agreement is for the third or subsequent ES CEO Club franchise being developed according to a ES CEO Club franchise Area Development Agreement between Franchisor and Franchisee (or an affiliate of Franchisee), in which event the terms set forth in Section 6.1.3 below will apply with respect to the pre-opening training of Franchisee, the Designated Principal and any General Manager (if any).

3.2.1 Franchisee may request additional sales staff to attend the Initial Training with Franchisee and pay the additional training fee of \$100 per additional person, per day.

3.2.2 Franchisee is responsible for all travel, lodging and meal expenses for Franchisee and any employee(s) while attending training.

3.3 **Loan of Manuals.** Franchisor will provide Franchisee, on loan, copies of the Franchisor's confidential operations manuals and other manuals, instructional materials, and written policies and correspondence (collectively, the "Manuals"), as more fully described in Section 10 in this Agreement.

3.4 **Advertising Programs and Materials.** Franchisor will review and will have the right to approve or disapprove all advertising and promotional materials that Franchisee proposes to use, according to Section 13 below. Franchisor will administer the National or Cooperative Ad Funds, if such funds exist or are created, in the manner set forth in Section 13 below.

3.5 **Guidance.** Franchisor may provide periodic advice or offer guidance to Franchisee in the marketing, management, and operation of the Franchised Business as Franchisor determines at the time(s) and in the manner determined by Franchisor.

3.6 **Inspections.** Franchisor will conduct, as it deems advisable, inspections of the operation of the Franchised Business by Franchisee.

3.7 **List of Suppliers.** Franchisor will, in the Manuals (or otherwise in writing as determined by Franchisor), provide Franchisee with a list of suppliers designated and/or approved by Franchisor to supply products, signage, materials and services to franchisees in the System.

3.8 **Delegation.** Franchisee acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any distributor, designee, employee, or agent of Franchisor, as Franchisor may direct.

3.9 **On-Going Training Sessions.** Franchisor will, on a regular basis, provide you with a monthly Web Based Franchise Owners Tele-club designed to familiarize Franchisee and Franchisee's facilitators with the upcoming month's curriculum and sharing of best practices. In addition, Franchisor will provide weekly one on one thirty (30) minute phone coaching to Franchisee during the term of this Franchise Agreement.

3.10 **Site Selection.** Franchisee will be solely responsible for selecting the site of the Franchised Location for the Franchisee's business, regardless of whether the Franchised Location is owned or leased by Franchisee. Accordingly, no provision of this Agreement will be construed or interpreted to impose any obligation upon Franchisor to locate a site for Franchisee, to assist Franchisee in the selection of a suitable site for the Franchised Location, or to provide any assistance to Franchisee in the purchase or lease of the Franchised Location.

3.11 **Site Selection Criteria.** Franchisee will not lease, purchase or otherwise acquire a site for the Franchised Location until such information as Franchisor may require regarding the proposed site has been provided to Franchisor by Franchisee, and Franchisor has issued a notice of no objection for the proposed site. Such information may include, without limitation, information regarding the proposed site as to accessibility, professional quality and appeal, lease terms and other demographic information. The review of the site conducted by Franchisor will not be deemed to be a warranty, representation or guaranty by Franchisor that if Franchisee's business is opened and operated at that site, it will be a financial success.

3.12 **Fulfillment of Obligations.** In fulfilling its obligations according to this Agreement, and in conducting any activities or exercising any rights according to this Agreement, Franchisor (and its affiliates) will have the right: (i) to take into account, as it sees fit, the effect on, and the interests of, other franchised businesses and systems and in which Franchisor has an interest and on Franchisor's (and its affiliates') own activities; (ii) to share market and product research, and other proprietary and non-proprietary business information, with other franchised businesses and systems in which Franchisor (or its affiliates) has an interest, or with Franchisor's affiliates; (iii) to introduce proprietary and non-proprietary items or operational equipment used by the System into other franchised systems in which Franchisor has an interest; and/or (iv) to allocate resources and new developments between and among systems, and/or Franchisor's affiliates, as Franchisor sees fit. Franchisee understands and agrees that all of Franchisor's obligations under this Agreement are subject to this Section 3.12, and that nothing in this Section 3.12 will in any way affect Franchisee's obligations under this Agreement.

## SECTION 4 - FEES

4.1 **Franchise Fee.** The initial franchise fee will be the amount specified in Exhibit A (the "Franchise Fee"), which is paid as specified in Exhibit A in consideration of the franchise granted in this Agreement. The Franchise Fee (as reflected in Exhibit A) will be Thirty-Five Thousand Dollars (\$35,000) if this is the first franchise. If this is the second franchise with an Area Development Agreement, the franchise fee for the second franchise is Thirty Thousand Dollars (\$30,000); and if this is for the third or subsequent franchise within the Area Development Agreement, the franchise fee will be Twenty-Five Thousand Dollars (\$25,000). The Franchise Fee will be paid in full on the execution of this Agreement, or the development credit, if any, that may be applied from the remaining portion (if any) of the Area Development Fees that Franchisee previously paid to Franchisor if Franchisee signed a separate ES CEO Club franchise Area Development Agreement with Franchisor relating to the Franchised Business).

4.2 **Refundability.** Payment of the Franchise Fee will be non-refundable in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor's lost or deferred opportunity to franchise others.

4.3 **Royalty Fees.** During the term of the franchise, Franchisee agrees to pay Franchisor a continuing fee of thirty percent (30%) of the monthly gross revenues of the franchise. This fee must be postmarked and paid on the

6<sup>th</sup>. of each month on gross revenues for the preceding month. Franchisee will charge its ES CEO Club Member(s) ("Member") an initial enrollment fee and then subsequent monthly fees. With respect to the initial enrollment fee, Franchisee will pay to Franchisor for each new enrolled Member, a royalty fee equal to 30% of the enrollment fee or \$1,200, whichever is greater. With respect to each Member's subsequent monthly fee, Franchisee shall pay Franchisor, each month, for each Member, 30% of the monthly fee or \$222.22, whichever is greater. With respect to Teleclub subscriptions of \$600 per year for each Member, Franchisee will pay 30% of the fee. (When monthly reoccurring Royalties exceed \$4,000.00 then the monthly member royalty fee is reduced from \$222.22 to \$175.00 per member above \$4,000.00. When Monthly reoccurring Royalties exceed \$6000.00 then the monthly member royalty fee is reduced from \$222.22/\$175.00 to \$125.00 per member above \$6,000.00)

Franchisee is required to pay Franchisor a "Minimum Royalty Fee" of \$500 per month for months 3-12 after the opening of the Franchise Unit; \$1,000 for months 13-36 after the opening of the Franchise Unit; and \$1,500 thereafter through the term of the Franchise Agreement.

4.4 **Other Fees.** Franchisee agrees to subscribe to the following additional services from the preferred suppliers of Franchisor, and pay the following support and subscription fees directly to preferred suppliers:

4.4.1 Franchisee agrees to pay the monthly Intranet and Software support fee for the use and access of the Intranet and proprietary software that helps to manage contact relationships, on-line documentation storage, calendar, intra company communications, on-line operations manuals and other franchise support. The current monthly fee per month, per user is \$159.00 and is due upon invoice from supplier of the Intranet Services.

4.4.2 Franchisee agrees to subscribe to the preferred supplier, currently Presenternet.com for the hosting of live, interactive webinars and seminars over the Internet, to ES CEO Club members who join the Teleclub. The current monthly subscription fee is \$29.95 per month and is paid directly to Presenternet.com.

4.4.3 Franchisee agrees to maintain an adequate supply of literature, marketing materials to include Estrada Strategies Posters, Direct Mail Postcards and the Gold TUIT coins that must be purchased directly from Franchisor.

4.5 **Advertising Contributions.** Franchisee will make Monthly advertising contributions for marketing and promotion as Franchisor may direct according to Section 13.1 when Franchisor establishes an Advertising fund.

4.6 **When Payments Due.** All payments required by Section 4.4 above are due upon invoice or as agreed to with preferred suppliers.

4.7 **Late Fees.** Any payment or contribution not paid within five (5) days of the due date will be considered late. If any contribution or payment is considered late, Franchisee will pay Franchisor immediately on demand, in addition to the overdue amount: (i) a late payment fee in an amount equal to ten percent (10%) of the overdue amount, and (ii) interest on the overdue amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less. Entitlement to such interest will be in addition to any other remedies Franchisor may have.

4.8 **No Subordination.** Franchisee will not subordinate to any other obligation its obligation to pay Franchisor the Service Fee and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.

## SECTION 5 - SITE AND OPENING OF BUSINESS

5.1 **Location.** Franchisee must receive approval of the site for the operation of the Franchised Business from Franchisor before signing any lease or purchasing any location to operate the Franchised Business. The site of the office must be within the DMA.



5.1.1 Franchisee will comply with all federal, state and local laws, codes and regulations, including the applicable terms of the ADA regarding the construction, design and operation of the Franchised Business. In the event Franchisee receives any complaint, claim, other notice alleging a failure to comply with the ADA, Franchisee will provide Franchisor with a copy of such notice within five days after receipt of the notice.

5.1.2 Franchisee will be responsible for obtaining all zoning classifications and clearances that may be required by state or local laws, ordinances, or regulations or that may be necessary to operate the business.

5.2 **Opening Date.** Unless delayed by the occurrence of events constituting "force majeure" as defined in Section 5.3 below, Franchisee will construct, furnish, and open the Franchised Business in accordance with this Agreement and will open the Franchised Business within three (3) months following the execution of this Agreement

5.3 **Force Majeure.** As used in this Agreement, "force majeure" means an act of God, war, civil disturbance, act of terrorism, government action, fire, flood, accident, hurricane, earthquake, or other calamity, strike or other labor dispute, or any other cause beyond the reasonable control of Franchisee; provided, however, force majeure will not include Franchisee's lack of adequate financing.

## SECTION 6 - TRAINING

6.1 **Initial Training and Attendees.** Before opening the Franchised Business, Franchisee will have satisfied all initial training obligations required by Franchisor, which are as follows:

6.1.1 Franchisee (or, if Franchisee is other than an individual, the Designated Principal (defined in Section 8.3 below)), will attend and successfully complete, to Franchisor's satisfaction, the initial five (5) day training program offered by Franchisor at a location designated by Franchisor (unless this Agreement is for the third or subsequent ES CEO Club franchise being developed according to a ES CEO Club franchises Area Development Agreement between Franchisor and Franchisee (or an affiliate of Franchisee), in which event the requirements set forth in Section 6.1.3 below will apply with respect to the pre-opening training of Franchisee, the Designated Principal and any General Manager). If any required attendee does not satisfactorily complete such training, Franchisor may require that a replacement person attend and successfully complete, to Franchisor's satisfaction, the initial training program.

