

EXHIBIT 3
FRANCHISE AGREEMENT

PERSONAL TRAINING INSTITUTE FRANCHISE, LLC

FRANCHISE AGREEMENT

FRANCHISEE

DATE

TABLE OF CONTENTS

ARTICLE I	2
GRANT OF FRANCHISE	2
ARTICLE II	4
TERM.....	4
ARTICLE III	5
FITNESS CENTER PREMISES.....	5
ARTICLE IV	7
FEES AND REPORTING.....	7
ARTICLE V	10
ADVERTISING AND PROMOTION.....	10
ARTICLE VI	18
TRAINING AND TECHNICAL ASSISTANCE.....	18
ARTICLE VII	19
DUTIES OF FRANCHISOR.....	19
ARTICLE VIII	22
DUTIES OF THE FRANCHISEE	22
ARTICLE IX	28
PROPRIETARY MARKS.....	28
ARTICLE X	31
OPERATIONS MANUAL AND CONFIDENTIALITY	31
ARTICLE XI	32
OPERATIONAL REQUIREMENTS	32
ARTICLE XII	35
INSURANCE	35
ARTICLE XIII	36
DEFAULT AND TERMINATION.....	36
ARTICLE XIV	38
OBLIGATIONS UPON TERMINATION.....	38
ARTICLE XV	40
NON-COMPETITION	40
ARTICLE XVI	42

ASSIGNMENT, TRANSFER AND SALE	42
ARTICLE XVII	46
PARTNERSHIP AND CORPORATE FRANCHISEES	46
ARTICLE XVIII	46
TAXES, PERMITS AND INDEBTEDNESS	46
ARTICLE XIX	47
DISCOUNTS.....	47
ARTICLE XX	47
CLIENT RELATIONS.....	47
ARTICLE XXI	48
RELATIONSHIP AND INDEMNIFICATION	48
ARTICLE XXII	49
DISPUTE RESOLUTION.....	49
ARTICLE XXIII	52
GENERAL	52

SCHEDULES

- A - PROPRIETARY MARKS
- B - LOCATION OF FITNESS CENTER
- C - GUARANTY AND ASSUMPTION OF OBLIGATIONS

EXHIBITS

- A - LOCATION ACCEPTANCE STATEMENT
- B - OPTION FOR ASSIGNMENT OF LEASE
- C - ASSIGNMENT OF TELEPHONE NUMBERS
- D - TRANSFER OF FRANCHISE TO A CORPORATION
- E - STATE SPECIFIC ADDENDUM

PERSONAL TRAINING INSTITUTE FRANCHISE, LLC

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into on this ___ day of _____, 20__, between **PERSONAL TRAINING INSTITUTE FRANCHISE, LLC**, a New York limited liability company, having its principal place of business located at 1C Miller Place, Smithtown, New York 11787 (hereinafter referred to as "Franchisor") and _____ (hereinafter referred to as "Franchisee").

WHEREAS, the Franchisor has developed a system of uniform standards, methods, procedures, specifications, merchandising and advertising (hereinafter referred to as the "System") for the operation of Fitness Centers (hereinafter referred to as "Fitness Center" or "Franchised Business") which offer one on one personal fitness training, one on one nutrition counseling and other approved services and health and fitness related products, as are approved from time to time by Franchisor ("Approved Services and Products") all under the trade name, trademark and service mark of "**Personal Training Institute**" (collectively, the "Proprietary Marks"); and

WHEREAS, the Franchisor is the sub-licensee of the Proprietary Marks, as are now specified in Schedule "A" attached hereto or as may be hereafter designated as a part of the System and not thereafter withdrawn, by virtue of a continuous license obtained from Personal Training Institute, LLC, Franchisor's affiliate; and

WHEREAS, the Franchisee wishes to obtain the right and license from the Franchisor for the use of the Franchisor's System and Proprietary Marks, and in association therewith to own and operate a Fitness Center located at _____ (hereinafter referred to as the "Premises"), and understands and accepts the terms, conditions and covenants set forth herein as those which are reasonably necessary to maintain the Franchisor's high and uniform standards of quality and service in order to protect the goodwill and enhance the public image of the System and the Proprietary Marks; and

WHEREAS, the Franchisor has the sole and exclusive right to the goodwill associated with the System and the Proprietary Marks and is willing to grant the right and license to the Franchisee on the terms and conditions herein contained to use the System and the Proprietary Marks; and

WHEREAS, Franchisee desires to obtain a franchise to use the System and the Proprietary Marks at the location described in Schedule "B", pursuant to the provisions hereof, and Franchisee has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Franchise Agreement by counsel of his/her own choosing and represents and warrants that he/she has the business experience and financial ability to operate a Fitness Center; and

WHEREAS, Franchisee acknowledges that Franchisee has read this Agreement and Franchisor's Uniform Franchise Offering Circular ("UFOC") and that Franchisee understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain uniform high standards of quality at all Fitness Centers and to protect the goodwill of the Proprietary Marks; and

WHEREAS, Franchisor expressly disclaims the making of any warranty or guarantee, expressed or implied, oral or written, regarding the potential revenues, profits or success of the business venture contemplated by this Agreement. Franchisee acknowledges that Franchisee has not received or relied upon any such warranty or guarantee; and

WHEREAS, Franchisee acknowledges that Franchisee has no knowledge of any representations by Franchisor, its officers, directors, shareholders or representatives about the franchise offered hereunder, about Franchisor or its franchising programs and policies that are contrary to the statements in Franchisor's UFOC or to the terms of this Agreement; and

WHEREAS, Franchisee acknowledges that this Agreement places detailed and substantial obligations on Franchisee, including strict adherence to Franchisor's reasonable present and future requirements regarding facilities, equipment, suppliers, operating procedures, management methods, merchandising strategies, sales promotion programs and related matters. Franchisee acknowledges that future improvements, changes and developments in the System may require additional expense to be undertaken by Franchisee.

BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH ASSISTANCE OF LEGAL COUNSEL.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
GRANT OF FRANCHISE

1.1 **Grant.** Subject to the terms, conditions and limitations elsewhere in this Agreement, the Franchisor hereby grants to the Franchisee a non-transferable right and license to use the System, the Proprietary Marks and to market, sell and provide the Approved Services in accordance with the System. The Approved Services are the only services authorized to be offered and sold by Franchisee from or at the Fitness Center.

1.2 **Location.** The right and license granted in Section 1.1 hereof shall be restricted solely and exclusively to use on and from the Premises, however, Franchisor (and any affiliates that it might have from time to time) will not establish, nor allow another franchise owner to establish, another Franchised Business, the physical premises of which are located within the area set forth on Exhibit "A" hereof ("Exclusive Territory"). During the term of this Agreement, the Premises shall be used exclusively by the Franchisee and solely for the purpose permitted by this Agreement. In the event that, prior to the termination of the franchise hereunder, the lease or sublease should expire or terminate without fault of the Franchisee, or if the Premises should be destroyed or otherwise rendered unusable for the purposes hereof, or if the Premises should be expropriated or the Franchisee otherwise loses possession thereof without fault on his/her part, the Franchisee shall be entitled to relocate the Fitness Center to another premises acceptable to the Franchisor, provided that:

(a) the Franchisor has first given its written consent to such relocation and new site, which consent may not be unreasonably withheld or delayed;

(b) the new premises shall be developed by the Franchisee in the same manner as described in Article III hereof solely at the Franchisee's costs;

(c) the Franchisee pays to the Franchisor any costs (including legal fees) incurred by Franchisor with respect to such relocation; and

(d) the new premises shall be located within Franchisee's Exclusive Territory.

1.3 **Non-Exclusivity.** Except as set forth above, the franchise and licenses granted to Franchisee by this Agreement are non-exclusive and Franchisor shall have, at all times throughout the term of this Agreement and any renewals hereof, and at all places, the unqualified right to open and operate, or to franchise and license others to open and operate, businesses utilizing the System anywhere, except within Franchisee's Exclusive Territory.

1.4 **Limitations on Sale of the Approved Services.** This license does not include any right to provide any service at or from any location except from the Premises. Use by Franchisee, directly or indirectly, of the System, the Proprietary Marks licensed hereunder, or the sale of any service at any location other than from the Premises shall be a material breach of this Agreement and shall give Franchisor, in addition to all other rights and remedies hereunder, the right to terminate this Agreement. Franchisee shall not engage in any promotional activities or sell the Approved Services or similar services, whether directly or indirectly, through the internet, the World Wide Web (as defined in Section 9.3 below), or any other similar proprietary or common carrier electronic delivery system (collectively, the "Electronic Media"); or by telecopy or other telephonic or electronic communications, including toll-free numbers, directed to or received from clients or prospective clients located outside of the Exclusive Territory. Franchisee may place advertisements in printed media and on television and radio that are targeted to clients and prospective clients located within the Exclusive Territory, and Franchisee will not be deemed to be in violation of this Agreement if those advertisements, because of the natural circulation of the printed media or reach of television and radio, are viewed by prospective clients outside of the Exclusive Territory. Franchisee may not make any sales or perform services to clients located outside of the Exclusive Territory unless there is not another Fitness Center, either franchised or company-owned, located in close proximity to Franchisee's Fitness Center.

1.5 **Rights Reserved to Franchisor.** Franchisor reserves the right to establish or operate, or license any other franchisee to establish or operate, a Fitness Center under the System at any location outside of the Exclusive Territory. Franchisor (and any affiliates that Franchisor periodically might have) reserves the right:

(a) to establish and operate, and grant rights to other franchise owners to establish and operate, Fitness Centers or similar businesses at any locations outside the Exclusive Territory and on any terms and conditions Franchisor deems appropriate;

(b) to purchase or otherwise acquire the assets or controlling ownership of one (1) or more businesses identical or similar to the Fitness Center (and/or franchise, license, and/or similar agreements for such businesses), some or all of which might be located anywhere, including within the Exclusive Territory. If there is such a purchase or other acquisition, Franchisor will (i) with respect to those businesses which are in the Exclusive Territory and are not franchised or licensed, (A) offer to sell these businesses to Franchisee or to any third party at their fair market value to be operated under the System, or (B) offer Franchisee the opportunity to operate those businesses in partnership with Franchisor (or its affiliate) under their original trade identities or a different trade identity that does not include the Proprietary Marks. Franchisor has the right to choose which of these alternatives Franchisor thinks best; (ii) with respect to those businesses which are franchised or licensed, act as franchisor and/or licensor of those businesses in compliance with the then-effective franchise and/or license agreements;

(c) to be acquired (regardless of the form of transaction) by a business identical or similar to "Personal Training Institute", even if the other business operates, franchises and/or licenses competitive businesses within the Exclusive Territory; and

(d) to engage in any other business activities not expressly prohibited by this Agreement, both within and outside the Exclusive Territory.

ARTICLE II

TERM

2.1 **Initial Term.** This Agreement, unless terminated earlier as hereinafter provided, shall remain in force for an initial term of ten (10) years commencing on the date of this Agreement ("Initial Term").

2.2 **Renewal.** Subject to the provisions of this Section, the Franchisee shall have an option (exercisable only by written notice delivered to the Franchisor less than nine (9) months, but more than six (6) months, prior to the end of the Initial Term of this Agreement) to renew the franchise hereunder for two (2) additional periods of five (5) years, if:

(a) the Franchisee has been, throughout the Initial Term of this Agreement, in substantial compliance, and at the expiration of such Initial Term is in full compliance, with this Agreement, the lease and all other agreements between the Franchisee and the Franchisor or companies associated or affiliated with the Franchisor;

(b) the Franchisee enters into the Franchisor's then-current Franchise Agreement and all other ancillary agreements, instruments and documents then customarily used by the Franchisor in the granting of Fitness Center franchises (all of which will contain terms substantially the same as those herein contained, except with respect to fees to be paid to Franchisor, which fees shall be the same as those Franchise Agreements being executed at the time of renewal, but which will not obligate the Franchisee to pay a further initial franchise fee);

(c) the Franchisee is able to maintain possession of the Fitness Center at the Premises (or at relocated Premises pursuant to Section 1.2 hereof) pursuant to a lease reasonably acceptable to Franchisor;

(d) the Franchisee refurbishes, upgrades, renovates, redecorates and remodels his/her Fitness Center to meet the then-current standards and image for all new Fitness Centers;

(e) the landlord of the Premises consents to a renewal or extension of the Franchisor's or Franchisee's lease (if necessary);

(f) at the time the renewal option is exercised and at the time such renewal commences, all monetary obligations to Franchisor and any affiliate of Franchisor must be current and must have been current at all times during the preceding twelve (12) months;

(g) pays to Franchisor a renewal fee equal to Twenty-Five (25%) percent of the then current initial franchisee fee, to cover Franchisor's costs, out of pocket expenses and legal fees; and

(h) the Franchisee executes a general release running in favor of Franchisor, its officers, directors and shareholders releasing all claims against Franchisor, its officers, directors and shareholders, (provided, however, that all rights enjoyed by the Franchisee and any causes of action arising in his/her favor from the provisions of Article 33 of the New York General Business Law ("GBL") and the regulations issued thereunder shall remain in force; it being the intent of this provision that the non-waiver provisions of GBL Sections 687.4 and 687.5 be satisfied).