6.1.2 If this Agreement is for the third or subsequent ES CEO Club franchise being developed according to a ES CEO Club franchise Area Development Agreement between Franchisor and Franchisee (or an affiliate of Franchisee), then Franchisee will be responsible for the conducting the initial training of its Designated Principal, its General Manager (if applicable), and any other managerial personnel, in accordance with the requirements and conditions as Franchisor may from time to time establish for such training. Franchisor's requirements for initial training by Franchisee will be set forth in the Manuals or other written materials and will include, but are not limited to, the requirement that all such training activities be conducted: (a) by the Principals or personnel of Franchisee (or an affiliate of Franchisee), who have completed Franchisor's initial training program to the satisfaction of the Franchisor, and who remain acceptable to Franchisor to provide initial training; and (b) following the procedures and conditions established by Franchisor. If Franchisor determines that the training provided by Franchisee does not satisfy Franchisor's standards and requirements, or that any newly trained individual is not trained to Franchisor's standards, then Franchisor may require that such newly trained individual(s) attend and complete an initial training program provided by Franchisor before the opening of the Franchised Business.

6.1.3 Franchisee must satisfy all pre-opening training requirements under this Section 6.1 by no later than thirty (30) days before the scheduled opening of the Franchised Business.

6.2 **New or Replacement Designated Principal and Managers.** In the event that Franchisee's Designated Principal, or (if required) General Manager cease active employment in the Franchised Business, Franchisee will enroll a qualified replacement who is reasonably acceptable to Franchisor in Franchisor's training program reasonably promptly following cessation of employment of the individual, provided that Franchisee may

train replacement General Managers in accordance with Section 6.3 below. The replacement Designated Principal, and any required managers will complete the initial training program as soon as is practicable and in no event later than any time periods as Franchisor may specify from time to time in the Manuals and otherwise in writing. Franchisor reserves the right to review any Franchisee trained personnel and require that such persons attend and complete, to the satisfaction of Franchisor, the initial training program offered by Franchisor at a location designated by Franchisor.

6.3 **Training by Franchisee of Additional Staff.** Franchisee will have the option of training any General Manager (following the training of the first General Manager by Franchisor) at the Franchised Business or other ES CEO Club franchises operated by Franchisee or its affiliates, provided that the training is conducted: (a) by the Designated Principal or other personnel who has completed Franchisor's initial training program, to the satisfaction of the Franchisor (and who remain acceptable to Franchisor to provide such training); (b) in accordance with any requirements or standards as Franchisor may from time to time establish in writing for such training; and (c) Franchisee is in compliance with all agreements between Franchisee and Franchisor.

6.4 **Refresher Training.** Franchisor may also require that Franchisee or its Designated Principal and General Manager attend such refresher courses, seminars, and other training programs as Franchisor may reasonably require from time to time, provided that such training will not exceed seven (7) days per person each year, and attendance for up to three (3) days per person each year at conventions, if any, conducted for Franchisor's franchisees.

6.5 **Training Costs.** The cost of all training (instruction and required materials) will be borne by Franchisor, except as provided in Section 6.7 below. All other expenses incurred in connection with training, including without limitation the costs of transportation, lodging, meals, wages, and worker's compensation insurance, will be borne by Franchisee.

6.6 **Location of Training.** All training programs will be at such times as may be designated by Franchisor. Training programs will be provided at Franchisor's headquarters in Ontario, CA and/or such other locations as Franchisor may designate.

6.7 **Additional On-site Training.** Franchisor will also provide Franchisee with two (2) days of on-site training at Franchisee's location for Franchisee's initial CEO Club opening; at no additional charge to Franchisee.

## SECTION 7 - TECHNOLOGY

7.1 **Computer Systems and Required Software.** The following terms and conditions will apply with respect to the Computer System and Required Software:

7.1.1 Franchisor will have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among ES CEO Club franchises, including without limitation: (a) memory and hard drive capabilities, printers and other peripheral devices; (e) archival back-up systems; and (f) internet access mode and speed (collectively, the "Computer System").

7.1.2 Franchisor uses the proprietary software (the "Software") that is owned by Franchisor's affiliated company, EE LLC. The Software manages the Intranet from contact relationship management (CRM) to Franchisee's financials; links Franchisee's data base, financials and online franchise specific document management and storage; manages Franchisee's calendar, on-line operations manual, intra company communications, relationship management and Franchisee's links on the Estrada Strategies Website. Franchisee agrees to register each user and pay the monthly agreed user fee (presently \$159 per user, per month, but may change in the future).

7.1.3 Franchisee agrees to use the Intranet and Estrada Proprietary Software programs to record all sales, client data and information related to the operation of the ES CEO Club as outlined in the Manuals.

7.1.4 Franchisee will make, from time to time, such upgrades and other changes to the Computer System and Required Software as Franchisor may request in writing (collectively, “**Computer Upgrades**”).

7.1.5 Franchisee will comply with all specifications issued by Franchisor, in the Manual(s), with respect to the Computer System and the Required Software, and with respect to Computer Upgrades. Franchisee will also afford Franchisor unimpeded access to Franchisee’s Computer System and Required Software as Franchisor may request, in the manner, form, and at the times requested by Franchisor.

7.2 **Data.** Franchisor may, from time-to-time, specify in the Manual or otherwise in writing the information that Franchisee will collect and maintain on the Computer System installed at the Franchised Business, and Franchisee will provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. All data pertaining to the Franchised Business, and all data created or collected by Franchisee in connection with the System, or in connection with Franchisee’s operation of the business (including without limitation data pertaining to or otherwise concerning the Franchised Business’s customers) or otherwise provided by Franchisee (including, without limitation, data uploaded to, or downloaded from Franchisee’s Computer System) is and will be owned exclusively by Franchisor, and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. Copies and/or originals of such data must be provided to Franchisor on Franchisor’s request. Franchisor by this agreement licenses use of such data back to Franchisee for the term of this Agreement, at no additional cost, solely for Franchisee’s use in connection with the business franchised under this Agreement.

7.3 **Privacy.** Franchisee will abide by all applicable laws pertaining to privacy of information collected or maintained regarding customers or other individuals (“**Privacy**”), and will comply with Franchisor’s standards and policies pertaining to Privacy. If there is a conflict between Franchisor’s standards and policies pertaining to Privacy and applicable law, Franchisee will: (a) comply with the requirements of applicable law; (b) immediately give Franchisor written notice of the conflict; and (c) promptly and fully cooperate with Franchisor and Franchisor’s counsel as Franchisor may request to assist Franchisor in its determination regarding the most effective way, if any, to meet Franchisor’s standards and policies pertaining to Privacy within the bounds of applicable law.

7.4 **Telecommunications.** Franchisee will comply with Franchisor’s requirements (as set forth in the Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between Franchisee’s Computer System and Franchisor’s Intranet (as defined below), if any, and/or such other computer systems as Franchisor may reasonably require.

7.5 **Intranet.** Franchisor has established a Intranet providing private and secure communications between Franchisor, Franchisee, franchisees, licensees and other persons and entities as determined by Franchisor, in its sole discretion (an “**Intranet**”). Franchisee will comply with Franchisor’s requirements (as set forth in the Manual or otherwise in writing) with respect to connecting to the Intranet, and utilizing the Intranet in connection with the operation of the Franchised Business. The Intranet may include, without limitation, the Manuals, training other assistance materials, and management reporting solutions (both upstream and downstream, as Franchisor may direct). Franchisee will purchase and maintain such computer software and hardware as may be required to connect to and utilize the Intranet.

7.6 **Websites.** As used in this Agreement, the term “**Website**” ([www.estradastrategies.com](http://www.estradastrategies.com)) means an interactive electronic document, series of symbols, or otherwise, that is contained in a network of computers linked by communications software. The term Website includes, but is not limited to, Internet and World Wide Web home pages. In connection with any Website, Franchisee agrees to the following:

7.6.1 Franchisor has established and maintains a Website, which may, without limitation, promote the Proprietary Marks, any or all of the Services, ES CEO Club franchises, the franchising of ES CEO Club franchises, and/or the System. Franchisor will have the sole right to control all aspects of the Website, including without limitation its design, content, functionality, links to the websites of third parties, legal notices, and policies and terms of usage; Franchisor will also have the right to discontinue operation of the website.

7.6.2 Franchisor will have the right, but not the obligation, to designate one or more web page(s) to describe Franchisee and/or the Franchised Business, with such web page(s) to be located within Franchisor's Website. Franchisee will comply with Franchisor's policies with respect to the creation, maintenance and content of any such web pages; and Franchisor's will have the right to refuse to post and/or discontinue posting any content and/or the operation of any webpage.

7.6.3 Franchisee will not establish a separate Website.

7.6.4 Franchisor will have the right to modify the terms of this Section 7 relating to Websites as Franchisor will solely determine is necessary or appropriate.

7.7 **Online Use of Marks.** Franchisee will not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Franchisee in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without Franchisor's prior written consent as to Franchisee's plan for transmitting such advertisements.

7.8 **Changes to Technology.** Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and Franchisee agrees that it will abide by those reasonable new standards established by Franchisor as if this Section 7 were periodically revised by Franchisor for that purpose.

## SECTION 8 - OTHER DUTIES OF FRANCHISEE

8.1 **Details of Operation.** Franchisee understands and acknowledges that every detail of the System and this Agreement is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating, quality and service standards, to increase the demand for the Services sold by all operators, to protect ES CEO Club franchisees operating under the System, and to protect the reputation and goodwill of Franchisor.

8.2 **Comply with the Agreement, including the Manuals.** Franchisee will operate the Franchised Business in strict conformity with this Agreement and such standards and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing, and will refrain from deviating from such standards, specifications, and procedures without the prior written consent of Franchisor.

8.3 **Management of Business & Designated Principal.** If Franchisee is other than an individual, before beginning training, Franchisee will comply with the following:

8.3.1 Franchisee will designate, subject to Franchisor's reasonable approval, one Principal who is both an individual person and owns at least a ten percent (10%) beneficial interest in Franchisee, and who will be responsible for general oversight and management of the operations of the Franchised Business on behalf of Franchisee (the "**Designated Principal**"). In the event the person designated as the Designated Principal dies, becomes incapacitated, transfers his/her interest in Franchisee, or otherwise ceases to supervise the operations of the Franchised Business, Franchisee will promptly designate a new Designated Principal, subject to Franchisor's reasonable approval.

8.3.2 Franchisee will inform Franchisor in writing whether Franchisee (or, if Franchisee is other than an individual, the Designated Principal) will assume full-time responsibility for the daily supervision and operation of the Franchised Business. If not, Franchisee will employ a full-time unit manager (the "**General Manager**") whose qualifications will be reasonably acceptable to Franchisor (including, but not limited to, the requirement that such individual possess sufficient experience in the management of a business) to assume full-time responsibility for the daily supervision and operation of the Franchised Business.

8.3.3 Franchisee acknowledges and agrees that Franchisor will have the right to rely on either or both the Designated Principal or General Manager to have been given by Franchisee the responsibility and decision-making authority regarding the Franchised Business's operation and Franchisee's business.

8.4 **Use of Premises.** Franchisee will use the Premises solely for the operation of the Franchised Business; will keep the Franchised Business open and in normal operation for such minimum hours and days as Franchisor may specify; will refrain from using or permitting the use of the Premises for any other purpose or activity at any time without first obtaining the written consent of Franchisor.

8.6 **Conformity to Standards.** To insure that the highest degree of quality and service is maintained, Franchisee will operate the Franchised Business in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Without limitation, Franchisee agrees as follows:

8.6.1 Franchisee will purchase and install before the opening of the Franchised Business, and thereafter maintain, all fixtures, furnishings, equipment, and signs, as Franchisor may prescribe in the Manuals or otherwise in writing. Franchisee will refrain from deviating from these guidelines by the use of any unapproved item without the prior written consent of Franchisor.

8.6.2 Franchisee will offer and sell only Services that Franchisor specifies from time to time, unless otherwise approved in writing by Franchisor; and Franchisee will offer and sell all Services as Franchisor may specify from time to time as required offerings at the Franchised Business. Franchisee will offer and sell the Services utilizing the standards and techniques, as specified by Franchisor. Franchisee is prohibited from offering or selling any products or services at or from the Franchised Business that have not previously been authorized by Franchisor, and will discontinue selling and offering for sale any Services which Franchisor will have the right to disapprove, in writing, at any time. If Franchisee wishes to offer or sell any products or services that have not previously been authorized by Franchisor, Franchisee must first make a written request to Franchisor, requesting authorization to offer or sell such products or services in accordance with Section 8.7 below. Franchisor may deny such approval for any reason.

8.6.3 Franchisee will participate in all customer surveys and satisfaction audits. Additionally, Franchisee will participate in any complaint resolution and other programs as Franchisor may reasonably establish for the System, which programs may include, without limitation, providing discounts or refunds to customers.

8.6.4 Franchisee agrees to provide coaching to CEO Club members and Teleclub members (client's) (more fully described in the Manuals) on a monthly basis; that are calendared twelve (12) months out and not to be cancelled; and will notify clients a minimum of one (1) week in advance of all future appointments and classes scheduled.

8.7 **Purchases and Approved Suppliers.** Franchisee will purchase the required products and services of graphics, printing, mailing and website from Franchisor or Franchisor Approved Suppliers only. Currently, the following products used in the operation of the franchise must be purchased through Franchisor's web site from the approved suppliers: Logo specific Letterhead, Envelopes, Business Cards, Direct Mail Postcards, Posters and the Gold (round) TUIT coins. Franchisee may purchase all other equipment, fixtures, furnishings, signs, décor, supplies, services, and products required for the establishment and operation of the Franchised Business from suppliers of its choice. Franchisor reserves the right to designate, at any time and for any reason, a single supplier for any equipment, supplies, services, or products (including any Services) and to require Franchisee to purchase exclusively from such designated supplier, which exclusive designated supplier may be Franchisor or an affiliate of Franchisor.

8.7.1 Notwithstanding anything to the contrary contained in this Agreement, Franchisee acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some ES CEO Club franchises with some or all of the products and/or services that Franchisor requires for use and/or sale in the development and/or operation of ES CEO Club franchises. In this event, Franchisor may limit the

number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use for some or all Services and other products and services, and/or refuse any of Franchisee's requests if Franchisor believes that this action is in the best interests of the System or the franchised network of ES CEO Club franchises. Franchisor will have unlimited discretion to approve or disapprove of the suppliers who may be permitted to sell Services to Franchisee.

8.7.6 Franchisor and its affiliates may receive payments or other compensation from suppliers on account of such suppliers' dealings with Franchisee and other franchisees; and Franchisor may use all amounts so received for any purpose Franchisor and its affiliates deem appropriate.

8.8 **Trademarked Items.** Franchisee will ensure that all advertising and promotional materials, signs, forms and stationery used in the Franchised Business), products, and other items specified by Franchisor bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor. Franchisee will place and illuminate all signs in accordance with Franchisor's specifications.

8.9 **Obligations to Third Parties.** Franchisee must at all times pay its distributors, contractors, suppliers, trade creditors, employees and other creditors promptly as the debts and obligations to such persons become due, and failure to do so will constitute a breach of this Agreement.

8.10 **Notice of Legal Actions.** Franchisee will notify Franchisor in writing within five (5) days of the start of any suit to foreclose any lien or mortgage, or any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, including health agencies, which (i) relates to the operation of the Franchised Business, (ii) may adversely affect the operation or financial condition of the Franchised Business, or (iii) may adversely affect Franchisee's financial condition.

8.11 **No Relocation.** Franchisee will not relocate the Franchised Business from within the DMA.

8.12 **Franchisee Advisory Councils.** If Franchisor should, during the term of this Agreement, form or require the formation of a franchisee advisory council or association (the "Advisory Council") or such successor council to serve as an advisory council to Franchisor with respect to advertising, marketing, and other matters relating to franchised ES CEO Club franchises, Franchisee will become a member of the Advisory Council. In such event, Franchisee will pay to the Advisory Council all dues and assessments authorized by the Advisory Council and will otherwise abide by the rules and regulations of the Advisory Council and will at all times maintain its membership in the Advisory Council in good standing.

8.13 **Changes to the System.** Franchisee acknowledges and agrees that from time to time hereafter Franchisor may change or modify the System presently identified by the Proprietary Marks, as Franchisor deems appropriate, including without limitation to reflect the changing market and to meet new and changing consumer demands, and that variations and additions to the System may be required from time to time to preserve and enhance the public image of the System and operations of ES CEO Club franchises. Changes to the System may include, without limitation, the adoption and use of new, modified, or substituted products, services, equipment and furnishings and new techniques and methodologies, and (as described in Section 9 below) additional or substitute trademarks, service marks and copyrighted materials. Franchisee will, with reasonable notice, accept, implement, use and display in the operation of the Franchised Business any such changes in the System, as if they were part of this Agreement at the time of execution of this Agreement, at Franchisee's sole expense. Additionally, Franchisor reserves the right, in its sole discretion, to vary the standards throughout the System, as well as the services and assistance that Franchisor may provide to some franchisees based on the peculiarities of a particular site or circumstance, existing business practices, or other factors that Franchisor deems to be important to the operation of any ES CEO Club franchises or the System. Franchisee will have no recourse against Franchisor on account of any variation to any franchisee and will not be entitled to require Franchisor to provide Franchisee with a like or similar variation of this Agreement.

## SECTION 9 - PROPRIETARY MARKS

9.1 **Ownership.** Franchisor represents with respect to the Proprietary Marks that:

9.1.1 Franchisor and/or its affiliate ES LLC is the owner of all right, title, and interest in and to the Proprietary Marks.

9.1.2 Franchisor will take all steps reasonably necessary to preserve and protect the ownership and validity in and to the Proprietary Marks.

9.2 **License to Franchisee.** Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use of the Proprietary Marks will constitute an infringement of rights of Franchisor.

9.3 **Terms of Franchisee's Usage.** With respect to Franchisee's use of the Proprietary Marks, Franchisee agrees to:

9.3.1 Use only the Proprietary Marks designated by Franchisor, and to use them only in the manner authorized and permitted by Franchisor;

9.3.2 Franchisee will use the Proprietary Marks only for the operation of the business franchised by this Agreement and only at the location authorized by this Agreement, or in Franchisor-approved advertising for the business conducted at or from that location;

9.3.3 Operate and advertise the Franchised Business only under the name "Estrada Strategies" and "ES CEO Club," and use the Proprietary Marks without prefix or suffix, unless otherwise authorized or required by Franchisor.

9.3.4 Franchisee will not use the Proprietary Marks as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium. Franchisee may, as necessary to conduct the business of the Franchised Business and to obtain governmental licenses and permits for the Franchised Business, indicate that Franchisee will be operating the Franchised Business under the trade name "Estrada Strategies," provided that Franchisee will also clearly identify itself as the owner and operator of the Franchised Business;

9.3.5 Identify itself as the owner of the Franchised Business (in the manner required by Franchisor) in conjunction with any use of the Proprietary Marks, including on invoices, order forms, receipts, and business stationery, as well as at such conspicuous locations on the Premises as Franchisor may designate in writing;

9.3.6 Not to use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor;

9.3.7 Execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability; and

9.3.8 Promptly notify Franchisor of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to Franchisor's ownership of, the right of Franchisor to use and to license others to use, or Franchisee's right to use, the Proprietary Marks. Franchisee acknowledges that Franchisor has the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement of the proceeding. Franchisor has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. Franchisor will defend Franchisee against any third-party claim, suit, or demand arising out of Franchisee's use of the Proprietary Marks. If Franchisor, in its sole discretion, determines that Franchisee has used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, will be borne by Franchisor. If Franchisor, in its sole discretion, determines that Franchisee has not used

the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, will be borne by Franchisee. In the event of any litigation relating to Franchisee's use of the Proprietary Marks, Franchisee will execute any and all documents and do such acts as may, in the opinion of Franchisor, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket costs in doing such acts.

9.4 **Franchisee Acknowledgments.** Franchisee expressly understands and acknowledges that:

9.4.1 Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them, and that Franchisor has the sole right to use, and license others to use, the Proprietary Marks;

9.4.2 During the term of this Agreement and after its expiration or termination, Franchisee will not directly or indirectly contest the validity of Franchisor's ownership of, or right to use and to license others to use, the Proprietary Marks;

9.4.3 Franchisee's use of the Proprietary Marks does not give Franchisee any ownership interest or other interest in or to the Proprietary Marks;

9.4.4 Any and all goodwill arising from Franchisee's use of the Proprietary Marks will inure solely and exclusively to the benefit of Franchisor, and on expiration or termination of this Agreement, no monetary amount will be assigned as attributable to any goodwill associated with Franchisee's use of the System or the Proprietary Marks;

9.4.5 The right and license of the Proprietary Marks granted by this Agreement to Franchisee is nonexclusive, and Franchisor thus has and retains the rights, among others: (a) to use the Proprietary Marks itself in connection with selling the Services; (b) to grant other licenses for the Proprietary Marks; and (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses to that Agreement without providing any rights to that Agreement to Franchisee; and

9.4.6 Franchisor will have the right to substitute different proprietary marks for use in identifying the System and the businesses operating under the System at the sole discretion of Franchisor.