2.3 Failure to Renew. For the purposes hereof, the Franchisee shall be deemed to have irrevocably elected not to renew the franchise hereunder (and the option to do so shall thereupon terminate) if the Franchisee fails to execute and return to the Franchisor its then-standard Franchise Agreement and other ancillary documents required by the Franchisor for a renewal within thirty (30) days after the Franchisor has delivered them to the Franchisee at any time during the last twelve (12) months of the Initial Term of this Agreement.

ARTICLE III **FITNESS CENTER PREMISES**

3.1 Location of Fitness Center. If a site for the Fitness Center has not been specified at the time of the execution of this Agreement by Franchisor and Franchisee, Franchisee shall use his/her best efforts and proceed with diligence to obtain and designate a location for the Fitness Center within a designated geographic area, which location shall be subject to Franchisor's written acceptance and approval. Franchisor will use its best efforts to assist Franchisee in evaluating a suitable location. Upon Franchisor's acceptance and approval of a location, Franchisor and Franchisee shall execute a Location Acceptance Statement in the form of Exhibit "A" hereto, which shall be deemed to be incorporated herein and made a part of this Agreement. Franchisee acknowledges that the location of the Fitness Center is a major factor in the Fitness Center's potential for success, and accordingly Franchisor may reject any proposed location in its sole discretion. Franchisee also acknowledges that the acceptance and approval by Franchisor of any location shall not in any way be deemed to be a guarantee, warranty or any other assurance (express or implied) of the success of Franchisee's business at such location. In the event a mutually agreeable site for the Fitness Center has not been located within ninety (90) days after execution of this Agreement by Franchisor, Franchisor shall have the right to terminate this Agreement and Franchisor shall refund to Franchisee all but Five Thousand Dollars (\$5,000) of the initial franchise fee paid by Franchisee, in consideration of Franchisor's time, effort and expenses in traveling to and inspecting the proposed locations.

3.2 Lease of Premises of Fitness Center. Franchisee shall not execute any lease for the Fitness Center without Franchisor's prior written approval. If the Fitness Center is to be leased or subleased by Franchisee from an entity or person affiliated in any way with Franchisee, the terms of the lease, including the financial terms, shall be comparable to the fair market terms of similar leases in the appropriate geographic area. Franchisor may reject any lease which does not include terms and conditions reasonably acceptable to Franchisor (and terms and conditions not acceptable to Franchisor may include, without limitation, those which Franchisor does not believe are comparable to fair market terms of similar leases in the appropriate geographic area). Without limiting the foregoing, Franchisor may elect to reject any lease which does not contain the provisions set forth in Exhibit "B" attached hereto. In addition, concurrently with the execution of such lease, Franchisee and Lessor shall execute and deliver to Franchisor an "Option for Assignment of Lease" in form and substance as provided for in Exhibit "C" attached hereto.

3.3 Development of Fitness Center. Franchisor shall consult with Franchisee regarding the construction of the interior of the Fitness Center or interior leasehold improvements. Franchisor will provide Franchisee with model plans and specifications based upon typical configurations for the layout of a Fitness Center. Franchisee must construct (or renovate) and equip the Fitness Center in a good and workmanlike manner and in conformity with all laws, rules, regulations and requirements of governmental authorities having jurisdiction over the Fitness Center and in accordance with the plans and specifications of Franchisor or, subject to Franchisor's prior written approval, the plans and specifications of Franchisee. All plans and specifications or modifications to Franchisor's plans and specifications proposed by Franchisee shall be submitted to Franchisor for approval at a reasonable time prior to the commencement of construction and shall be modified as requested by Franchisor. Franchisee will forthwith cause any mechanics' liens, materialmen's liens or other liens which may be recorded or perfected or which may otherwise attach to all or any portion of the Fitness Center as a result of work done by or for Franchisee to be discharged or released of record or be fully bonded.

3.4 Equipment, Furniture, Furnishings and Signs. Franchisee shall install in and about the Fitness Center such equipment, including computer-related equipment and computer software, fixtures, furnishings, furniture, interior and exterior signs, and other personal property as are required and which strictly conform to the appearance, uniform standards, and specifications of Franchisor existing from time to time (hereinafter sometimes referred to collectively as "Equipment and Furnishings"). Franchisor shall furnish Franchisee with lists and specifications of the approved furniture, fixtures, equipment and signs which are required to outfit and furnish the Fitness Center in accordance with Franchisor's image and standards. Franchisor shall have the right to inspect all Equipment and Furnishings and their installation to assure Franchisee's compliance with Franchisor's standards and specifications. Franchisee shall not install coin operated vending devices of any kind, newspaper racks, telephone booths, games, rides, or other coin operated machines, or permit others to do so, with the exception for beverage machines.

3.5 Opening for Business. Franchisee shall open the Fitness Center for business as follows:

(a) If the location requires the installation of Improvements (as hereinafter defined), then Franchisee shall open the Fitness Center for business upon completion thereof; provided, however, that Franchisee shall not delay the completion of the Improvements; and provided further, that (subject only to force majeure) Franchisee shall open the Fitness Center for business not later than one hundred and eighty (180) days after the date Franchisee's location is approved by Franchisor.

(b) If the location does not require the installation of Improvements, then Franchisee shall open the Fitness Center as soon as practicable after receiving possession of the Fitness Center Premises; provided, however, that Franchisee shall not delay taking delivery of possession.

(c) In the event the Fitness Center is not open for business on or before the time provided for above, Franchisor may terminate this Agreement upon thirty (30) days' prior written notice to Franchisee, unless the Fitness Center shall open for business pursuant to the terms of this Agreement within such thirty (30) day period.

(d) For purposes of this Section 3.5(d), "Improvements" shall mean and include all improvements necessary or required to operate a Fitness Center including, but not limited to, electrical, plumbing, and carpentry work, floor treatment, structural modifications including walls, wall treatments, heating, ventilating, and air conditioning, ceiling, and sheet metal work.

(e) In no event shall the Fitness Center be opened for business until: (i) all Franchisee's obligations under this Section 3.5 have been fulfilled; (ii) Franchisor determines that the Fitness Center has been constructed, decorated, furnished, equipped and stocked with materials and supplies in accordance with plans and specifications Franchisor has approved; (iii) the initial training program has been completed to Franchisor's satisfaction by all required persons; (iv) the initial franchise fee and all other amounts due to Franchisor have been paid; (v) Franchisee has furnished Franchisor with all Certificates of Insurance required by Article XII herein; (vi) Franchisee has obtained all required governmental permits, licenses and authorizations necessary for the operation of the Fitness Center; (vii) Franchisee is in full compliance with all the terms of this Agreement; and (viii) all items in Franchisor's opening checklist have been complied with to Franchisor's satisfaction.

ARTICLE IV **FEES AND REPORTING**

4.1 **Initial Franchise Fee.** In consideration of the grant of this license, the Franchisee shall pay to the Franchisor by cashier's or certified check a non-recurring and non-refundable initial franchise fee for the franchise hereunder in the amount of Nineteen Thousand Five Hundred (\$19,500) Dollars, payable upon execution of this Agreement. The initial franchise fee shall be deemed to have been fully earned by the Franchisor upon execution of this Agreement.

4.2 **Continuing Service Fee.** In further consideration of the grant of this license, the Franchisee shall pay to the Franchisor monthly (the "Period") on the fifteenth (15th) day of the month following the previous month's end during the term of the Agreement a non-refundable continuing service fee ("Continuing Service Fee") equal to five percent (5%) of the Franchisee's Gross Revenue for such Period. All Continuing Service and other fees payable hereunder shall be made via electronic funds transfer or automatic debit of funds, in a method determined by the Franchisor, in its sole discretion.

4.2.1 Franchisee shall sign and deliver to Franchisor any documents required to authorize Franchisor to debit Franchisee's business checking account automatically for the Continuing Service Fee and other amounts due under this Agreement. On or before the day Franchisor specifies, Franchisee must report to Franchisor by telephone or electronic means or in written form, as Franchisor directs, the Fitness Center's true and correct Gross Revenue for the previous month. Franchisor will debit Franchisee's account for the Continuing Service Fee on or after the fifteenth (15th) day of the month for the previous month. Franchisee agrees to make the funds available for withdrawal by electronic transfer before each due date.

4.2.2 If Franchisee fails to report the Fitness Center's Gross Revenue, Franchisor may debit Franchisee's account for one hundred twenty percent (120%) of the last Continuing Service Fee that it debited. If the Continuing Service Fee debited from Franchisee's account is less than the Continuing Service Fee Franchisee actually owes to Franchisor (once Franchisor has determined the Fitness Center's true and correct Gross Revenue), Franchisor will debit Franchisee's account for the balance of the Continuing Service Fee due on the day Franchisor specifies. If the Continuing Service Fee debited from Franchisee's account is greater than the Continuing Service Fee actually owed, Franchisor will credit the excess against the amount Franchisor otherwise would debit from Franchisee's account during the following month.

4.3 **Advertising Contributions.** Recognizing the value of uniform national and regional advertising and promotion of the System, the Franchisee, in further consideration of the grant of this license, agrees to pay to the Franchisor, without notice from Franchisor, on the tenth (10th) day after the

end of each Period, a non-refundable advertising contribution ("Brand Development Fee") to the Fund (as hereinafter defined) equal to up to two percent (2%) of the Franchisee's Gross Revenue, payable at the same time and in the same manner as the Continuing Service Fee provided for in Section 4.2 hereof. However, Franchisor shall maintain the absolute right, in its sole discretion, to increase the Brand Development Fee in order to meet the demands of the marketplace, upon thirty (30) days' written notice to Franchisee. In no event, however, shall such increases exceed three percent (3%) of Franchisee's Gross Revenue.

4.4 Definition of Gross Revenue. For purposes of this Agreement, the term "Gross Revenue" includes the total during any month of all sales, monies, revenues, charges and receipts received by Franchisee or any other person which are derived from services sold at the Fitness Center and from all sales and orders made, solicited or received at the Fitness Center, and from all other business whatsoever conducted at or from the Fitness Center or related in any way to the Fitness Center, whether such revenues are evidenced by cash, credit (and regardless of collection in the case of credit), checks, credit cards, gift certificates, scrip, coupons, services, property or other means of exchange, and whether such sales are of vending or coin operated machine items, services, merchandise or products of any nature whatsoever. However, Gross Revenue shall not include (i) sales taxes or other taxes measured on the basis of the Gross Revenue of the business imposed by governmental authorities directly on sales and collected from clients, provided the taxes are added to the selling price and are in fact paid by Franchisee to the appropriate governmental authorities; and (ii) sales for which refunds have been made to clients to the extent that such sales have been previously included in Gross Revenue for which a Continuing Service Fee was paid.

4.4.1 Gross Revenue shall be deemed received by Franchisee at the time any payment is received by Franchisee, whether such payment represents an installment or partial payment or payment in full for any of the products, merchandise or services sold, contracted for or rendered. Gross Revenue consisting of property or services shall be valued at the prices applicable, at the time such Gross Revenue are received, to the products or services exchanged for such Gross Revenue.

4.4.2 Franchisee shall report the daily Gross Revenue to Franchisor at the time of payment of the Continuing Service Fee and Brand Development Fee on such form and in such detail as may be prescribed from time to time by Franchisor, and at the same time Franchisee shall deliver to Franchisor copies of all customer product and service order forms in such form and such detail as Franchisor may from time to time require.

4.5 Late Payments. To encourage prompt and timely payment of the Continuing Service Fees and Brand Development Fees and to cover the costs and expenses involved in handling and processing any payments not received by their due dates, Franchisee shall also pay, upon demand, a late payment charge in an amount equal to the lesser of: (i) two percent (2%) per month; or (ii) the highest rate permitted by law. Such charge shall accrue from the date payment was due until the date payment is actually received by Franchisor. Notwithstanding the foregoing, each failure to pay the Continuing Service Fees, Brand Development Fees or other payments payable to Franchisor when due will be a material breach of this Agreement.

4.6 Application of Payments. Franchisor shall have sole discretion to apply any payments received from Franchisee to any past due indebtedness of Franchisee for the Continuing Service Fees, Brand Development Fees, purchases made from Franchisor or its affiliates, late payment charges or any other indebtedness of Franchisee to Franchisor or its affiliates.

4.7 Bookkeeping, Accounting and Records. The Franchisee shall use a bookkeeping, accounting, inventory control, point of sale and record-keeping system for the business of the Fitness Center that is reasonably approved by Franchisor, and Franchisee shall retain all invoices, order forms, time cards, payroll records, check stubs, bank deposit receipts, sales tax records and returns, cash disbursements journals and general ledgers. The Franchisee shall keep such original documents at the Fitness Center throughout the term of this Agreement, and for at least five (5) years thereafter, at a location of which the Franchisor shall be kept advised, unless the Franchisor gives written permission to dispose of such records. All sales shall be recorded at the time of sale in the presence of the customer on Franchisee's point of sale system reasonably approved by the Franchisor and having a cumulative totaling device.

4.8 Reports and Tax Returns. The Franchisee shall furnish to the Franchisor throughout the term of this Agreement in the form from time to time prescribed by the Franchisor:

(a) on the tenth (10th) day of each month, a facsimile report of Gross Revenue for the preceding month;

(b) within five (5) days after each of the Franchisor's Periods, a report of the Franchisee's Gross Revenue and other Fitness Center activities for such Period (including such information as may be required by Franchisor) verified by the Franchisee on forms to be supplied or approved by the Franchisor;

(c) within thirty (30) days after the documents referred to in Section 4.9 hereof are filed, an exact copy of all returns, schedules and reports filed by the Franchisee for income, corporate or sales tax purposes;

(d) within ten (10) days after the end of each calendar month, a statement of Gross Revenue for such month and all preceding months of such calendar year, a monthly profit and loss statement for such month, and a profit and loss statement from the beginning of the Franchisee's latest financial year, on such forms as the Franchisor may specify;

(e) within ninety (90) days after the end of each fiscal year of the Franchisee, an unaudited balance sheet, statement of profit and loss and source and application of funds from the beginning of that fiscal year, prepared by an independent chartered accountant and verified by the Franchisee's statutory declaration as to the information furnished to such accountant; and

(f) such other reports, statements, sales slips, order forms, records, calculations and indices as the Franchisor may, from time to time, require.

4.9 Audited Statements. If the Franchisor, in its sole discretion, determines that any report, financial statement, tax return or schedule furnished by the Franchisee understates the Gross Revenue of the business, distorts any other information or is incomplete, unclear or misleading, it shall have the right to require the Franchisee to furnish audited annual financial statements for that year at the Franchisee's sole cost and expense, with such statements being prepared in accordance with generally accepted accounting principles consistently applied.

4.10 Audit. The Franchisor or its representatives or agents shall have the right at any time during normal business hours, and on Seventy-Two (72) hour prior notice to the Franchisee, to inspect, photograph, copy, request, receive and/or audit or cause to be inspected, copied, requested, received

and/or audited the business records, bookkeeping and accounting records, sales, reports, financial statements and tax returns that the Franchisee is required to submit to the Franchisor hereunder along with the Franchisee's books and records and those of any corporation or partnership to which the Franchisee has assigned this Agreement. If the Franchisor should determine that an audit is necessary during the term hereof or after the expiration or termination of the franchise, the Franchisee will, upon notice, deliver to the Franchisor all required records and documents to conduct such audit. The Franchisee shall fully cooperate with representatives of the Franchisor conducting any such audit. In the event that any such audit should disclose an understatement of Gross Revenue for any Period or Periods, the Franchisee shall pay, within fifteen (15) days after receipt of the audit report, the fees, contributions and any other amounts (including, without limitation, interest pursuant to Section 24.13 hereof) due upon the amount of such understatement. Further, in the event such audit is made necessary by the failure of the Franchisee to furnish reports, financial statements, tax returns or schedules as herein required, or if an understatement of Gross Revenue for any Period is determined by any such audit to be greater than two percent (2%) of the Gross Revenue for such Period disclosed by the audit, the Franchisee shall pay two (2) times the amount of the deficiency, in addition to reimbursing the Franchisor for the cost of such audit, including, without limitation, the charges of any independent accountants, legal fees, and travel expenses, room, board and compensation of their employees or representatives. The foregoing remedies are in addition to all other rights and remedies Franchisor may have under this Agreement or under applicable law.

4.11 Information from Others. The Franchisee hereby authorizes the Franchisor to make reasonable inquiries of the Franchisee's bank, credit reporting agencies, suppliers and trade creditors concerning the business of the Fitness Center and hereby directs such persons and companies to provide to the Franchisor such information as it may request.

4.12 Inspection. The Franchisor or its representatives or agents shall have the right at any time during normal business hours, and without prior notice to the Franchisee, to enter, inspect and photograph the Premises and all aspects of the operation of the Fitness Center together with all records, books of account, tax returns and other documents and materials in the possession or under the control of the Franchisee relating to the business of the Fitness Center, the Franchisee and the subject matter and terms of this Agreement, including, without limitation, all records of the Franchisee required to be maintained pursuant to applicable law, to ascertain that the Franchisee is operating the Fitness Center in accordance with the System, the terms of this Agreement and the Confidential Operations Manual. The Franchisor or its representatives or agents shall be allowed to make extracts from or copies of any such material without any liability to Franchisor, including, but not limited to, payment for such extracts or copies. In the event that the Franchisor gives notice to the Franchisee of any deficiency detected during such inspection, the Franchisee shall diligently correct such deficiency as soon as possible, but in any event within five (5) days after receipt of such notice. If the Franchisee fails to correct such deficiency within such five (5) day period, the Franchisor shall have the right (but not the obligation) to correct such deficiency on behalf of and at the sole expense of the Franchisee, and in such case the Franchisee shall reimburse the Franchisor for all costs incurred by the Franchisor (including, without limitation, a reasonable charge for the time of any personnel of the Franchisor) in connection therewith.

ARTICLE V

ADVERTISING AND PROMOTION

5.1 The Fund. Recognizing the value of uniform advertising and promotion to the goodwill and public image of the System, the Franchisee agrees that the Franchisor or its designee shall have the right to establish, maintain and administer a national creative advertising fund (hereinafter referred to as

the "Fund") for such national and regional advertising programs as the Franchisor may deem necessary or appropriate, in its reasonable discretion, as follows:

(a) the Franchisor shall direct all national and regional advertising programs with sole discretion over the creative concepts, materials, endorsements and media used therein, and the placement and allocation thereof. The Franchisee understands and acknowledges that the Fund is intended to maximize general public recognition and acceptance of the System and the Proprietary Marks for the benefit of all Fitness Centers operating under the System, and that the Franchisor undertakes no obligation in administering the Fund to ensure that expenditures from the Fund are proportionate or equivalent to the Franchisee's contributions made for his/her Fitness Center, or that any particular Fitness Center or franchisee benefits directly or pro rata from the placement of any such advertising;

(b) the Franchisee agrees that the Fund may be used to meet any and all costs of maintaining, administering, directing and preparing national and/or regional advertising materials, programs and public relations activities (including, without limitation, the cost of preparing and conducting television, radio, magazine, Internet, billboard, newspaper, direct mail and other media programs and activities, for conducting marketing surveys, test marketing, employing advertising agencies to assist therewith, and providing promotional brochures, coupons and other marketing materials to all franchisees of the System). The Fund shall be accounted for separately from the other funds of the Franchisor, and shall not be used to defray any of the Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, not to exceed ten (10%) percent, as the Franchisor may incur in activities reasonably related to the administration or direction of the Fund and its advertising programs;

(c) a statement of the operations of the Fund shall be prepared annually by the Franchisor's accountants and shall be made available to the Franchisee on written request. The cost of the statement shall be paid by the Fund. Except as expressly provided in this Section 5.1, the Franchisor assumes no direct or indirect liability or obligation to the Franchisee with respect to the maintenance, direction or administration of the Fund;

(d) the Franchisor shall, for each company-owned Fitness Center, make contributions to the Fund calculated at the same percentage of the Gross Revenue of such Fitness Center as is required to be contributed by Fitness Center franchisees generally within the System; and

(e) the Franchisor shall have the right to create an advertising council composed of franchisees and Franchisor representatives, including any of Franchisor's designees. Said council shall have input with respect to expenditures of Fund contributions.

(f) the Franchisee understands and acknowledges that the Fund is intended to maximize recognition of the Proprietary Marks and patronage of "Personal Training Institute" businesses. Although the Franchisor will endeavor to utilize the Fund to develop advertising and marketing materials, and to place advertising, in a manner that will benefit all "Personal Training Institute" businesses, the Franchisor undertakes no obligation to ensure that expenditures by the Fund in or affecting any geographic area are proportionate or equivalent to contributions to the Fund by "Personal Training Institute" businesses operating in that geographic area or that any "Personal Training Institute" business will benefit directly or in proportion to its contribution to the Fund from the development of advertising and marketing materials or the placement of advertising. Except for losses to the Fund resulting from theft, embezzlement, or similar actions by the Franchisor's representatives, the Franchisor assumes no direct or indirect liability or obligation to the Franchisee with respect to the maintenance, direction, or administration of the Fund.

5.2 Local Advertising. In addition to making the Fund contributions required in Section 4.3 hereof, the Franchisee shall make every reasonable effort to vigorously and aggressively promote and increase the demand for the services and products of the Fitness Center by conducting, at his/her further expense, the following local advertising during the term of this Agreement:

(a) the Franchisee shall obtain and pay for listings for the Fitness Center in the white pages and classified sections (Yellow Pages) of all local telephone directories distributed in the area in which his/her Fitness Center is located, as required by the Franchisor, of the kind and size as may from time to time be specified by the Franchisor. If other Fitness Centers are served by the same white pages and classified section, the Franchisor shall have the right, in its sole discretion, to require group advertisements and listings therein, to make arrangements directly with the telephone company on the Franchisee's behalf for his/her participation therein, and to determine the formula for allocating part of the costs thereof to the Franchisee, and the Franchisee shall pay such on demand;

(b) the Franchisee shall participate in such sales and promotional campaigns and activities as the Franchisor may direct from time to time; provide such approved promotional material to each customer of the Fitness Center as the Franchisor may require; and maintain a sufficient supply thereof for that purpose at all times; and

(c) the Franchisee shall display all such signs, emblems and logos at the Premises as the Franchisor may require from time to time.

5.3 Additional Local Advertising. Subject to the prior written approval of the Franchisor, the Franchisee shall, at the Franchisee's expense, conduct additional advertising in the Franchisee's local area, and the Franchisor may, from time to time, offer the Franchisee approved local marketing plans and materials including, without limitation, templates for advertising that will cover pre-opening and post-opening advertising, on the same terms and conditions as the Franchisor is then offering to its other Fitness Center franchisees. Prior to their use by the Franchisee, samples of all local marketing materials not prepared or previously approved by the Franchisor shall be submitted to the Franchisor for written approval, which approval shall not be unreasonably withheld. Notwithstanding the generality of the foregoing, the Franchisee shall spend three (3%) percent of the Gross Revenue per month for local advertising in his/her marketing area. Upon request from Franchisor, Franchisee shall provide Franchisor with verification of all expenditures for local advertising within thirty (30) days of such request.

5.4 Advertising Cooperatives. In addition to the Brand Development Fee and in lieu of the required local advertising expenditures discussed above, if a local advertising cooperative is formed by Franchisor's franchisees and approved by Franchisor, Franchisee shall contribute to said cooperative the amount agreed upon by a majority of the members of the cooperative, and to pay that amount to the advertising cooperative at the times agreed upon by the majority. If, however, the amount contributed to the cooperative is less than what is required to be spent locally (Section 5.3 above), then Franchisee shall nevertheless be required to spend the difference locally.

5.5 Grand Opening Advertising. The Franchisee shall spend between Two Thousand Dollars (\$2,000) and Five Thousand Dollars (\$5,000) for a grand opening advertising campaign to be incurred in connection with the grand opening of the Fitness Center. This sum of money shall be spent within the first sixty (60) days of operation of the Fitness Center.

5.6 Website.

5.6.1 **Definitions:** For the purpose of this Agreement, the following words and phrases shall have the meaning set forth in this Paragraph 5.6:

5.6.1.1 **“Content”** means all text, images, sounds, files, video, designs, animations, layout, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Franchisor’s Web site.

5.6.1.2 **“Deep Link”** means a link to content of a Web site. Typically, a deep link to an interior page of a Web site (i.e., bypassing the front page of the Web site).