## SECTION 10 - MANUALS

10.1 **The Manuals and Furnishings to Franchisee.** In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under the System, Franchisee will operate the Franchised Business in accordance with the standards, methods, policies, and procedures specified in the Manuals, which Franchisee will receive on loan from Franchisor, via electronic access or otherwise, for the term of this Agreement on completion by Franchisee of initial training. The Manuals may be set forth in several volumes, including such amendments to the Manuals, as Franchisor may publish from time to time. Additionally, Franchisee acknowledges and agrees that Franchisor may provide a portion or all (including updates and amendments) of the Manuals, and other instructional information and materials in, or via, electronic media, including without limitation, through the use of computer disks, or the Internet.

10.2 **The Manuals are Proprietary and Confidential.** Franchisee will treat the Manuals, any other materials created for or approved for use in the operation of the Franchised Business, and the information contained in the Manuals, as confidential, and will use all reasonable efforts to maintain such information (both in electronic and other formats) as proprietary and confidential. Franchisee will not download, copy, duplicate, record, or otherwise reproduce the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person.



10.3 **The Manuals Remain Franchisor's Property.** The Manuals will remain the sole property of Franchisor and will be accessible only from a secure place on the Premises, and will be returned to Franchisor, as set forth in Section 17.8 below, on the termination or expiration of this Agreement.

10.4 **Revisions to the Manuals.** Franchisor may from time to time revise the contents of the Manuals, and Franchisee expressly agrees to comply with each new or changed standard. Franchisee will ensure that the Manuals are kept current at all times. In the event of any dispute as to the contents of the Manuals, the terms of the master copies maintained at the home office of Franchisor will be controlling.

10.5 **CEO Club Manuals.** All references to manuals will also include the CEO Club manuals used for coaching and training in the operation of the ES CEO Club franchised business.

## SECTION 11 - CONFIDENTIAL INFORMATION

11.1 **Agreement with respect to Confidentiality.** Franchisee acknowledges and agrees that it will not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person or entity any confidential information, knowledge, or know-how concerning Franchisor, the System, the Services and/or the marketing, management or operations of the Franchised Business that may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation under the terms of this Agreement. Franchisee will divulge such confidential information only to such of its employees as must have access to it in order to operate the Franchised Business. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential will be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention before disclosure of this Agreement by Franchisor; or which, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others.

11.2 **Individual Covenants of Confidentiality.** At Franchisor's request, Franchisee will require its manager and any personnel having access to any confidential information of Franchisor to execute covenants that they will maintain the confidentiality of information they receive in connection with their employment by Franchisee at the Franchised Business. Such covenants will be in a form satisfactory to Franchisor (the current forms of which are included in Exhibit F to this Agreement), which will include specific identification of Franchisor as a third-party beneficiary of such covenants with the independent right to enforce them.

11.3 **Remedies for Breach.** Franchisee acknowledges that any failure to comply with the requirements of this Section 11 will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 11.

11.4 **Grantback.** Franchisee agrees to disclose to Franchisor all ideas, concepts, methods, techniques and products conceived or developed by Franchisee, its affiliates, owners or employees during the term of this Agreement relating to the development and/or operation of the Franchised Business. Franchisee by this agreement grants to Franchisor and agrees to procure from its affiliates, owners or employees a perpetual, non-exclusive, and worldwide right to use any such ideas, concepts, methods, techniques in all businesses operated by Franchisor or its affiliates, franchisees and designees. Franchisor will have no obligation to make any payments to Franchisee with respect to any such ideas, concepts, methods, techniques or products. Franchisee agrees that Franchisee will not use or allow any other person or entity to use any such concept, method, technique or product without obtaining Franchisor's prior written approval.

## SECTION 12 - ACCOUNTING AND RECORDS

12.1 **Books and Records.** With respect to the operation and financial condition of the Franchised Business, Franchisor may require that Franchisee adopt, until otherwise specified by Franchisor, a fiscal year that coincides with Franchisor's then-current fiscal year, as specified by Franchisor in the Manual or otherwise in writing. Franchisee will maintain for a period of not less than six (6) years during the term of this Agreement, and,

for not less than six (6) years following the termination, expiration, or non-renewal of this Agreement, full, complete, and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by Franchisor from time to time in the Manuals or otherwise in writing, including but not limited to: (i) weekly sales reports; (ii) cash receipts journal and general ledger; (iii) customer account details and complete contact information; (iv) monthly bank statements, deposit slips and cancelled checks; (v) all tax returns; (vi) supplier's invoices (paid and unpaid); (vii) dated daily and Monthly transaction journal; (viii) semi-annual fiscal period balance sheets and fiscal period profit and loss statements; (ix) such other records as Franchisor may from time to time request.

12.2 **Franchisee's Reports to Franchisor.** Franchisee is required to provide Franchisor with any and all reports as outlined in the Operation Manual and other manuals through the Intranet and Proprietary Software of Franchisor.

## SECTION 13 - MARKETING AND PROMOTION

13.1 **Franchisee's Advertising Obligations.** Recognizing the value of marketing and promotion, and the importance of the standardization of marketing and promotion programs to the furtherance of the goodwill and public image of the System, Franchisee and Franchisor agree as follows:

13.1.1 Franchisee understands and agrees that the best marketing for this business is networking and face to face meetings with the potential clients to fully describe the ES CEO Club and discuss their individual needs. With that in mind, Franchisee or Facilitator of Franchisee agrees to join local area networking groups, attend networking meetings and make every effort to meet with prospective clients face to face, on a regular basis. Additionally, Franchisee will use the Direct Mail Postcards that can be ordered through the Intranet; and one (1) sheet flyer invitations to executive briefings, that can be accessed via the Intranet and printed locally.

13.1.2 With that said, Franchisee agrees, during each Month to spend a minimum amount, not to exceed \$300 per month, on local advertising of the franchised business.

13.2 **National Ad Fund.** Franchisor will have the right at any time, in its sole discretion to establish a fund for system-wide advertising and promotion of the System (the "National Ad Fund"). During the existence of the National Ad Fund, Franchisee will contribute to the National Ad Fund in the manner specified in Section 4.6 above, such amounts as Franchisor may specify, not to exceed \$300 per month. The National Ad Fund will be maintained and administered by Franchisor as follows:

13.2.1 Franchisor will direct all marketing programs, with sole discretion over the concepts, materials, and media used in such programs and the placement and allocation for them. Franchisor is not obligated, in administering the National Ad Fund, to make expenditures for Franchisee which is equivalent or proportionate to Franchisee's contribution, or to ensure that any particular Franchisee benefits directly or pro rata from expenditures by the National Ad Fund.

13.2.2 The National Ad Fund, all contributions to the National Ad Fund, and any earnings thereon, will be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, and preparing marketing, advertising, public relations, and/or promotional programs and materials, and any other activities including socially responsible activities, which Franchisor believes will enhance the image of the System, including, among other things, the costs of preparing and conducting media marketing campaigns; direct mail advertising; marketing surveys and other public relations activities; or public relations agencies to assist in the enhancement of the System; sponsorship of organizations and events; purchasing promotional items; and providing promotional and other marketing materials and services to the ES CEO Club franchises operating under the System.

13.2.3 Franchisee will contribute to the National Ad Fund by separate payment made payable (or as otherwise directed for payment) to Franchisor by electronic fund transfer (See Exhibit D to this Franchise Agreement). All sums paid by Franchisee to the National Ad Fund will be accounted for separately and will not be used to defray any of the expenses of Franchisor, except for such reasonable costs, salaries and overhead, if any, as Franchisor may incur in activities reasonably related to the direction and implementation of the System Ad Fund and

marketing programs for operators and the System, including costs of personnel for creating and implementing marketing, advertising, and promotional programs. The National Ad Fund and any earnings from it will not otherwise inure to the benefit of Franchisor. Franchisor will maintain separate bookkeeping accounts for the National Ad Fund.

13.2.4 Franchisor, on request, will provide Franchisee with an annual accounting of National Ad Fund receipts and disbursements.

13.2.5 Franchisor reserves the right, at its sole discretion, to discontinue the National Ad Fund on written notice to Franchisee.

13.2.6 Franchisor may, but is not required to, make available to Franchisee from time to time, marketing plans and promotional materials, including newspaper mats, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, and similar marketing and promotional materials produced from contributions to the National Ad Fund. Franchisee acknowledges and agrees that it will be reasonable for Franchisor to not provide any such materials to Franchisee during any period in which Franchisee is in not in full compliance with its obligations to contribute to the National Ad Fund. Additionally, if monies of the National Ad Fund are used to produce point of sale materials, or other samples or other promotional materials and items, Franchisor may, on the behalf of the National Ad Fund, sell such items to franchisees in the System at a reasonable price, and any proceeds from the sale of such items or materials will be contributed to the National Ad Fund.

13.3 **Standards for Advertising.** All advertising, marketing and promotion to be used by Franchisee, the National Ad Fund or any Cooperative Ad Fund will be in such media and of such type and format as Franchisor may approve, will be conducted in a dignified manner, and will conform to such standards and requirements as Franchisor may specify. Franchisee will not use any marketing or promotional plans or materials that are not provided by Franchisor unless and until Franchisee has submitted the materials to Franchisor, according to the procedures and terms set forth in Section 13.3 in this Agreement.

13.4 **Franchisor's Approval of Proposed Plans and Materials.** If Franchisee desires to use marketing and promotional plans and materials that have not been provided or previously approved by Franchisor, Franchisee will submit samples of all such marketing and promotional plans and materials to Franchisor (as provided in Section 24 in this Agreement) for prior approval. If written notice of disapproval is not received by Franchisee from Franchisor within five (5) business days of the date of receipt by Franchisor of such samples or materials, Franchisor will be deemed to have approved them.

13.5 **Directory Listings.** Franchisee will, at its expense and in addition to its expenditures for local advertising and promotion, obtain listings in the white and yellow pages of local telephone directories. Franchisee will comply with Franchisor's specifications concerning such listings, including the form and size of such listings, and the number of directories in which such listings will be placed. Additionally, Franchisee will be required to obtain listings in and/or advertise with Franchisor and other franchisees in the System, on electronic yellow page directories and other on-line directories as Franchisor may designate. Franchisor reserves the right to place such, and subsequently modify or remove, on-line listings and advertisements on behalf of Franchisee. For any listings or advertisements posted by or on behalf of Franchisee, Franchisee will promptly pay, on demand by Franchisor, its pro-rata share of the costs. Additionally, these activities may be carried out through the use of the System Ad Fund.