5.6.1.3 **“Electronic Commerce”** means offering and selling merchandise and services associated with the Proprietary Marks, and receiving and accepting orders and payment for that merchandise and services, directly or indirectly, through any means of electronic communication, including receiving and accepting orders over the Internet.

5.6.1.4 **“Frame”** refers to a feature which, when used in conjunction with certain browsers, allows visitors of a Web site to view content from other Web sites without actually leaving the first page.

5.6.1.5 **“Franchisee’s Web Page”** means one or more interior pages of Franchisor’s Web site dedicated in whole or on part of the Fitness Center.

5.6.1.6 **“Franchisor’s Web site”** means one or more Internet Web sites that may, among other things, facilitate orders, provide information about the System and the products and services that are offered on the Web site and at Fitness Centers operated under the Proprietary Marks; Franchisee’s Web Page may be part of the Franchisor Web site.

5.6.1.7 **“Internet”** means any means of electronic communication that employs inter-connected computer networks to communicate information (of any kind) by fiber optics, wire, radio or other methods of transmission, including the myriad of computers, telecommunications facilities and similar means (both equipment and software) that comprise the interconnected worldwide network of networks that employ the TCP/IP (Transmission Control Protocol/Internet Protocol) or any predecessor or successor protocols to that protocol.

5.6.1.8 **“Intranet”** means a private method of communication for use only by employees and franchisees of Franchisor; the Franchisor’s Intranet may be either a “True” intranet (a series of inter-connected computers that use the same type of software as the Internet, but that are not technically part of the Internet and do not use the Internet to transmit material to one another) or an extranet (which will actually transmit information over the Internet, but require a password to access data on the servers used by Franchisor).

5.6.1.9 **“Link”** means a cross-reference which, with the aid of an interactive browser program, allows the end-user to move or connect easily from one document (including, another Web site or page on a Web site) to another.

5.6.1.10 **“Software”** means all computer programs and computer code (e.g., HTML, Java) used for or on the Web site, excluding any software owned by third parties.

5.6.1.11 “URL” means uniform resource locator, the unique address assigned to each page of a Web site.

5.6.1.12 “Web site” means a series of inter-connected “pages” on the World Wide Web section of the Internet (the “World Wide Web” is the portion of the Internet that features graphic-rich pages using the HTTP and HTML protocols).

5.6.2. **Use of Proprietary Marks on Internet:** Franchisee shall not develop, create, generate, own, license, lease or use in any manner any computer medium or electronic medium (including, any Internet home page, e-mail address, Web site, bulletin board, newsgroup or other Internet-related medium) which in any way uses or displays, in whole or part, the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto without Franchisor’s express prior written consent, and then only in such manner and in accordance with this Agreement, such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time and only so long as Franchisee is not in default of this Agreement or any other Agreement between Franchisor its affiliates and Franchisee. Without limiting the generality of the foregoing, Franchisee shall not cause, permit or allow the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto, be used or displayed in whole or part; (a) as, or as a part of, an Internet domain name; (b) as, or as a part of, URL (at any level or address); or (c) on or in connection with any Internet home page, Web site, bulletin board, newsgroup, chat-group, buddy list, instant messenger, meta-tag (or the comparable identifier in any future technology) or other internet-related activity, without Franchisor’s express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time. Franchisee shall not link to or frame Franchisor’s Web site (including Franchisee’s Web Page, if any) to any other Web site or authorize any third party to Link to or frame the Web site (including Franchisee’s Web Page, if any) without Franchisor’s express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

5.6.2.1 Except as provided in Paragraph 5.6 of this Agreement Franchisee shall not use, nor authorize any third party to use, the Proprietary Marks to advertise, promote, offer or sell any goods or services through the Internet, if those goods or services are the same as or similar to those (a) which are offered at or from the Fitness Center, (b) which bear any of the Proprietary Marks, or (c) which are otherwise offered or sold under the Proprietary Marks. Franchisee may, however, use the Proprietary Marks to sell such goods or services through the Internet in compliance with Paragraph 11.11 of this Agreement or with Franchisor’s prior written consent, but then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

5.6.2.2 Franchisor will own and will retain all right, title and interest in and to the Proprietary Marks and the use thereof in any and all manners and to all existing and future domain names, URLs, future addresses and sub addresses established by Franchisor (including Franchisee’s Web Page sub addresses) which may or may not include the Proprietary Marks; all Software; all Content prepared for, or use on, Franchisor’s Web site; and all intellectual proprietary rights in or to any of them.

5.6.3 **Franchisor’s Web Site:** Franchisor may, but shall not be obligated to, establish and maintain from time to time Franchisor’s Web site to provide information about the System and the goods and services the Fitness Centers provide, even through Franchisor’s Web site is accessible by person in Franchisee’s trade area. Franchisor has sole discretion and control over design and content of

Franchisor's Web site, except the Franchisor may configure the site to accommodate Franchisee's Web Page as described in Paragraph 5.6.2 of this Agreement. Franchisor may, at its sole option, from time to time, without prior notice to Franchisee: (a) change, revise, or eliminate the design, content and functionality of Franchisor's Web site; (b) make operational changes to Franchisor's Web site; (c) change or modify, or modify the URL and /or domain name of Franchisor's Web site; (d) substitute, modify, or rearrange Franchisor's Web site, at Franchisor's sole option, including in any manner that Franchisor considers necessary or desirable to, among to other things, (1) comply with applicable laws, (2) respond to changes in market conditions or technology, and (3) respond to any other circumstances; (e) limit or restrict end-user access (in whole or in part) to Franchisor's Web site; and (f) disable or terminate Franchisor's Web site without any liability to Franchisee.

5.6.3.1 Franchisor's Web site may include a series of interior pages that may identify participating Fitness Centers by among other things, name, geographic region, address, telephone number and/or e-mail address. Franchisor may permit Franchisee to customize or post certain information to Franchisee's Web Page, subject to Franchisee's compliance with the procedures, policies, standards and specifications that Franchisor may establish the Manuals from time to time which may require the Franchisee to pay a reasonable fee for the privilege of having Franchisee's Web Page, and may include, without limitation, specifications and limitations for the data or information to be posted to Franchisee's Web Page, customization specifications, the basic template for design of Franchisee's Web Page, parameters and deadlines specified by Franchisor, disclaimers, and such other standards and specifications and rights and obligations of the parties as Franchisor may establish from time to time. Any modifications (including customizations, alterations, submissions or updates) to the Content made by Franchisee for any purpose will be deemed to be a "work made for here" under the copyright laws, and therefore, Franchisor shall own the intellectual property rights in and to such modifications. To the extent any modification does not qualify as a work made for hire as outlined above. Franchisee hereby assigns those modifications to Franchisor for no additional consideration and with no further action required and shall execute such further assignments(s) as Franchisor may request. Franchisee may not modify Franchisee's Web Page except in coordination with Franchisor's webmaster and in compliance with Franchisor's policies and procedures. Franchisee shall contribute a reasonable fee toward the cost of the Web site's maintenance, which may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time. If Franchisee fails to pay when due any fees or other amount payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may disable Franchisee's Web Page until such time as Franchisee pays its outstanding obligations in full. Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of disabling Franchisee's Web Page. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

5.6.3.2 Franchisor may Link Franchisor's Web site to the Web sites of third parties, including, electronic service providers, Franchisor's affiliates and other providers of goods and services. Franchisor may also permit third parties to Link (including Deep Links to any interior page of Franchisor's Web site, including Franchisee's Web Page) and frame Franchisor's Web site (including Franchisee's Web Page). Franchisor may place legal notices, disclaimers, Franchisor's corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on Franchisor's Web site, all of which may be modified, expanding, or eliminated at Franchisor's option. Further, Franchisor may establish or participate in programs whereby Franchisor refers end-users to other Web sites, or Franchisor receives referrals from other Web sites. All consideration (monetary and non-monetary) received by Franchisor on account of the placement or sale of advertisements, endorsements, and sponsorships on Franchisor's Web site (including any Franchisee Page), and all consideration

(monetary and non-monetary) received by Franchisor on account of affiliate programs, will belong only to Franchisor. Franchisor may also establish programs which encourage repeat and business by end-users.

5.6.3.3 Without limiting Franchisor's general unrestricted right to permit, deny and regulate Franchisee's participation on Franchisor's Web site in Franchisor's sole discretion, if Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may disable or terminate Franchisee's Web Page and remove all references to the Fitness Center on Franchisor's Web site until the breach is cured.

5.6.3.4 Franchisor has no control over the stability or maintenance of the Internet generally; as a result, Franchisor is not responsible for damage or loss caused by errors of the Internet. Furthermore, Franchisor is not liable for any direct or indirect, special, incidental, exemplary or consequential damages arising out of the use of, or the inability to use, Franchisor's Web site or the Internet, including loss of profits, goodwill, or savings; downtime; or damage to or replacement of programs and data, whether passed in contract, tort, product liability, or otherwise.

5.6.4 **Electronic Commerce.** Franchisee will not use the Proprietary Marks to advertise, promote or sell any services or merchandise through the Internet, nor will Franchisee offer or sell any service that is identify with the Proprietary Marks or other merchandise that bears the Proprietary Marks through the Internet, except in compliance with Paragraph 5.6.2.1 of this Agreement and this Paragraph 5.6.4. Franchisee's breach of this restriction will constitute willful trademark infringement and a material breach of this Agreement.

5.6.4.1 Franchisor may, at its discretion, use the Web site described in Paragraph 5.6 of this Agreement or may establish another facility on the Internet for the purpose of engaging in Electronic Commerce with respect to products and services that are identified with the Proprietary Marks.

5.6.4.2 If Franchisor decides to engage in Electronic Commerce, it will (a) establish uniform procedures, policies and protocols to govern electronic communications between Franchisor and its customers and the use and dissemination of information that Franchisor obtains with respect to customers' identities, purchasing habits and other commercially relevant matters; (b) develop a secure site on the facility through which Franchisor can accept credit card and other confidential information from its customers; (c) establish a central administration center through which customer orders are processed, customer complaints are handled, sales taxes (if any) are remitted, and records of sales transactions are created and maintained; (d) establish a central fulfillment center through which all customer orders are filled; and (e) establish the terms and conditions under which members of the System may participate in Franchisor's Electronic Commerce program.

5.6.4.3 In the event that Franchisor initiates Franchisor's Electronic Commerce program, Franchisee will have the opportunity to participate in the program provided the Franchisee is in good standing under this Agreement and any other agreement with Franchisor or Franchisor's affiliates. The Electronic Commerce program set forth in the Manuals may (a) state the terms on which Franchisor and participating franchisee of Franchisor may share program revenues and expenses, (b) obligate Franchisee to adhere to Franchisor's procedures, policies and protocols that govern electronic communications and the use and dissemination of customer information, (c) authorize Franchisor from

time to time to modify the procedures, policies and protocols that govern the Electronic Commerce program; and (d) release Franchisor from liability to Franchisee and its customers for theft or disclosure of confidential customer information or breach of Franchisor's privacy standards unless the proximate cause of such theft, disclosure or breach is Franchisor's gross negligence or willful misconduct.

5.6.4.4 If Franchisee declines to participate in the Electronic Commerce program on the terms stated in the Manuals, Franchisee will have no right to share in the program revenues, nor will Franchisee have any responsibility to bear or pay any program expenses.

5.6.4.5 If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisee hereby authorizes Franchisor to disable or terminate the end-user's ability to place pick-up and deliveries orders with Franchisee until the breach is cured.

5.6.5 **Franchisor's Intranet.** Franchisor may, at its option, establish and maintain, an Intranet through which Franchisor, franchisees of Franchisor and Franchisor's employees may communicate with each other, and through which Franchisor may disseminate the Manuals, updates thereto and other confidential information. Franchisor shall have sole discretion and control over all aspects of the Intranet, including the content and functionality thereof. Franchisor will have no obligation to maintain the Intranet indefinitely, and may dismantle it at any time without liability to Franchisee.

5.6.5.1 If Franchisor establishes an Intranet, Franchisee shall have the privilege to use the Intranet, subject to Franchisee's strict compliance with the standards and specifications, protocols and restrictions that Franchisor may establish from time to time. Such standards and specifications, protocols and restrictions may relate to, among other things, (a) the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) communications between or among franchisees that endorse or encourage breach of any franchisee's Franchise Agreement; (c) confidential treatment of materials that Franchisor transmits via the Intranet; (d) password protocols and other security precautions; (e) grounds and procedures for Franchisor's suspending or revoking a franchisee's access to the Intranet; and (f) a privacy policy governing Franchisor access to use of electronic communications that franchisees post to the Intranet. Franchisee further acknowledges that, as administrator of the Intranet, Franchisor can technically access and view any communication that any person posts on the Intranet. Franchisee further acknowledges that the Intranet facility and all communications that are posted to it will become Franchisor's property, free of any claims of privacy or privilege that Franchisee or any other person may assert.

5.6.5.2 Upon receipt of notice from Franchisor that Franchisor has established the Intranet, Franchisee shall establish and continually maintain (during all times that the Intranet shall be established and until the termination of this Agreement) an electronic connection (the specifications of which shall be specified in the Manuals) with the Intranet that allows Franchisor to send message to and receive messages from Franchisee, subject to the standards and specifications. Franchisee shall contribute a reasonable amount toward the cost of the Intranet's maintenance which may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time.

5.6.5.3 If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates or

otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may temporarily disable to terminate Franchisee's access to the Intranet until such time as Franchisee pays its outstanding obligation in full without Franchisor having any liability to Franchisee, in which case Franchisor shall only be required to provide Franchisee a paper copy of the Manuals and any updates thereto, if none have been previously provided to Franchisee, unless Franchisee is not otherwise entitled to the Manuals.

5.6.6. **Assignment Upon Termination or Expiration.** Franchisee shall, at the option and request of Franchisor, assign to Franchisor all rights to all e-mail addresses, URLs, domain names, Internet listings, and Internet accounts related to the Fitness Center following demand by Franchisor upon Franchisee's misuse of the same and/or the termination or expiration of this Agreement. Furthermore, Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of assigning these rights to Franchisor. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effective until the termination or expiration of this Agreement.

ARTICLE VI

TRAINING AND TECHNICAL ASSISTANCE

6.1 **Managerial Responsibility.** It is agreed that at all times during the term of this Agreement, either Franchisee or a fully trained Manager, certified by the Franchisor (the "Manager(s)"), shall:

(a) devote full time, attention and effort to the active management and operation of the business of the Fitness Center;

(b) irrespective of any delegation of authority, not inconsistent with clause (a), reserve and exercise ultimate authority and responsibility with respect to the management and operation of the business of the Fitness Center; and

(c) represent and act on behalf of the Franchisee in all dealings with the Franchisor.

If two (2) or more individuals are named in this Section, each of them shall fulfill the requirements of clause (a) and both or all of them shall jointly fulfill the requirements of clauses (b) and (c).

6.2 **Initial Training Program.** At least twenty-one (21) days before the Fitness Center is opened for business, the Franchisor shall make available to the Franchisee a ten (10) day training program which the Franchisee and his/her Manager that Franchisee designates, must successfully complete prior to the opening of the Fitness Center. If Franchisee owns more than one Fitness Center, Franchisor shall train up to two Managers per year, without any additional charge. Such training program shall be held at the Franchisor's office location or at such other place as may be specified by the Franchisor. In addition, Franchisor shall send one of its representatives to Franchisee's Premises for three (3) days, to conduct on-site training. All costs and expenses incurred by the Franchisee and such Manager(s) or employees relating to such training program (including, without limitation, the cost of travel, food, accommodations and wages) shall be paid by the Franchisee. The Franchisor shall provide only the instruction, training facilities and materials for classroom and on-site instruction of the Franchisee and two (2) Manager(s) or employees, not to exceed three (3) persons total. If the Franchisor determines that the Franchisee or one (1) or more of the Managers cannot or has not completed the

training program to the Franchisor's satisfaction (after giving the Franchisee the opportunity to designate a replacement Manager), the Franchisor may terminate this Agreement pursuant to Section 13.1 hereof and refund to Franchisee one-third of the initial franchise fee paid by Franchisee, in consideration of Franchisor's time, effort and expense in conducting the initial training. Franchisor may, in its sole discretion, provide additional or refresher training programs at a time and place mutually acceptable to Franchisor and Franchisee. Franchisee must pay to Franchisor its then-current per diem training fee for each of Franchisor's representatives involved in said additional or refresher training, in addition to reimbursing Franchisor for all expenses of said representatives, including travel, lodging and meals.

6.3 Hiring and Training of Employees by the Franchisee. The Franchisee shall hire and train, at his/her expense, except as may be set forth in Section 6.2, all employees of the Fitness Center, and shall be exclusively responsible for the terms of their employment and compensation. The Franchisee shall not employ anyone who refuses or fails to complete such training program. The Franchisee shall at all times maintain a sufficient number of trained employees to service the Franchisee's clients, but at least the minimum number specified by the Franchisor.

6.3.1 Franchisor shall require Franchisee (or Franchisee's Manager(s)) and/or previously trained and experienced managers to attend training courses that Franchisor periodically chooses to provide at the times and locations Franchisor designates. Franchisor may charge reasonable attendance fees for these courses. Franchisee is also responsible for all travel and living expenses incurred in attending Franchisor's training courses.

6.4 Operating Assistance. The Franchisor shall make available to the Franchisee such operating assistance and training on a continuing basis as the Franchisor considers appropriate and which may consist of advice and guidance with respect to:

- (a) methods and procedures for the marketing and sale of the Approved Services;
- (b) such additional services and products as the Franchisor may approve, from time to time, to be used or offered for sale by franchisees;
- (c) the purchase, operation, maintenance and use of displays, uniforms, equipment, materials and supplies;
- (d) formulating and implementing advertising and promotional programs using such merchandising, marketing and advertising research data and advice as may, from time to time, be developed by the Franchisor and deemed by it to be helpful in the operation of the Fitness Center;
- (e) the establishment and implementation of administrative, bookkeeping, accounting, inventory control and general operating procedures for the proper operation of the Fitness Center;
- (f) provide on-going training and nutrition programs; and
- (g) the operation, cleanliness and efficiency of the Fitness Center.

ARTICLE VII
DUTIES OF FRANCHISOR

7.1 **Franchisor's Duties.** During the term of this Agreement, the Franchisor shall, at its expense, offer to the Franchisee the following:

(a) an initial training program in System standards, specifications, methods and techniques as provided for in Section 6.2 hereof, as well as assistance to Franchisee in the opening of the Fitness Center for a period of ten (10) days prior to its opening;

(b) provide such periodic continuing individual or group advice, consultation, and assistance, rendered in person, by weekly correspondence (electronic or otherwise), quarterly field visits, or by periodic telephone or written communications made available from time to time to all franchisees of the System, as the Franchisor may deem necessary or appropriate to assist the Franchisee in conforming to the requirements of the System. Such continuing advice may include, but not be limited to, such topics as products and services to be offered to clients, improvements and developments in operating a Fitness Center, pricing, administrative, bookkeeping, accounting and inventory control procedures, and operating problems encountered by the Franchisee;

(c) subject to Section 10.1 hereof, to lend to the Franchisee one (1) copy of the Confidential Operations Manual and one (1) copy of any other manuals designated for use with the System, as well as such additions and modifications thereto as the Franchisor may, in its sole discretion, issue from time to time; and

(d) new, modified or supplemented standards for the System that, in Franchisor's sole discretion, are beneficial or necessary to maintain the uniformity and goodwill of the System utilized by all franchisees.

(e) arrangements for Franchisee to purchase his/her initial supply of Approved Products from Franchisor or from Franchisor's designated supplier.

7.1.1 Franchisor or Franchisor's affiliates or other restricted sources shall sell and Franchisee shall purchase the Approved Products intended for sale exclusively through Personal Training Institute and its entire system from the Franchisor, its affiliates or other restricted sources.

7.2 **Products and Services.** Upon request and at the Franchisee's expense, the Franchisor shall offer to the Franchisee, during the term of this Agreement, any of the following services and products which it is then offering to other franchisees and on the same terms and conditions:

(a) supplies of signs, equipment, accessories, printed business forms and other materials and supplies used in the operation of the Fitness Center;

(b) on-site assistance by a person employed or retained by the Franchisor at mutually convenient times; and

(c) periodic supplemental training, as set forth in Section 6.2 hereof.

7.3 **System Maintenance.** The Franchisor shall continue its efforts to maintain uniform standards of quality, cleanliness, appearance and service at all Fitness Centers in the System, to promote, protect and enhance the public image and reputation of the System, and to increase the demand for the services offered by all System franchisees, and to that end the Franchisor shall:

(a) review all other materials prepared by the Franchisee for use in local advertising and promotion pursuant to Section 5.3 hereof; and

(b) conduct periodic inspections of the services and products provided to the public by the Franchisee's Fitness Center.

7.4 Meetings. To develop and maintain cooperation and friendship with other franchisees, to enhance the ability to operate the Franchised Business properly, to learn the most recent developments in business methods for the Franchised Business and to take instructions from Franchisor on new or revised procedures or requirements, Franchisee shall be required to attend any regional meetings organized and conducted by Franchisor for franchisees, to be held at locations to be determined by Franchisor.

7.4.1 Franchisor will pay all costs of organizing and conducting such meetings utilizing monies of the Fund, but Franchisee shall be responsible for his/her own travel expenses, meals and lodging, including those of his/her Manager(s), if any. However, Franchisor shall be under no obligation to organize or hold such meetings until, in Franchisor's sole and absolute discretion, it is advisable to do so.

7.4.2 Franchisee may be excused from attending any regional meetings only for reasonable necessity, after prior notice in writing to Franchisor. However, regardless of any excuses, Franchisee must attend a make-up session to be arranged by Franchisor at a date and location to be selected by Franchisor. The cost of organizing and conducting each such make-up session, including the fees of any guest lecturer, rental of a meeting place and audio-visual materials and equipment, and reasonable compensation for the time of Franchisor personnel required to organize such make-up session, shall be borne in equal shares by all those who attend it. Failure to attend a make-up session after missing a regional meeting shall be deemed good cause for termination of this Agreement.

7.4.3 Franchisee's Manager(s), if any, must attend and complete, at Franchisee's expense, all the meetings and training sessions described in Article VII hereof, in addition to Franchisee and to the same extent as Franchisee.

7.5 Directories. To assist in the efficient operation of the Personal Training Institute, Franchisor shall provide and Franchisee shall assist Franchisor in the continuous development and maintenance of the following directories for their use solely by the Personal Training Institute:

7.5.1 Franchisee Directory. To assist Franchisee in maintaining contact with other franchisees, referring clients to them and receiving referrals from them, Franchisor shall publish, from time to time, a directory of the names, addresses and telephone numbers of every franchisee in the System.

7.5.2 Approved Suppliers Directory. Franchisor will compile from time to time and deliver to Franchisee a directory of the names and addresses of authorized sources of materials and supplies for all goods and services which Franchisee may only purchase from Approved Suppliers (as hereinafter defined). Such directory may also include suggested sources of supply for items which must meet Franchisor's specifications. Franchisor may require a listing fee for suggested sources of supply, but will not require any such fee or other payment for listing Approved Suppliers of items which Franchisee cannot purchase except from Approved Suppliers. Such directory may be national or

regional, at Franchisor's sole and absolute discretion. Franchisor may sell advertising in such directory for Franchisor's own account.