13.6 **Ownership of Advertising Plans and Materials.** Franchisee acknowledges and agrees that any and all copyrights in and to advertising and promotional materials developed by or on behalf of Franchisee which bear the Proprietary Marks will be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision. Any advertising, marketing, promotional, public relations, or sales concepts, plans, programs, activities, or materials proposed or developed by Franchisee for the Franchised Business or the System and approved by Franchisor may be used by Franchisor and other operators under the System of Franchisor without any compensation to Franchisee.

## SECTION 14 - INSURANCE

14.1 **Insurance.** Prior to opening and at all times during the term of the franchise, Franchisee shall maintain in force at Franchisee's sole expense:

(a) property insurance on a replacement cost basis at a minimum limit based on the total value of Franchisee's assets (including, but not limited to, fire, extended coverage, vandalism and malicious mischief);

(b) primary general liability insurance with a minimum limit of \$1,500,000.00 (including, but not limited to, coverage for personal injury, products and contractual liability);

(c) primary automobile liability insurance with a minimum limit of \$1,500,000.00 (including, but not limited to, owned automobiles titled or leased in the name of Franchisee or Franchisee's owners and used at any time, whether principally or occasionally in Franchisee's business). If Franchisee or Franchisee's owners do not use a vehicle owned or leased in the name of Franchisee or any of Franchisee's owners in Franchisee's business, Franchisee must provide written evidence of that fact, satisfactory to us.

(d) workers compensation insurance (in Franchisee's name) as required by applicable law. If no such law exists, then Franchisee must participate in such other comparable insurance as required by Franchisor. If Franchisee's state recognizes and permits self-insurer programs, Franchisee's participation in such a program will satisfy our requirements under this subparagraph (d). If deductible plans are approved and used in Franchisee's state, coverage may be purchased on this basis subject to the requirements of Franchisee's insurance carrier.

All insurance policies must be issued by an insurance carrier rated "A" or better by Alfred M. Best & Company, Inc. All liability insurance policies must name Franchisor, and any subsidiaries and affiliates which Franchisor designates, as additional insureds entitled to the coverage afforded to all named insureds, without regard to any other insurance or self-insured program which we may have in effect, and also provide that Franchisor receives thirty (30) days prior written notice of termination, expiration, cancellation, modification, or reduction in coverage or limits of any such policy. Franchisor may also reasonably increase the minimum liability "limit" protection requirement annually and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards in public, product or motor vehicle litigation or other relevant changes in circumstances. Franchisee must submit to Franchisor annually, a copy of the certificate of insurance or evidence of the renewal or extension of each such insurance policy or any modifications to any such insurance policies, which must describe the applicable deductibles for each such policy. If at any time Franchisee fails or refuses to maintain in effect any insurance coverage required by Franchisor, or to furnish satisfactory evidence of such insurance, Franchisor may, at Franchisor's option and in addition to other rights and remedies Franchisor may have, obtain insurance coverage, on Franchisee's behalf, and Franchisee agrees to promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to Franchisor on demand any cost and premiums incurred by Franchisor. Franchisee's obligations to obtain and maintain the insurance described in this Agreement shall not be limited in any way by reason of any insurance maintained by Franchisor.

## SECTION 15 - TRANSFER OF INTEREST

15.1 **Franchisor's Rights to Transfer.** Franchisor will have the right to transfer or assign this Agreement and all or any part of its rights or obligations in this Agreement to any person or legal entity, and any designated assignee of Franchisor will become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, Franchisee expressly affirms and agrees that Franchisor may sell its assets, its Proprietary Marks, or its System; may sell its securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.

15.2 **No Transfers Without Franchisor's Approval.** Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee or the Principals of Franchisee if

Franchisee is not an individual, and that Franchisor has granted this franchise in reliance on Franchisee's or Franchisee's Principals' business skill, financial capacity, and personal character. Accordingly:

15.2.1 Franchisee will not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and/or obligations of Franchisee under this Agreement; or (b) any material asset of Franchisee or the Franchised Business.

15.2.2 If Franchisee is a corporation or limited liability company, Franchisee will not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities will become a Principal under this Agreement, if so designated by Franchisor.

15.2.3 If Franchisee is a partnership or limited partnership, the partners of the partnership will not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner will automatically be deemed a Principal of Franchisee.

15.2.4 A Principal will not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee, as such is identified in Exhibit C.

15.3 **Conditions on Transfer.** Franchisor will not unreasonably withhold any consent required by Section 15.2 above; provided, that if the proposed transfer alone or together with other previous, simultaneous, or proposed transfers would have the effect of changing control of Franchisee, results in the assignment of the rights and obligations of Franchisee under this Agreement, or transfers the ownership interest in all or substantially all of the assets of the Franchised Business or the business franchised by this Agreement, Franchisor will have the right to require any or all of the following as conditions of its approval:

15.3.1 All of Franchisee's monetary obligations and all other outstanding obligations to Franchisor, its affiliates, and any approved suppliers of the System have been satisfied in full;

15.3.2 Franchisee will not be in default under any provision of this Agreement, any other agreement between Franchisee and Franchisor or its affiliate, the approved suppliers of the System, or the landlord (or sub-landlord) for the Premises;

15.3.3 Each transferor (and, if the transferor is other than an individual, the transferor and such owners of beneficial interest in the transferor as Franchisor may request) will have executed a general release in a form satisfactory to Franchisor of any and all claims against Franchisor and its affiliates and their respective officers, directors, agents, and employees;

15.3.4 The transferee of a Principal will be designated as a Principal and each transferee who is designated a Principal will enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee. Additionally, the transferee and/or such owners of the transferee as Franchisor may request, will guaranty the performance of the transferee's obligations in writing in a form satisfactory to Franchisor;

15.3.5 The transferee will demonstrate to Franchisor's satisfaction that the terms of the proposed transfer do not place an unreasonable financial or operational burden on the transferee, and that the transferee (or, if the transferee is other than an individual, such owners of beneficial interest in the transferee as Franchisor may request) meets Franchisor's then-current application qualifications (which may include educational, managerial, socially responsible, and business standards, good moral character, business reputation, and credit rating); has the aptitude and ability to operate the Franchised Business and absence of conflicting interests; and has adequate financial resources and capital to operate the Franchised Business;

15.3.6 At Franchisor's option, Franchisee will execute the form of franchise agreement then being offered to new System franchisees, and such other ancillary agreements required by Franchisor for the

business franchised by this Agreement, which agreements will supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher and/or additional fees;

15.3.7 If so requested by Franchisor, Franchisee, at its expense, will upgrade the Franchised Business, and other equipment to conform to the then-current standards and specifications of new ES CEO Club franchises then-being established in the System, and will complete the upgrading and other requirements within the time specified by Franchisor.

15.3.8 The transferor will remain liable for all of the obligations to Franchisor in connection with the Franchised Business that arose before the effective date of the transfer and will execute any and all instruments reasonably requested by Franchisor to evidence such liability;

15.3.9 The transferee (and, if the transferee is not an individual, such Principals of the transferee as Franchisor may request) and the transferee's manager (if applicable) will, at the transferee's expense, successfully attend and successfully complete any training programs then in effect for operators and managers on such terms and conditions as Franchisor may reasonably require;

15.3.10 Franchisee will pay a transfer fee in an amount of \$10,000 to compensate Franchisor for its expenses incurred in connection with the transfer. There is no charge if the transferee is a corporation or limited liability company controlled by Franchisee. If Franchisee requests Franchisor to assist in finding a transferee, Franchisee will pay a transfer fee of \$25,000 or six percent (6%) of the selling price of the franchise, whichever is greater; and the \$10,000 transfer fee to cover review, approval and training of the transferee. If a Broker is used to find a transferee, Franchisee will be responsible for paying any Broker fees directly.

15.3.11 The transferor(s), at the request of Franchisor, will agree in writing to comply with the covenants set forth in Section 18 below.

15.4 **Additional Terms.** For any transfer not covered by Section 15.3, each transferee will, in addition to the requirement of obtaining Franchisor's consent as provided in Section 15.2, be subject to the requirements of Sections 15.3.3 and 15.3.4 above (with respect to execution of releases and personal guarantees).

15.5 **Security Interests.** Neither Franchisee nor any Principal will grant a security interest in, or otherwise encumber, any of the assets or securities of Franchisee, including the Franchised Business unless Franchisee satisfies the requirements of Franchisor, which include, without limitation, execution of an agreement by the secured party in which it acknowledges the creditor's obligations under this Section 15, and agrees that if there are any defaults by Franchisee under any documents related to the security interest, Franchisor will have the right and option (but not the obligation) to be substituted as obligor to the secured party and to cure any default of Franchisee, and, if Franchisor exercises such option, any acceleration of indebtedness due to Franchisee's default will be void.

15.6 **Right of First Refusal.** If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material asset of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal will promptly notify Franchisor, and will provide such information and documentation relating to the offer as Franchisor may require. Franchisor will have the right and option, exercisable within thirty (30) days after receipt of the written transfer request and the required information and documentation related to the offer (including any information that Franchisor may reasonably request to supplement or clarify information provided to Franchisor with the written transfer request), to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party; provided, however, a spouse, domestic partner, parent or child of the seller will not be considered a third party for purposes of this Section 15.6. If Franchisor elects to purchase the seller's interest, closing on such purchase will occur within forty-five (45) days from the date of notice to the seller of the election to purchase by Franchisor, or, if longer, on the same timetable as contained in the *bona fide* offer.

15.6.1 Any material change thereafter in the terms of the offer from the third party or by Franchisee, or a change in the identity of the third party will constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 15.6 will not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 15, with respect to a proposed transfer.

15.6.2 If the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, Franchisor will designate an independent appraiser to make a binding determination. The cost of any such appraisal will be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this Section 15.6, Franchisor will have the right to set off all amounts due from Franchisee, and one-half (½) of the cost of the appraisal, if any, against any payment to the seller.

15.7 **Death of a Principal.** Upon the death of a Principal, the deceased's executor, administrator, or other personal representative will transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the recipient of such interest must be approved by Franchisor. If the recipient is not approved by Franchisor, then the recipient will transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

15.8 **Permanent Disability of Controlling Principal.** Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor will have the right to require such interest to be transferred to a third party in accordance with the conditions described in this Section 15 within six (6) months after notice to Franchisee. "Permanent Disability" will mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of disability is unlikely. Permanent disability will be determined by a licensed practicing physician selected by Franchisor on examination of such person or, if such person refuses to be examined, then such person will automatically be deemed permanently disabled for the purposes of this Section 15.8 as of the date of refusal. Franchisor will pay the cost of the required examination.