ARTICLE VIII
DUTIES OF THE FRANCHISEE

8.1 **Obligations of Franchisee.** In order to maintain the high quality and uniform standards associated with the System and the Proprietary Marks, and to promote and protect the goodwill associated therewith, the Franchisee shall:

(a) at all times comply strictly, and cause the Fitness Center to comply strictly, with all standards, specifications, processes, procedures, requirements and reasonable instructions of Franchisor regarding the operation of the Fitness Center. Franchisee shall adopt as a standard for performance and operation of his/her Fitness Center the standards of Franchisor and conform to all specifications relating to construction, decor, design, equipment, packaging, products, services, uniforms, signs, displays or decorations, and other identifying materials, uniform record keeping practices, days and hours of operation and such other matters as may be in the Confidential Operations Manual, any administrative bulletins, and other confidential manuals or materials developed by Franchisor, or otherwise, as any of same may be modified from time to time by Franchisor. To insure the conformance and compliance by Franchisee with Franchisor's standards of performance, Franchisee will permit Franchisor, its officers, employees and designated representatives to enter his/her Fitness Center at any time and from time to time to conduct an inspection to ascertain whether or not the uniform standards are being met;

(b) at all times keep and maintain the Fitness Center Premises and the Equipment and Furnishings in a neat, clean, orderly and sanitary condition, and the Equipment and Furnishings in good repair and maximum working condition. In connection therewith, Franchisee shall from time to time abide by any reasonable requirement of Franchisor with regard to the remodeling and upgrading of the Fitness Center to comply with standards then applicable to new "Personal Training Institute" franchisees. The interior of the Fitness Center shall be renewed or repainted, and re-carpeted as necessary, but in any event not less frequently than every five (5) years, in accordance with Franchisor's then-current standard color schemes and standards, or within said five (5) year period if reasonably required by Franchisor. If at any time during the Initial Term or any renewal thereof any of the Equipment and Furnishings become obsolete or depreciated, then to the extent that they require replacement in accordance with Franchisor's standards, Franchisee will replace the same with items required by Franchisor's then-current standards and specifications. Franchisee shall not attach or exhibit any signs, displays, or posters on or in the interior of said building other than signs, displays or posters then currently supplied, required, or authorized in writing by Franchisor, nor shall Franchisee permit or suffer others to do so. If any substantial alterations are to be made upon the Fitness Center Premises during the Initial Term or any renewal thereof, then said alterations shall be first approved in writing by Franchisor and plans and specifications therefor agreed to in writing by Franchisor. To maintain a modern, progressive, and uniform operational image, Franchisor, at any time during the Initial Term or any renewal thereof, shall have the right to require Franchisee to perform such remodeling, repairs, replacements and redecoration in and upon the Fitness Center Premises, improvements, and Equipment and Furnishings used by Franchisee which are reasonably necessary and practical to bring such Fitness Center Premises, improvements, and Equipment and Furnishings up to the then-current standards of Franchisor. Franchisee will bear the entire cost of any remodeling, repairs, replacements, redecoration or

other maintenance or refurbishing required hereunder. Franchisee acknowledges that possible additional investment may be required pursuant to this Section. If Franchisee fails to make any required remodeling, repairs, replacements, redecoration or other maintenance or refurbishing required hereunder within ten (10) days after receipt of notice from Franchisor of the actions required to be taken, Franchisor may, but is not required to, arrange for the completion of all required actions on Franchisee's behalf and Franchisee shall reimburse Franchisor upon demand for all costs incurred;

(c) operate the Fitness Center in accordance with the standards, specifications, requirements and instructions as may be communicated to Franchisee by Franchisor. Franchisee must comply strictly with all standards, specifications, processes, procedures, requirements and instructions of Franchisor, whether they now exist or are hereafter established from time to time regarding the operation of the Fitness Center. The Fitness Center and everything located therein must be maintained in first-class condition and repair and must be kept clean, neat and sanitary. It must be adequately lighted and must be operated in a clean, wholesome and sanitary manner consistent with Franchisor's requirements. All maintenance, repairs and replacements requested by Franchisor or needed in connection with the Fitness Center must be made promptly. All employees of Franchisee must be clean and neat and must wear the required uniform, if any, at all times;

(d) offer for sale the Approved Services and Products and only the Approved Services and Products, as same exist from time to time. The Approved Services and Products must be offered for sale on a continuous basis at the Fitness Center at the time and in the manner required by Franchisor. No sale of any product or service except the Approved Services and Products may be solicited, accepted or made at or from the Fitness Center. If requested by Franchisor, on at least thirty (30) days' notice, as part of a general program or standardization effort by Franchisor, the marketing of the Approved Services and Products may be modified. In such an event, such modified service becomes the Approved Services and Products.

(i) Franchisor may, from time to time, conduct market research and testing to determine consumer trends and salability of new products and services. Franchisee must cooperate by participating in Franchisor's market research programs, test marketing new products and services and providing timely reports and other relevant information regarding marketing research. In connection with such test marketing, Franchisee must purchase a reasonable quantity of products to be tested and effectively promote and make a reasonable effort to sell such products and services.

(ii) Franchisee may not: (a) sell any product for resale; (b) sell any product or service at or from any place except the Fitness Center or within the Exclusive Territory; or (c) prepare or deliver any product or service at any place other than the Fitness Center or within the Exclusive Territory.

(iii) Franchisee shall purchase his/her entire supply of the Approved Products from Franchisor, its affiliates or other restricted sources, in which case Franchisee will be obligated to acquire the Approved Products only from such restricted sources at prices Franchisor decides to charge;

(e) at his/her own expense, promotionally display in and upon the Premises "Personal Training Institute" advertising signs of such nature, form, color, number, location, size and containing such material as Franchisor shall direct or approve in writing. Franchisor or its suppliers shall furnish to Franchisee, without cost or expense to Franchisee, design plans for outside advertising signs. Only signs or advertising media approved by Franchisor shall be displayed by Franchisee in or upon the

Fitness Center Premises or elsewhere. All signs must be purchased from suppliers approved by Franchisor. Franchisee shall install and maintain such signs at his/her own expense for the period that such signs remain in Franchisee's possession. Upon termination of this Agreement for whatever reason, the signs shall become the property of Franchisor, and Franchisee shall promptly remove and procure any such signs and deliver them to Franchisor according to its direction;

(f) adhere to Franchisor's minimum quality standards and specifications for all facets of the "Personal Training Institute" Franchised Business, including equipment, signage, layout design, decor, furniture, fixtures, furnishings, inventory supplies, advertising and sales promotion materials and other products or materials used in the operation of a Fitness Center. Such standards and specifications have been established by Franchisor for uniformity, quality control and to protect, maintain and foster its reputation, goodwill and public acceptance. All such information regarding standards and specifications shall be provided to Franchisee in writing or otherwise through the Confidential Operations Manual. The Confidential Operations Manual is incorporated in this Agreement by reference and Franchisee will comply with all provisions therein. All such standards and specifications may be modified at any time by Franchisor. Franchisor will provide Franchisee with a list of and specifications for the equipment, fixtures, furniture and furnishings which are consistent with the standard Fitness Center. Franchisor will provide Franchisee with a list of recommended fixtures, furniture, Equipment and Furnishings and the Approved Suppliers thereof, which list may be modified by Franchisor from time to time. Franchisor shall also provide Franchisee with lists and specifications of approved promotional materials, supplies, and other inventory items needed in the daily operation of the Fitness Center. Franchisor will afford Franchisee the opportunity to purchase in sufficient quantity, and in a timely manner to meet Franchisee's reasonable needs, such products and supplies as Franchisor or its affiliated company is in the business of selling. Franchisee will also have the opportunity to purchase from Franchisor advertising, promotional and training materials developed by Franchisor.

(i) Franchisor has and will continue to periodically approve suppliers and distributors of the products, materials and supplies used in the operation of a Fitness Center that meet Franchisor's standards and requirements, including, without limitation, standards and requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations and customer relations. Franchisee must purchase all products, materials and supplies only from distributors and other suppliers approved by Franchisor from time to time.

(ii) Franchisor may approve a single distributor or other supplier (collectively "Approved Supplier") for any product and may approve a supplier only as to certain products. Franchisor may concentrate purchases with one (1) or more suppliers to obtain lower prices or the best advertising support or services for any group of Fitness Centers. Franchisor may, if it chooses, take advantage of discounts offered by a supplier in connection with the acquisition of large quantities of products and resell said products to Franchisee at a profit or to pass such savings on to its franchisees. Approval of a supplier may be conditioned on requirements relating to the frequency of delivery, concentration of purchases, standards of service, including prompt attention to complaints, or other criteria and may be temporary, pending Franchisor's continued evaluation of the supplier from time to time.

(iii) If Franchisee desires to purchase any items from any unapproved supplier, Franchisee must submit to Franchisor a written request for approval of the proposed supplier and obtain Franchisor's written approval of the supplier prior to purchasing any such items from said supplier. Franchisor may charge Franchisee a reasonable, non-refundable fee, not to exceed One Thousand Dollars (\$1,000), to cover the cost Franchisor incurs in determining its approval. Franchisor may inspect the proposed supplier's facilities and require product

samples from the proposed supplier to be delivered at Franchisor's option either directly to Franchisor or to any independent entity which Franchisor designates for testing. Franchisor's evaluation and ultimate approval or rejection shall be completed within thirty (30) days of submission. Franchisor reserves the right to periodically re-inspect the facilities and products of any Approved Supplier and to revoke its approval if the supplier does not continue to meet any of Franchisor's criteria. Franchisor shall in no event be obligated to approve any proposed supplier.

(g) comply with all mandatory specifications, standards and operating procedures relating to the appearance, function, cleanliness, sanitation and operation of a Fitness Center. Mandatory specifications, standards, and operating procedures prescribed from time to time by Franchisor, or otherwise communicated to Franchisee in writing, will constitute provisions of this Agreement as if fully set forth in this Agreement. All references to "this Agreement" includes all such mandatory specifications, standards and operating procedures;

(h) secure and maintain in force in his/her name all required licenses, permits and certificates relating to the operation of the Fitness Center. Franchisee must operate the Fitness Center in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to workers' compensation insurance, unemployment insurance, and withholding and payment of federal and state income taxes, social security taxes and sales taxes. All necessary and appropriate measures must be taken to avoid unsatisfactory safety, sanitation or health ratings at all times from government authorities. Conditions or practices disapproved by any such authorities must be corrected promptly except that, after consultation between Franchisee and Franchisor, Franchisee may contest in good faith the action by such authority as being arbitrary, capricious, unfair or unlawful. All advertising employed by Franchisee must be completely factual, in good taste (in Franchisor's reasonable judgment), and must conform to the highest standards of ethical advertising. Franchisee must in all dealings with Franchisor, clients, suppliers, and public officials adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Franchisee must refrain from any business or advertising practice which may be harmful to the business of Franchisor, the goodwill associated with the Proprietary Marks or other Fitness Centers. Franchisee must notify Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental unit, which may adversely affect the operation or financial condition of Franchisee or the Fitness Center, or of any notice of violation of any law, ordinance or regulation relating to health or safety;

(i) assure that at all times the Fitness Center must be under the direct, on-premises supervision of a manager who has satisfactorily completed Franchisor's training program. Franchisee shall staff the Fitness Center with the number of managers, assistant managers or other key personnel as Franchisor specifies from time to time, and who shall have been trained by Franchisor provided if they are involved with working with their clients. Franchisee shall hire all employees of the Fitness Center and be exclusively responsible for the terms of their employment, their compensation, and for the proper training of the employees in the operation of the Fitness Center. Franchisee may not recruit or hire, either directly or indirectly, any employee (or former employee for six (6) months after his or her employment has ended) of a Fitness Center without Franchisor's advance written permission or that of the employer-franchisee. (If Franchisee violates this provision, Franchisee shall pay the hired employee's former employer twice the hired employee's annual salary, plus all costs and attorneys' fees incurred as a result of the violation).

(j) provide that payment for all products and services purchased from the Franchisor by the Franchisee, if any, shall be due and payable within fifteen (15) days after receipt of an invoice therefor, unless otherwise specified by the Franchisor. All other supplies, forms, documents and

equipment required for the operation of the Fitness Center and not required to be purchased from the Franchisor or its designees may be purchased from the Franchisor or from any source or supplier approved or designated in writing by the Franchisor or from any other source or supplier, provided that the Franchisor shall have first approved in writing such other source or supplier, which approval shall not be unreasonably withheld so long as the standards of the System are met;

(k) maintain at all times such arrangements with (and only with) such credit card issuers or sponsors, and shall implement and at all times operate such point-of-sale systems and credit verification systems as the Franchisor may designate from time to time;

(l) assure that his/her Manager(s) and other personnel of the Fitness Center as the Franchisor may direct shall attend and participate at such additional or supplemental training courses, seminars and franchisee meetings as may be specified by the Franchisor from time to time. The Franchisor shall have the right to charge the Franchisee a reasonable fee for such additional or supplemental training courses, seminars or franchisee meetings and the Franchisee shall also be responsible to pay all travel, accommodation, meal and other expenses of the Franchisee and its Manager(s) and other personnel in respect of attending and completing such courses, seminars or meetings;

(m) issue and honor any type of gift certificate or other types of promotions or marketing campaigns.

8.2 Inventory. Franchisee shall, at all times, maintain on the Premises, under proper conditions, an adequate inventory of the Approved Products, all required components, materials, equipment and supplies therefor, including, without limitation, the marketing, manufacturing, installation and administrative aspects of the Franchised Business.

8.3 Computer Hardware and Software Systems. Since the effective and efficient operation of a Personal Training Institute Franchise, LLC Franchised Business is intimately connected with the use and maintenance of appropriate computer hardware and software systems as specified by Franchisor, with direct interconnection to and access by Franchisor's computer hardware and software systems, Franchisee must purchase, use, maintain and update computer and other systems, including software programs which meet Franchisor's specifications, as they evolve over time and which, in some cases, may only be available through Franchisor and/or its affiliates. Franchisee must maintain his/her systems on-line to provide full, twenty-four (24) hour access for computer systems used by Franchisor and Franchisee must promptly update and otherwise change his/her computer hardware and software systems and Franchisor requires from time to time, at Franchisee's expense. Franchisee will pay all amounts charged by any supplier or licensor, which may be Franchisor or an affiliate, of the systems and programs used by Franchisee, including charges for use, maintenance, support and/or update of these systems or programs.

8.4 Mutual Dependence. Franchisee acknowledges that he/she is one of a number of Personal Training Institute Franchise, LLC franchisees, each of whose success depends in substantial part on the integrity, reputation and marketing efforts of each other franchisee. Franchisee further acknowledges that the value of the Proprietary Marks and of membership in the Personal Training Institute Franchise, LLC to Franchisee, to Franchisor and to each other franchisee depends on the maintenance of uniform standards of quality, integrity and appearance. Franchisee further acknowledges that any action which impairs the reputation and goodwill of the Proprietary Marks, impairs or adversely affects the objectives of the Franchisor or brings the Franchisor into disrepute, or departs from the

uniform practices specified by Franchisor, will be likely to injure all members of the Personal Training Institute Franchise, LLC.

8.5 Uniformity. Franchisee agrees that he/she will at all times adopt and follow all the Franchisor's directives concerning the appearance of Franchisee's Fitness Center, the quality and appearance of goods and services offered, the appearance of Franchisee and his/her staff, other business practices and other matters likely to affect the public perception of the Personal Training Institute System as a unified and reliable network of companies. Franchisee will offer all of, and only, the goods and services which Franchisor authorizes.

8.6 Variances. Complete and detailed uniformity under many varying conditions may not be possible or practicable, and Franchisor therefore reserves the right and privilege, at the sole and absolute discretion of Franchisor and as Franchisor may deem in the best interest of all concerned in any specific instance, to vary standards to accommodate special needs of Franchisee, or those of any other franchisee, based upon the peculiarities of a particular site or location, density of population, business potential, population of trade area, existing business practices, requirements of local law or local custom, or any other condition which Franchisor deems to be of importance to the successful operation of such franchisee's business. Further, Franchisor may from time to time allow certain franchisees to depart from normal System standards and routines in certain respects in order to experiment with or test new products or services, equipment, designs, procedures and the like. In no event shall such variance, or such testing, be deemed a waiver of any of Franchisor's rights, or an excuse from performance of any of Franchisee's duties hereunder. Franchisor may at any time require Franchisee to commence full compliance with all of Franchisor's standards and procedures. Franchisor shall not under any circumstances be required to grant any variance to Franchisee. Nothing contained in this Article is intended to confer on Franchisee any right to compel Franchisor to grant a variance to Franchisee or to grant, withdraw or modify any variance given to any other franchisee. Such matters shall at all times remain within the sole and absolute discretion of Franchisor.

8.7 Relationship with Former Franchisees. Franchisee acknowledges that former franchisees (those whose franchise agreements have expired or have been terminated) are in a position to compete unfairly with the Franchisee and/or other members of the Personal Training Institute Franchise, LLC, and to cause great injury to the reputation of the Personal Training Institute Franchise, LLC and/or the Proprietary Marks. Franchisee therefore agrees as follows:

8.7.1 Franchisee will not sell, loan, give or otherwise transfer or deliver to any former franchisee, or allow any former franchisee to copy or otherwise obtain, any confidential business information about the Personal Training Institute Franchise, LLC; any advertising or promotional materials produced by the Fund or by Franchisor or which bear any of the Proprietary Marks; any other materials or publications of Franchisor, including, without limitation, the Confidential Operations Manual; any directory or roster of franchisees or Approved Suppliers, any other customer lists or mailing lists pertaining in any way to the Personal Training Institute Franchise, LLC; or any other information about the Personal Training Institute Franchise, LLC business or the Fitness Center which is not available to the public.

8.7.2 Franchisee will not refer prospective clients to any former franchisee.

8.7.3 Franchisee will not notify or advise any former franchisee of, or in any other way assist any former franchisee in learning about, the date, time and place of any meetings of franchisees.

8.7.4 If Franchisee observes any former franchisee using any of the Proprietary Marks in any way, or utilizing business premises from which the Proprietary Marks and/or distinctive color scheme have not been completely obliterated, Franchisee shall immediately report such observation to Franchisor, along with all details available to Franchisee.

8.7.5 Franchisee shall in general have no dealings with a former franchisee which Franchisee, under this Agreement, could not have with a person who has never been a Personal Training Institute Franchise, LLC franchisee.

8.7.6 The provisions of Section 8.6 of this Agreement shall apply to Franchisee as soon as Franchisee is on notice of the expiration or termination of another franchise agreement. Franchisee shall be deemed to be on such notice when:

(i) Franchisee receives a new Franchisee Directory in which such franchise does not appear; or

(ii) Franchisee receives written notice from Franchisor that one or more particular franchise agreements have expired or have been terminated.

8.8 **Parties to Litigation.** Franchisee will not in any way contribute to the legal costs and fees of any actual or contemplated legal proceeding against Franchisor, the Fund or any other franchisee or any individual member or owner thereof, nor in any other way encourage, support or assist such litigation, except:

(i) to give evidence to the extent required by law, pursuant to a subpoena or court order; or

(ii) to carry on litigation to which Franchisee is a proper party.

8.9 **Certification Programs.** Franchisee and each of his/her personal trainers must have at least one certification from either of the two national certification organizations, National Association of Sports Management ("NASM") or the American College of Sports Management ("ACSM"), or in the alternative, from the Franchisor's affiliate.

ARTICLE IX

PROPRIETARY MARKS

9.1 **Proprietary Marks.** When used in this Agreement, "Proprietary Marks" mean the "PTI Personal Training Institute" trademark and service marks which are used now or in the future to identify Fitness Centers or the Approved Services and to distinguish it from that of any other business, and the trademarks, service marks, trade names, logos and commercial symbols as may be designated by the Franchisor from time to time for use in connection with the Fitness Center.

9.2 **License of Proprietary Marks.** Franchisee is licensed to use the Proprietary Marks, goodwill and trade secrets in the operation of the Fitness Center only at the location specified in Schedule B. Nothing in this Agreement shall be construed as authorizing or permitting their use at any other location or for any other purpose, except as may be authorized in writing by Franchisor.

9.3 Franchisor Retains Ownership. Franchisee acknowledges that the ownership of all of the Proprietary Marks, goodwill and trade secrets remains solely with Franchisor and Franchisor's licensor, and that Franchisee shall not register or attempt to register the Proprietary Marks or to assert any rights in them other than as specifically granted in this Agreement, nor shall Franchisee use the Proprietary Marks as part of any domain name, electronic address, or search engine that Franchisee may maintain on the Internet, Worldwide Web, or any other similar proprietary or common carrier electronic delivery system, or otherwise in connection with a Website, unless the Franchisor has approved such use.

9.4 Use of Proprietary Marks. Franchisee shall only use the Proprietary Marks, logos, trade styles, color combinations, designs, signs, symbols and slogans of Franchisor, and only in the manner and to the extent specifically permitted by this Agreement, the Confidential Operations Manual or in any manuals, directives or memos prepared by Franchisor.

9.5 Approval of Items Using Proprietary Marks. Franchisor reserves the right to approve all signs, memos, stationery, business cards, advertising material, forms and all other objects and supplies using the Proprietary Marks. All advertising, publicity, point of sale materials, signs, decorations, furnishings, equipment, or other materials employing the words "PTI Personal Training Institute" shall be in accordance with this Agreement and the Confidential Operations Manual, and Franchisee shall obtain Franchisor's approval prior to such use.

9.6 Cessation of Use after Expiration, Termination or Non-Renewal. Upon the expiration, termination or non-renewal of this Agreement, Franchisee shall immediately cease using the Proprietary Marks, color combinations, designs, symbols or slogans; and Franchisor may cause Franchisee to execute such documents and take such action as may be necessary to evidence this fact. After the effective date of expiration, termination or non-renewal, Franchisee shall not represent or imply that he/she is associated with Franchisor. To this end, Franchisee irrevocably appoints Franchisor or its nominee to be Franchisee's attorney-in-fact to execute on Franchisee's behalf any document or perform any legal act necessary to protect the Proprietary Marks from unauthorized use. Franchisee acknowledges and agrees that the unauthorized use of the Proprietary Marks will result in irreparable harm to Franchisor for which Franchisor shall be entitled to obtain injunctive relief, monetary damages, reasonable attorneys' fees and costs.

9.7 Notification of Infringement. Franchisee shall immediately notify Franchisor of any apparent infringement of or challenge to Franchisee's use of the Proprietary Marks, or any claim, demand, or suit based upon or arising from the unauthorized use of, or any attempt by any other person, firm, or corporation to use, without authorization, or any infringement of or challenge to, any of the Proprietary Marks. Franchisee also agrees to immediately notify Franchisor of any other litigation instituted by any person, firm, corporation or governmental entity against Franchisor or Franchisee.

9.8 Franchisor to Defend. Franchisor shall undertake the defense or prosecution of any litigation concerning Franchisee that relates to any of the Proprietary Marks or that, in Franchisor's judgment, may affect the goodwill of the System; and Franchisor may, in such circumstances, undertake any other action which it deems appropriate. Franchisor shall have sole and complete discretion in the conduct of any defense, prosecution or other action it chooses to undertake. In that event, Franchisee shall cooperate and execute those documents and perform those acts which in the opinion of Franchisor are necessary for the defense or prosecution of the litigation or for such other action as may be undertaken by Franchisor.

9.9 **Franchisee to Use Only Designated Proprietary Marks.** In order to develop and maintain high uniform standards of quality and service and to protect the reputation and goodwill of Franchisor, Franchisee shall do business and advertising using only the Proprietary Marks designated by the Franchisor. Franchisee shall not do business or advertise using any other name. Franchisee is not authorized to and shall not use the words "PTI Personal Training Institute" by themselves, as a part of the legal name of any corporation, partnership, proprietorship or other business entity to which Franchisee is associated, or with a bank account, trade account or in any legal or financial connection.

9.10 **Inspection.** In order to preserve the validity and integrity of the Proprietary Marks, and to assure that Franchisee is properly employing them in the operation of Franchisee's business, Franchisor and its agents shall have the right at all reasonable times and without prior notice, to inspect Franchisee's business, and its operations. Franchisee shall cooperate with and assist Franchisor's representative in such inspection.

9.11 **Copyright Symbols.** Franchisee shall be required to affix the ®, ™ or ™ symbol upon all advertising, publicity, signs, decorations, furnishings, equipment or other printed or graphic material employing the words "PTI Personal Training Institute" or any other of the Proprietary Marks, whether presently existing or developed in the future.

9.12 **No Right to Deny Use of Proprietary Marks.** Franchisee acknowledges that he/she does not have any right to deny the use of the Proprietary Marks to any other Personal Training Institute Franchise, LLC franchisees. In consideration therefor, Franchisee shall execute all documents and take such action as may be requested to allow Franchisor or other Personal Training Institute Franchise, LLC franchisees to have full use of the Proprietary Marks.

9.13 **Avoidance of Conflict.** If during the term of this Agreement there is a claim of prior use of the "PTI Personal Training Institute" name or any other of the Proprietary Marks in the area in which Franchisee is doing business or in another area or areas, Franchisee shall so use Franchisor's other Proprietary Marks in such a way and at Franchisor's discretion in order to avoid a continuing conflict.

9.14 **Indemnification.** The Franchisor agrees to indemnify Franchisee against, and to reimburse Franchisee for, all damages, costs, reasonable attorneys' fees and expenses for which he/she is held liable in any proceeding in which Franchisee's use of any Proprietary Mark pursuant to and in compliance with this Agreement is held to constitute trademark infringement, unfair competition or dilution, and for all costs reasonably incurred by Franchisee in the defense of any such claim brought against him/her or in any such proceedings in which he/she is named as a party, provided that Franchisee has timely notified the Franchisor of such claim or proceedings, has otherwise complied with this Agreement and has tendered complete control of the defense of such to the Franchisor. If the Franchisor defends such claim, the Franchisor shall have no obligation to indemnify or reimburse Franchisee with respect to any fees or disbursements of any attorney retained by Franchisee.

9.15 **Limited License.** Franchisee understands and agrees that the limited license to use the Proprietary Marks granted hereby applies only to such Proprietary Marks as are designed by Franchisor, and which are not subsequently designated by Franchisor as being withdrawn from use, together with those which may hereafter be designated by Franchisor in writing. Franchisee expressly understands and agrees that he/she is bound not to represent in any manner that he/she has acquired any ownership or equitable rights in any of the Proprietary Marks by virtue of the limited license granted hereunder, or by virtue of Franchisee's use of any of the Proprietary Marks.

If it becomes advisable at any time, in the discretion of Franchisor, to modify or discontinue use of any Proprietary Mark and/or to adopt or use one or more additional or substitute Proprietary Marks, then Franchisee shall be obligated to comply with any such instruction by Franchisor. The sole obligation of Franchisor in such event shall be to reimburse Franchisee for modifying his/her signs and advertising materials. Franchisee waives any other claim arising from or relating to any Proprietary Mark change, modification or substitution. Franchisor will not be liable to Franchisee for any expenses, losses or damages sustained by Franchisee as a result of any Proprietary Mark addition, modification, substitution or discontinuation, except as provided herein. Franchisee covenants not to commence or joint in any litigation or other proceeding against Franchisor for any of these expenses, losses or damages.

9.16 Name Registrations. Before commencing business at the Fitness Center, Franchisee must supply evidence satisfactory to Franchisor that Franchisee has complied with all applicable laws regarding the use of fictitious or assumed names. Franchisee must take such steps as Franchisor approves in writing to register the name "**PTI Personal Training Institute**" to be able to operate the Fitness Center under such name within Franchisee's Exclusive Territory. Except for registration of a "d/b/a" or assumed name or other fictitious name certificate in connection with the operation of the Fitness Center, Franchisee must not register or attempt to register Franchisor's names or the Proprietary Marks in Franchisee's own name or that of any other entity, nor shall Franchisee make any attempt to register a domain name which includes the Proprietary Marks.

ARTICLE X

OPERATIONS MANUAL AND CONFIDENTIALITY

10.1 Confidential Operations Manual. The Franchisor has developed and will lend to the Franchisee during the term of this Agreement an operating manual for the Fitness Center (herein referred to as the "Confidential Operations Manual") containing mandatory specifications, standards, methods, techniques and procedures for the operation of the Fitness Center prescribed from time to time by the Franchisor for its franchisees, and containing information relative to other obligations of the Franchisee hereunder. All such specifications, standards and operating procedures shall be consistent with this Agreement and all applicable laws. Specifications, standards and operating procedures prescribed from time to time by the Franchisor in the Confidential Operations Manual or otherwise communicated to the Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein and shall be kept confidential by the Franchisee at all times during the term of this Agreement and after the termination or expiration thereof for any reason. The Franchisee shall operate his/her Fitness Center strictly in accordance with the Confidential Operations Manual. The Franchisor shall have the right to add to, and otherwise modify, the Confidential Operations Manual from time to time to reflect changes in the Approved Services, the System, or the operation of the Fitness Center; provided, however, no such addition or modification shall alter the Franchisee's fundamental status and rights under this Agreement. However, operating procedures and standards that the Franchisor prescribes from time to time in the Confidential Operations Manual will constitute provisions of this Agreement as if fully set forth herein. All references to this Agreement shall include all such standards and operating procedures. The Franchisee covenants to accept, implement and adopt any such modifications at his/her own cost, except as provided in Section 9.15 hereof covering a change in the Proprietary Marks. The Franchisee shall keep the Confidential Operations Manual up to date with replacement pages and insertions as instructed by the Franchisor. The Franchisee acknowledges that the Confidential Operations Manual contains proprietary information of the Franchisor and the Franchisee agrees to keep the Confidential Operations Manual and its contents confidential at all times and not to make any copies thereof. The Confidential Operations Manual shall at all times remain the property of the Franchisor, and the Franchisee shall

promptly return the Confidential Operations Manual to the Franchisor upon the Franchisor's request, and in any event upon the termination or expiration of this Agreement for any reason. In the event a dispute arises as to the contents of the Confidential Operations Manual, the master copy maintained by Franchisor shall be controlling.

10.2 Confidentiality. Franchisee shall not, during the term of this Agreement or at any time thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association or corporation any confidential information or know-how concerning the methods of operation of the System hereunder which may be communicated to Franchisee, or of which Franchisee may become apprised, by virtue of the operation of the Fitness Center under this Agreement. Franchisee shall divulge such confidential information only to such of his/her employees who must have access to it in order to operate the Fitness Center. Any and all information, knowledge, and know-how, including, without limitation, the materials, equipment, specifications, techniques, and other data, which the Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to his/her attention prior to disclosure thereof by the Franchisor; or which, at the time of disclosure by the Franchisor to Franchisee, had become a part of the public domain through publication or communication by others; or which, after disclosure to Franchisee by the Franchisor, becomes a part of the public domain through publication or communication by others.

At Franchisor's request, Franchisee shall require any personnel having access to any confidential information provided by the Franchisor to execute covenants that they will maintain the confidentiality of information they received in connection with their employment by Franchisee at the Fitness Center. Such covenants shall be on a form provided by the Franchisor, and which will include, without limitation, specific identification of the Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

Franchisee acknowledges that any failure to comply with the requirements of this Article X will cause the Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by the Franchisor when Franchisor seeks to obtain specific performance of or an injunction against violation of the requirements of this Article X.

10.3 Database. Franchisee acknowledges that the database of clients is proprietary to Franchisor and that Franchisor shall have access to same electronically following notice to Franchisee. Franchisee further acknowledges that upon termination, expiration or non-renewal of this Agreement, such database shall remain the property of the Franchisor.

10.4 Return of Confidential Operations Manual. Franchisee shall keep the Confidential Operations Manual in his/her Fitness Center at all times and promptly return all copies to Franchisor upon the expiration or termination of this Agreement, and shall refrain from making any copies thereof or otherwise reproducing it either in whole or in part at any time.

ARTICLE XI

OPERATIONAL REQUIREMENTS

11.1 Sole Business at Premises. Franchisee shall not carry on all or part of any business except the Franchised Business at the Premises. Without limiting the generality of the foregoing, Franchisee shall not receive mail or telephone calls or visitors at the Premises for or in connection with any other line of business, without Franchisor's prior approval. However, in the event Franchisee has

added the Personal Training Institute Franchise, LLC Franchised Business to his/her existing business premises, Franchisee shall nevertheless be required to maintain Personal Training Institute Franchise, LLC dedicated telephone lines for this Franchised Business.

11.2 Hours of Operation. Franchisee shall be open for business to the public from 6:00 am to 9:00 pm, Monday through Friday, except legal holidays, and Saturdays from 7:00 am to 1:00 pm. Natural disasters, war, strikes or riots preventing Franchisee temporarily from complying with the foregoing shall to that extent suspend Franchisee's obligation to comply therewith.

11.3 Business Forms. Franchisee shall use only those forms, contracts, invoices and statements which have been approved as to form by Franchisor. If Franchisor has made available a form of customer contract, credit disclosure, customer invoice, and/or statement of account for use by Franchisee, Franchisee shall reimburse Franchisor's legal fees and other expenses incurred in connection with reviewing any other form of the same type which Franchisee submits for approval.

11.4 Prior Review of Collection Practices. Franchisee acknowledges that abusive or excessive collection techniques and unnecessary or unfounded litigation against his/her clients is likely to injure the goodwill of the Proprietary Marks and the reputation of the System. Franchisee therefore agrees that he/she will neither (a) assign any account for collection, nor employ any collection agency, without obtaining Franchisor's prior approval of the collection agency; nor (b) commence any legal action or proceeding against any customer or former customer, or allow a collection agency to do so, without first submitting such matter for Franchisor's review for a period of ten (10) days from the time Franchisor receives all documentation pertaining to the account, customer or former customer in question.

11.4.1 If Franchisor believes that such legal action is not well founded in law, or brings disrepute on the Franchisor, or is likely to result in disclosure of trade secrets or other confidential business information about the Franchisor, and so advises Franchisee in writing prior to the expiration of such ten (10) days referred to herein, Franchisee shall make such modifications to his/her complaint as may be necessary to avoid risks of the kind set forth in Section 11.5 hereof, and shall obtain Franchisor's approval before filing or serving the complaint. Such approval shall not be unreasonably withheld.

11.5 Compliance with Laws and Ethical Business Practices. Franchisee shall secure and maintain in force, in his/her name, all required licenses, permits and certificates relating to the operation of the Franchised Business. Franchisee shall operate his/her Franchised Business in full compliance with all applicable laws, ordinances and regulations, including, without limitation, laws relating to health regulations, workers' compensation insurance, unemployment insurance, and withholding and payment of income taxes, social security taxes and sales taxes. All advertising by Franchisee will be completely factual, in good taste in Franchisor's sole and absolute discretion, and will conform to high standards of ethical advertising. Franchisee will, in all dealings with his/her clients, suppliers and public officials, adhere to high standards of honesty, integrity, fair dealing and ethical conduct, in each case above and beyond merely legal requirements. Franchisee will refrain from any business or advertising practice which may be injurious to Franchisor's business and the goodwill associated with the Proprietary Marks and other Personal Training Institute Franchise, LLC businesses. Franchisee will notify Franchisor in writing within five (5) days of the commencement of 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, which relates to or which may affect the operation or financial condition of Franchisee and/or his/her Franchised Business.

11.5.1 Without limiting the generality of the foregoing, Franchisee shall obtain any appropriate or necessary license if required to do so by the laws of any state in which he/she operates. If Franchisee's license is suspended or revoked, Franchisee's subsequent failure to operate the Franchised Business shall not be deemed an abandonment thereof, provided that within thirty (30) days after the effective date of such suspension or revocation:

(i) Franchisee transfers the business in accordance with Article XVI of this Agreement to one who does have such license.

If such lack of a required license continues more than thirty (30) days, Franchisee shall be deemed to have abandoned the Franchised Business. Franchisee shall be in default under this Agreement if Franchisee continues operating the Franchised Business without a license when one is required by applicable law.

11.5.2 In no event shall Franchisee's failure or inability to comply with applicable laws or regulations excuse Franchisee from timely performance of each and every one of his/her obligations under this Agreement.

11.6 **Disclosure.** In order to facilitate compliance with current and future legal obligations and requirements, Franchisor shall maintain the right, in its sole and absolute discretion, to disclose, whether in its offering circulars or otherwise, any information relating to Franchisee's ownership and operation of his/her Personal Training Institute Franchise, LLC business including, but not limited to, Franchisee's name, address and/or telephone number, e-mail address, revenues, expenses, results of operation or other information.

11.7 **Inspection by Franchisor.** Franchisor and its employees and representatives shall have the right to observe and monitor the activities of Franchisee and Franchisee's employees, agents and independent contractors, including the right to enter Franchisee's Premises at all reasonable times during the business day, and without prior notice to Franchisee, for the purpose of ascertaining if all the provisions of this Agreement and if the operating standards and procedures and other Franchisor directives are being observed by Franchisee. On any such inspection, Franchisor and/or such representatives shall have the right to observe and photograph Franchisee's marketing and sales techniques; to monitor Franchisee's use of required design principles and techniques; to inspect Franchisee's Premises, fixtures and equipment; to observe the customer relations services rendered by Franchisee and to inquire of Franchisee's clients about their satisfaction; to observe the conditions of maintenance and repair; to observe and question Franchisee's employees; and otherwise to investigate all aspects of Franchisee's operations.

11.7.1 Franchisee and all those under Franchisee's control shall cooperate fully in such inspection by admitting Franchisor's representatives to Franchisee's Premises, by allowing Franchisor's representatives to accompany Franchisee's representatives to customer meetings, by answering questions, by providing and explaining business records, and by otherwise facilitating in good faith the proper completion of such inspection.

11.7.2 Franchisee shall include in any and all agreements with independent contractors terms and conditions sufficient to ensure cooperation by their respective employees, agents and independent contractors with such inspections by Franchisor.

11.8 **Other Forms of Agreement.** Franchisee understands, acknowledges and agrees that Franchisor may have offered franchises in the past, may currently be offering franchises and/or may offer franchises in the future on economic and/or other terms, conditions and provisions which may significantly differ from those offered by this Agreement and any related documents.

ARTICLE XII **INSURANCE**

12.1 **Insurance.** Prior to opening the Fitness Center for business, Franchisee must obtain the following insurance coverage under policies of insurance issued by carriers approved by Franchisor: (1) comprehensive public liability insurance and comprehensive product liability insurance against claims for bodily and personal injury, death, and property damage caused by or occurring in conjunction with the operation of the Fitness Center or Franchisee's conduct of business pursuant to this Agreement under one (1) or more policies of insurance containing minimum liability coverage of at least One Million Dollars (\$1,000,000) from time to time; (2) general casualty insurance including fire and extended coverage, vandalism, theft, burglary and malicious mischief insurance for the replacement value of the Fitness Center and its contents, containing minimum coverage of Five Hundred Thousand Dollars (\$500,000); (3) Workers' Compensation or other employer's liability insurance as well as such other insurance as may be required by statute or rule in the state in which the Fitness Center is located; (4) business interruption and rent insurance for a period adequate to reestablish normal business operations with coverage adequate to coincide with the value of the Fitness Center Premises and its contents; and (