15.9 **Notice to Franchisor of Death or Permanent Disability.** Upon the death or permanent disability any Principal of Franchisee, such person or his representative will promptly notify Franchisor of such death or claim of permanent disability. Any transfer on death or permanent disability will be subject to the same terms and conditions as any *inter vivos* transfer.

15.10 **Limited Exceptions.** Notwithstanding anything to the contrary in this Section 15:

15.10.1 Franchisee will not be required to pay the transfer fee due under Section 15.3.10 above, if the transferee: (a) is a spouse, domestic partner, parent, or direct lineal descendant or sibling of Franchisee or of a Principal of Franchisee (or more than one of such persons), provided that the transferee has been involved in, and is knowledgeable regarding, the operations of the Franchised Business; (b) is a Principal of Franchisee; or (c); is a transferee under Sections 15.7 or 15.8 above.

15.10.2 If Franchisee is an individual and seeks to transfer this Agreement to a corporation, partnership, or limited liability company formed for the convenience of ownership, the conditions of Sections 15.3.6 (signing a new franchise agreement), 15.3.7 (upgrading the Franchised Business), and 15.3.10 (transfer fee) will not apply, and Franchisee may undertake such transfer, provided that Franchisee owns one hundred percent (100%) of the equity interest in the transferee entity, and the Franchisee personally guarantees, in a written guaranty satisfactory to Franchisor, the performance of the obligations of the Franchisee under the Franchise Agreement.

15.11 **Securities Offerings.** All materials required for any offering of securities or partnership interests in Franchisee by federal or state law will be submitted to Franchisor by the offering party for review before filing

with any government agency; and any materials to be used in any exempt offering will be submitted to Franchisor for review before their use. No offering will imply, by use of the Proprietary Marks or otherwise, that Franchisor is participating in an underwriting, issuance, or offering of securities of either Franchisee or Franchisor; and review by Franchisor of any offering will be limited solely to the subject of the relationship between Franchisee and Franchisor. At its option, Franchisor may require the offering materials to contain written statements or disclaimers prescribed by Franchisor including, but not limited to, any limitations stated above in this paragraph. Franchisee and the other participants in the offering must fully indemnify Franchisor in connection with the offering. For each proposed offering, Franchisee will reimburse Franchisor for its actual costs and expenses associated with reviewing the proposed offering materials, including legal and accounting fees. Franchisee will give Franchisor written notice at least sixty (60) days before the date of commencement of any offering or other transaction covered by this Section 15.11. Any such offering will be subject to prior written consent of Franchisor and right of first refusal as provided in Section 15.6.

15.12 **No Waiver.** The consent of Franchisor to any transfer according to this Section 15 will not constitute a waiver of any claims it may have against the transferring party, nor will it be a waiver of the right of Franchisor to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

15.13 **Bankruptcy.** If Franchisee or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of the ownership of Franchisee, Franchisee's obligations and/or rights by this Agreement and/or any material assets of Franchisee, will be subject to all of the terms of this Section 15.

15.14 **No Transfers in Violation of Law.** Notwithstanding anything to the contrary in this Agreement, no transfer will be made if the transferee, any of its affiliates, or the funding sources for either is a person or entity designated with whom Franchisor, or any of its affiliates, are prohibited by law from transacting business.

## SECTION 16 - DEFAULT AND TERMINATION

16.1 **Automatic Termination.** Franchisee will be in default under this Agreement, and all rights granted to Franchisee in this Agreement will automatically terminate without notice to Franchisee, if Franchisee will become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; if Franchisee is adjudicated a bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part of the assets or property, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); if Franchisee is dissolved; if execution is levied against Franchisee's business or property; if suit to foreclose any lien or mortgage against the Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of the Franchised Business will be sold after levy thereupon by any sheriff, marshal, or constable.

16.2 **Termination Upon Notice.** Franchisee will be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted by this Agreement, without affording Franchisee any opportunity to cure the default, effective immediately on the provision of notice to Franchisee (in the manner provided under Section 24 in this Agreement), on the occurrence of any of the following events of default:

16.2.1 If Franchisee fails to complete all pre-opening obligations and to open the Franchised Business within the time limits as provided in Section 5.2 above;

16.2.2 If Franchisee or any of its Principals is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the Services, the goodwill associated to the System, the Proprietary Marks, the Services, or the interest of Franchisor to the System, the Proprietary Marks and the Services;



16.2.3 If Franchisee's action or inaction, at any time, results in the loss of Franchisee's right to do or transact business in the jurisdiction where the Franchised Business is located;

16.2.4 If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 15 in this Agreement;

16.2.5 If, contrary to the terms of Sections 9 or 10 of this Agreement, Franchisee discloses or divulges the contents of the Manuals or other confidential information provided to Franchisee by Franchisor;

16.2.6 If Franchisee fails to comply with the covenants in Section 18.2 below or fails to timely obtain execution of the covenants required under Section 18.5 below;

16.2.7 If Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or if Franchisee otherwise operates the Franchised Business in a manner that materially impairs the reputation or goodwill associated with the System, Proprietary Marks, Services, or the rights of Franchisor in those matters;

16.2.8 If Franchisee, after curing a default according to Sections 16.3 or 16.4 of this Agreement, commits the same default again, whether or not cured after notice.

16.2.9 If Franchisee commits three (3) or more defaults under this Agreement in any twelve (12) month period, whether or not each such default has been cured after notice, except for 16.3.2 below which allows for no more than two (2) defaults under coaching sessions. (this provision in no way limits Section 16.2.8 above);

16.2.10 If Franchisee at any time ceases to operate or otherwise abandons the Franchised Business for a period of thirty (30) consecutive days unless such closure is approved in writing by Franchisor, or excused by *force majeure*.

16.2.11 If Franchisee breaches any material provision of this Agreement which breach is not susceptible to cure.

**16.3 Notice and Opportunity to Cure -7 Days.** Upon the occurrence of any of the following events of default, Franchisor may, at its option, terminate this Agreement by giving written notice of termination (in the manner set forth under Section 24 in this Agreement) stating the nature of the default to Franchisee at least seven (7) days before the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to the satisfaction of Franchisor, and by promptly providing proof of it to Franchisor within the seven (7) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement will terminate without further notice to Franchisee, effective immediately on the expiration of the seven (7) day period or such longer period as applicable law may require.

16.3.1 If Franchisee fails, refuses, or neglects promptly to pay any monies owing to Franchisor or its affiliates when due; including royalty and/or minimum royalty fees as outlined above in Section 4.3 of this Franchise Agreement;

16.3.2 If Franchisee cancels a CEO Club client coaching session as scheduled with Franchisee's client(s). Franchisor has the right to terminate this Agreement if Franchisee cancels a second CEO Club client coaching session with Franchisee's client(s);

**16.4 Notice and Opportunity to Cure -30 Days.** Except as otherwise provided in Sections 16.1 and 16.2 of this Agreement, on any other default by Franchisee, Franchisor may terminate this Agreement by giving written notice of termination (in the manner set forth under Section 24 in this Agreement) stating the nature of the default to Franchisee at least thirty (30) days before the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to the

satisfaction of Franchisor, and by promptly providing proof of it to Franchisor within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement will terminate without further notice to Franchisee, effective immediately on the expiration of the thirty (30) day period or such longer period as applicable law may require.

16.4.1 If Franchisee receives poor reviews from surveys of client(s) by Franchisor and the accumulated average is below 3 out of 5; and fails to raise the average above 3 out of 5 after consultation and the second six month survey, Franchisee will be put on notice. NOTE: Surveys with clients are based on actual CEO Club franchise services.

## SECTION 17 - OBLIGATIONS ON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted by this Agreement to Franchisee will terminate, and:

17.1 **Stop Operating.** Franchisee will immediately cease to operate the Franchised Business, and will not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former operator of Franchisor in connection with the promotion or operation of any other business.

17.2 **Stop Using the System.** Franchisee will immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Mark "ES CEO Club" and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee will cease to use all signs, marketing materials, displays, stationery, forms, products, and any other articles which display the Proprietary Marks.

17.3 **Cancel Assumed Names.** Franchisee will take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the mark "ES CEO Club" or any other Proprietary Marks, and Franchisee will furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

17.4 **The Premises.** Franchisee will, at the option of Franchisor, assign to Franchisor any interest which Franchisee has in any lease or sublease for the Premises. In the event Franchisor does not elect to exercise its option to acquire the lease or sublease for the Premises, Franchisee will make such modifications or alterations to the Premises immediately on termination or expiration of this Agreement as may be necessary to distinguish the appearance of the Premises from that of ES CEO Club franchises under the System, and will make such specific additional changes to Premises as Franchisor may reasonably request for that purpose. In the event Franchisee fails or refuses to comply with the requirements of this Section 17.4, Franchisor will have the right to enter the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay on demand. Additionally, if Franchisor does not elect to exercise the option to acquire the lease/sublease, Franchisee will comply with Section 18.3 below regarding a Competitive Business (as defined in Section 18.2.3 below).

17.5 **Phone Numbers and Directory Listings.** In addition, Franchisee will cease use of all telephone numbers and any domain names, websites, e-mail addresses, and any other identifiers, whether or not authorized by Franchisor, used by Franchisee while operating the Franchised Business, and will promptly execute such documents or take such steps necessary to remove reference to the Franchised Business from all trade or business telephone directories, including "yellow" and "white" pages, or at Franchisor's request transfer same to Franchisor. Franchisee by this agreement authorizes Franchisor to instruct issuers of any telephone and internet domain name services, and other providers to transfer any such telephone numbers, domain names, websites, addresses, and any other identifiers to Franchisor on termination of this Agreement, without need for any further approval from Franchisee. Without limiting the foregoing, if requested by Franchisor, Franchisee will provide, during the term or on termination of this Agreement, written confirmation of Franchisor's rights under this Section 17.5. Franchisee agrees that it will sign such documents and do such things (without cost to Franchisee) that may be reasonably requested by Franchisor in order to implement this Section 17.5.

17.6 **No Use of Proprietary Marks or Trade Dress in other Businesses.** Franchisee agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion of it, which, in the sole discretion of Franchisor, is likely to cause confusion, mistake, or deception, or which, in the sole discretion of Franchisor, is likely to dilute the rights of Franchisor in and to the Proprietary Marks. Franchisee further agrees not to utilize any designation of origin, description, or representation (including but not limited to reference to Franchisor, the System, or the Proprietary Marks) which, in the sole discretion of Franchisor, suggests or represents a present or former association or connection with Franchisor, the System, or the Proprietary Marks.

17.7 **Pay Franchisor All Amounts Due.** Franchisee will promptly pay all sums owing to Franchisor and its affiliates. In the event of termination for any default of Franchisee, such sums will include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default and termination, which obligation will give rise to and remain, until paid-in-full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by Franchisee and on the Premises at the time of default.

17.8 **Return Manuals and Confidential Information.** Franchisee will, at its own expense, immediately deliver to Franchisor the Manuals and all other records, correspondence, and instructions containing confidential information relating to the operation of the Franchised Business (and any copies of it, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor.

17.9 **Franchisor's Option to Purchase Certain Assets.** Franchisor will have the option, to be exercised within thirty (30) days after termination, to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, supplies, or inventory of Franchisee related to the operation of the Franchised Business, at the lesser of Franchisee's cost or fair market value. The cost for such items will be determined based on a five (5) year straight-line depreciation of original costs. For equipment that is five (5) or more years old, the parties agree that fair market value will be deemed to be ten percent (10%) of the equipment's original cost. If Franchisor elects to exercise any option to purchase by this agreement provided, it will have the right to set off all amounts due from Franchisee.

17.10 **Comply with Covenants.** Franchisee and Principals will comply with the covenants contained in Section 18.3 of this Agreement.

17.11 **Liquidated Damages.** If Franchisor terminates the Franchise Agreement with cause, or Franchisee terminates the Franchise Agreement without cause, Franchisee must pay Franchisor liquidated damages equal to the present value (using the then-current 30-Year Treasury Bond rate) of the Service Fees Franchisee would have paid Franchisor for the number of months remaining in the Franchise Agreement had Franchisor or Franchisee not terminated it.

## SECTION 18 - COVENANTS

18.1 **Full Time and Best Efforts.** Franchisee covenants that, during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or, if Franchisee is not an individual, the Designated Principal) or Franchisee's fully-trained General Manager will devote full time and best efforts to the management and operation of the Franchised Business.

18.2 **During the Agreement Term.** Franchisee specifically acknowledges that, according to this Agreement, Franchisee will receive valuable, specialized training and confidential information, including information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee will not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity:

18.2.1 Divert or attempt to divert any present or prospective business or customer of any ES CEO Club franchises to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or

indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System;

18.2.2 Employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee of Franchisor, or otherwise encourage such person to leave his or her employment; or

18.2.3 Own, maintain, operate, engage in, be employed by, provide any assistance to, or have any more than a one percent (1%) interest in (as owner or otherwise) any Competitive Business (as defined below). A “**Competitive Business**” will be considered to be any management training or consulting, executive coaching or training and related services similar to ES CEO Club. Furthermore, Franchisee acknowledges and agrees that Franchisee will be considered in default under this Agreement and that this Agreement will be subject to termination as provided in Section 16.2.8 in this Agreement, if a person in the immediate family (including spouse, domestic partner, parent or child) of Franchisee (or, if Franchisee is other than an individual, each Principal that is subject to these covenants) engages in a Competitive Business that would violate this Section 18.2.3 if such person was subject to the covenants of this Section 18.2.3.

18.3 **After the Agreement and After a Transfer.** Franchisee covenants that, except as otherwise approved in writing by Franchisor, for a continuous uninterrupted period of two (2) years commencing on the date of: (a) a transfer permitted under Section 15 of this Agreement; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 18.3; or (e) any or all of the foregoing.

18.3.1 Franchisee will not either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity, own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any Competitive Business that is, or is intended to be, located at the DMA, within the Territory, within a radius of one (1) mile of any other ES CEO Club franchises located anywhere; provided, however, that this provision will not apply to the operation by Franchisee of any business under the System under a franchise agreement with Franchisor; or

18.3.2 Franchisee will not sublease, assign, or sell Franchisee’s interest in any lease, sublease, or ownership of the Premises or assets of the Franchised Business to a third party for the operation of a Competitive Business, or otherwise arrange or assist in arranging for the operation by a third party of a Competitive Business.

18.4 **Exception for Ownership in Public Entities.** Sections 18.2.3 and 18.3 will not apply to ownership by Franchisee of a less than five percent (5%) beneficial interest in the outstanding equity securities of any corporation which has securities registered under the Securities Exchange Act of 1934.

18.5 **Covenants as Independent Clauses.** The parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 18 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an un-appealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 18.

18.6 **Franchisor’s Right to Reduce Scope of the Covenants.** Franchisee understands and acknowledges that Franchisor will have the right, at its sole discretion, to reduce the scope of any covenant set forth in this Section 18, or any portion of it, without Franchisee’s consent, effective immediately on receipt by Franchisee of written notice of it; and Franchisee agrees that it will comply forthwith with any covenant as so modified, which will be fully enforceable notwithstanding the terms of Section 25 in this Agreement.

18.7 **Covenants Survive Claims.** Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to the enforcement by Franchisor of the covenants in this Section 18; provided, however, any claims Franchisee may have

against Franchisor may be brought in a separate proceeding. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 18.

## **SECTION 19 - CORPORATE, LIMITED LIABILITY COMPANY, OR PARTNERSHIP FRANCHISEE**

19.1 **List of Principals.** If Franchisee is a corporation, limited liability company, or partnership, each Principal of Franchisee, and the interest of each Principal in Franchisee, will be identified in Exhibit C of this Agreement. Franchisee will maintain a list of all Principals and immediately furnish Franchisor with an update to the information contained in Exhibit C on any change, which will be made only in compliance with Section 15 above.

19.2 **Guaranties.** Such Principals as Franchisor may request will execute a guaranty, indemnification, and acknowledgment of Franchisee's obligations under this Agreement in the form attached to this Agreement as Exhibit E. As set forth in Section 8.3, the Designated Principal will at all times have at least a ten percent (10%) interest in Franchisee.

19.3 **Corporations and Limited Liability Companies.** If Franchisee is a corporation or limited liability company, Franchisee will comply with the following requirements:

19.3.1 Franchisee will be newly organized and its governing documents will at all times provide that its activities are confined exclusively to operating the Franchised Business.

19.3.2 Franchisee will, on request of Franchisor, promptly furnish to Franchisor copies of Franchisee's Articles of incorporation, bylaws, Articles of organization, operating agreement and/or other governing documents, and any amendments to the governing documents, including the resolution of the Board of Directors or members authorizing entry into this Agreement.

19.3.3 Franchisee will maintain stop-transfer instructions against the transfer on its records of any equity securities; and each stock certificate or issued securities of Franchisee will conspicuously endorse on its face a statement, in a form satisfactory to Franchisor, which references the transfer restrictions imposed by this Agreement; provided, however, that the requirements of this Section 18.2.3 will not apply to a publicly-held corporation.

19.4 **Partnerships and Limited Liability Partnerships.** If Franchisee or any successor to or assignee of Franchisee is a partnership or limited liability partnership, Franchisee will comply with the following requirements:

19.4.1 Franchisee will be newly organized and its partnership agreement will at all times provide that its activities are confined exclusively to operating the Franchised Business.

19.4.2 Franchisee will furnish Franchisor with a copy of its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments to the documents.

19.4.3 The partners of the partnership will not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner.

## **SECTION 20 - TAXES, PERMITS, AND INDEBTEDNESS**

20.1 **Taxes.** Franchisee will promptly pay when due all taxes levied or assessed, including unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business. Franchisee will pay to Franchisor an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to

Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor.

20.2 **Dispute About Taxes.** In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event will Franchisee permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises of the Franchised Business, or any improvements thereon.

20.3 **Compliance with Laws.** Franchisee will comply with all federal, state, and local laws, rules, and regulations, and will timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Franchised Business, including licenses to do business, fictitious name registrations, sales tax permits, and fire clearances.

## SECTION 21 - INDEPENDENT CONTRACTOR AND INDEMNIFICATION

21.1 **No Fiduciary Relationship.** Franchisee is an independent contractor. Franchisor and Franchisee are completely separate entities and are not fiduciaries, partners, joint ventures, or agents of the other in any sense and neither will have the power to bind the other. No act or assistance given by either party to the other according to this Agreement will be construed to alter the relationship. Franchisee will be solely responsible for compliance with all federal, state, and local laws, rules and regulations, and for Franchisee's policies, practices, and decisions relating to the operation of the Franchised Business.

21.2 **Public Notice.** During the term of this Agreement, Franchisee will hold itself out to the public as an independent contractor operating the Franchised Business according to a franchise agreement from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including exhibiting a notice of that fact in a conspicuous place at the Premises, the content of which Franchisor reserves the right to specify.

21.3 **No Assumption of Liability.** Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on the behalf of Franchisor, or to incur any debt or other obligation in the name of Franchisor; and Franchisor will in no event assume liability for, or be deemed liable by this Agreement as a result of, any such action; nor will Franchisor be liable by reason of any act or omission of Franchisee in its operation of the Franchised Business or for any claim or judgment arising therefrom against Franchisee or Franchisor.

21.4 **Indemnification By Franchisee.** Franchisee will indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, and employees (the "Indemnitees") harmless against any and all causes of action, claims, losses, costs, expenses, liabilities, litigation, damages or other expenses (including, but not limited to, settlement costs and attorneys' fees) arising directly or indirectly from, as a result of, or in connection with the operation of the Franchised Business and/or Franchisee's conduct under this Agreement (notwithstanding any claims that the Indemnitees are or were negligent). Franchisee agrees that with respect to any threatened or actual litigation, proceeding or dispute which could directly or indirectly affect any of the Indemnitees, the Indemnitees will have the right, but not the obligation, in their discretion, to: (i) choose counsel, (ii) direct, manage and/or control the handling of the matter; and (iii) settle on behalf of the Indemnitees, and/or Franchisee, any claim against the Indemnitees. All vouchers, canceled checks, receipts, receipted bills or other evidence of payments for any such losses, liabilities, costs, damages, charges or expenses of whatsoever nature incurred by any Indemnitee will be taken as prima facie evidence of Franchisee's obligation by this Agreement.

21.5 **Indemnification By Franchisor.** Franchisor will indemnify and hold Franchisee, Franchisee's owners and affiliates, and their respective officers, directors, and employees (the "Indemnitees") harmless against any and all causes of action, claims, losses, costs, expenses, liabilities, litigation, damages or other expenses (including, but not limited to, settlement costs and attorneys' fees) arising directly or indirectly from, as a result of, or in connection with the use of the Proprietary Marks in the operation of the Franchised Business. All vouchers, canceled checks, receipts, receipted bills or other evidence of payments for any such losses, liabilities, costs,

damages, charges or expenses of whatsoever nature incurred by any Indemnitee will be taken as prima facie evidence of Franchisor's obligation by this Agreement.

## SECTION 22 - APPROVALS AND WAIVERS

22.1 **Approval Requests.** Whenever this Agreement requires the prior authorization, approval or consent of Franchisor, Franchisee will make a timely written request to Franchisor, and such approval or consent must be obtained in writing.

22.2 **Non-waiver.** No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist on strict compliance by Franchisee with any obligation or condition by this Agreement, and no custom or practice of the parties in variance with the terms of this Agreement, will constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Agreement. Waiver by Franchisor of any particular default by Franchisee will not be binding unless in writing and executed by the party sought to be charged and will not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor will any delay, waiver, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, terms, or covenants of this Agreement, affect or impair Franchisor's rights nor will such constitute a waiver by Franchisor of any right by this Agreement or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it by this Agreement will not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

## SECTION 23 - WARRANTIES OF OPERATOR

23.1 **Reliance by Franchisor.** Franchisor entered into this Agreement in reliance on the statements and information submitted to Franchisor by Franchisee in connection with this Agreement. Franchisee represents and warrants that all such statements and information submitted by Franchisee in connection with this Agreement are true, correct and complete in all material respects. Franchisee agrees to promptly advise Franchisor of any material changes in the information or statements submitted.

23.2 **Compliance with Laws.** Franchisee represents and warrants to Franchisor that neither Franchisee (including, without limitation, any and all of its employees, directors, officers and other representatives), nor any of its affiliates or the funding sources for either is a person or entity designated with whom Franchisor, or any of its affiliates, are prohibited by law from transacting business.

## SECTION 24 - NOTICES

Any and all notices required or permitted under this Agreement will be in writing and will be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, will be deemed to have been given at the date and time of receipt or rejected delivery.

## SECTION 25 - ENTIRE AGREEMENT

This Agreement, the attachments of this Agreement, and the documents referred to in this Agreement constitute the entire Agreement between Franchisor and Franchisee concerning the subject matter of this Agreement, and supersede any prior agreements, no other representations having induced Franchisee to execute this Agreement. Except for those permitted to be made unilaterally by Franchisor by this Agreement, no amendment, change, or variance from this Agreement will be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

## SECTION 26 - SEVERABILITY AND CONSTRUCTION

26.1 **Severable Parts**. Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement will be considered severable; and if, for any reason, any section, part, term, and/or provision in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such will not impair the operation of, or have any other effect on, such other portions, sections, parts, terms, and/or conditions of this Agreement as may remain otherwise intelligible; and the latter will continue to be given full force and effect and bind the parties of this Agreement; and the invalid portions, sections, parts, terms, and/or conditions will be deemed not to be a part of this Agreement.

26.2 **Terms Surviving this Agreement**. Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination or assignment of this Agreement (regardless of cause for termination), or assignment will survive such expiration, termination.

26.3 **No Rights on Third Parties**. Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor will be deemed, to confer on any person or legal entity other than Franchisee, Franchisor, officers, directors, shareholders, agents, and employees of Franchisor, and such successors and assigns of Franchisor as may be contemplated by Section 15 in this Agreement, any rights or remedies under or by reason of this Agreement.

26.4 **Full Scope of Terms**. Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the terms of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an un-appealed final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

26.5 **Franchisor's Application of its Rights**. Franchisor will have the right to operate, develop and change the System in any manner that is not specifically precluded by this Agreement. Whenever Franchisor has reserved in this Agreement a right to take or withhold an action, or are deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or omit an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its rights, on the basis of the information readily available to Franchisor, and its judgment of what is in its best interests and/or in the best interests of the Franchisor's franchise network, at the time its decision is made, without regard to whether: (i) other reasonable or preferable alternative decisions could have been made by Franchisor; (ii) the decision or action of Franchisor will promote its financial or other individual interest; (iii) Franchisor's decision or the action it take applies differently to Franchisee and one or more other franchisees or Franchisor's company-owned operations; or (iv) Franchisor's decision or the exercise of its right or discretion is adverse to Franchisee's interests. In the absence of an applicable statute, Franchisor will have no liability to Franchisee for any such decision or action. Franchisor and Franchisee intend that the exercise of Franchisor right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, Franchisor and Franchisee agree that such covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisee's rights and obligations by this Agreement.

26.6 **Captions Only for Convenience**. All captions in this Agreement are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision of this Agreement.



## SECTION 27 - APPLICABLE LAW AND DISPUTE RESOLUTION

27.1 **Governing Law.** This Agreement takes effect on its acceptance and execution by Franchisor, and will be interpreted and construed under the laws of the State of California. In the event of any conflict of law, the laws of California will prevail, without regard to, and without giving effect to, the application of California conflict of law rules. Nothing in this Section 27.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of California or of any other state to which it would not otherwise be subject.

27.2 **Non-Binding Mediation.** Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation will be non-binding and will be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 27.2 will not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation. Mediation by this Agreement will be concluded within forty five (45) days of Franchisee's receipt of the notice specifying the designated mediator or such longer period as may be agreed on by the parties in writing. All aspects of the mediation process will be treated as confidential, will not be disclosed to others, and will not be offered or admissible in any other proceeding or legal action. Franchisor and Franchisee will each bear its own costs of mediation, and each will bear one-half the cost of the mediator or mediation service.

27.3 **Arbitration.** Franchisor and Franchisee agree that, except for controversies, disputes, or claims related to or based on improper use of the Marks or Confidential Information, all controversies, disputes, or claims between Franchisor and Franchisor's affiliates, and Franchisor's and their respective shareholders, members, officers, directors, agents, and/or employees, and Franchisee (and/or Franchisee's owners, guarantors, affiliates, and/or employees) arising out of or related to:

- (1) this Agreement or any other agreement between Franchisee and Franchisor;
- (2) Franchisor's relationship with Franchisee;
- (3) the validity of this Agreement or any other agreement between Franchisee and Franchisor; or
- (4) any System Standard;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association in the United States ("AAA"). The arbitration proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the AAA's then current rules. All proceedings will be conducted at a suitable location chosen by the arbitrator which is within a five (5) mile radius of Franchisor's then current principal place of business. All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs (as allowable under this Agreement or applicable law), provided that the arbitrator may not declare any Mark generic or otherwise invalid or, except as expressly provided in Subsection 27.5. below, award any punitive, exemplary or multiple damages against either party (Franchisor and Franchisee by this agreement waiving to the fullest extent permitted by law, except as expressly provided in Subsection 27.5. below, any right to or claim for any punitive, exemplary or multiple damages against the other).

Franchisor and Franchisee agree to be bound by the terms of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. Franchisor and Franchisee further agrees that, in any arbitration proceeding, each must submit or file any claim which would

constitute a compulsory counterclaim (as defined by Rule 13 of the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Franchisee or Franchisor.

Franchisor and Franchisee agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between Franchisor and Franchisor's affiliates, and Franchisor's and their respective shareholders, officers, directors, agents, and/or employees, and Franchisee (and/or Franchisee's owners, guarantors, affiliates, and/or employees) may not be consolidated with any other arbitration proceeding between Franchisor and any other person.

Despite Franchisor's and Franchisee's agreement to arbitrate, Franchisor and Franchisee each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that Franchisor and Franchisee must contemporaneously submit Franchisor's dispute for arbitration on the merits as provided in this Subsection.

The terms of this Subsection are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

27.4 **No Rights Exclusive of Other Rights.** No right or remedy conferred on or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor will be deemed, exclusive of any other right or remedy provided in this Agreement or permitted by law or equity, but each will be cumulative of every other right or remedy.

27.5 **Waiver of Jury Trial.** Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee's operation of the Franchised Business, brought by either party of this Agreement against the other, whether in mediation, or a legal action, will be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action will be barred.

27.6 **Waiver of Punitive Damages.** Franchisor and Franchisee by this agreement waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other.

27.7 **Injunctive Relief.** Nothing in this Agreement contained will bar the right of Franchisor to obtain injunctive relief against threatened conduct that will cause it loss or damages, including violations of the terms of Sections 9, 10, 11, 15, and 18 under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

## SECTION 28 - ACKNOWLEDGEMENTS

28.1 **Franchisee's Investigation of the Business Possibilities.** Franchisee acknowledges that it has conducted an independent investigation of the business of operating a ES CEO Club franchise, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent on the ability of Franchisee (or, if Franchisee is a corporation, partnership or limited liability company, the ability of its principals) as (an) independent businessperson(s). Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guaranty, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

28.2 **Receipt of UFOC and Complete Agreement.** Franchisee acknowledges that it received a complete copy of this Agreement, the attachments of this Agreement, and agreements relating to this Agreement, if any, at least five (5) business days before the date on which this Agreement was executed. Franchisee further acknowledges that it received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity

Ventures" at least ten (10) business days (14 days in Illinois) before the date on which this Agreement was executed or any payment by Franchisee for the franchise rights granted under this Agreement.

28.3 **Franchisee Read the Agreement and Consulted.** Franchisee acknowledges that it has read and understood this Agreement, the attachments of this Agreement, and agreements relating to this Agreement, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

28.4 **Franchisee's Responsibility for Operation of Business.** Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of the Franchised Business, Franchisee retains the right and sole responsibility for the day-to-day management and operation of the Franchised Business and the implementation and maintenance of system standards at the Franchised Business.

28.5 **No Conflicting Obligations.** Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

28.6 **Different Franchise Offerings to Others.** Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.

28.7 **Success Depends on Franchisee.** Franchisee acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, on Franchisee's ability as an independent businessperson, his/her active participation in the daily affairs of the business, market conditions, area competition, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated by this agreement.

28.8 **No Guaranties.** Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received nor relied on, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement.

**IN WITNESS WHEREOF**, the parties of this Agreement has duly executed this Agreement in duplicate on the date first above written and is only binding when executed and signed by an officer of Franchisor.

Estrada Strategies Franchise, Inc., Franchisor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

Estrada Strategies Franchise, Inc.  
3400 Inland Empire Blvd., Suite 101  
Ontario, CA 91764  
(909) 476-3510  
Attn: Department of Franchising

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Attn: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the subscriber, a Notary Public in and for said State, personally appeared \_\_\_\_\_ of \_\_\_\_\_, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer and for and on behalf of said corporation, acknowledged the signing and execution of said instrument, and that the signing and execution of said instrument is his free and voluntary act and deed as such officer, and the free and voluntary act and deed of said corporation, for the uses and purposes in said instrument mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

\_\_\_\_\_  
Notary Public

My Commission Expires: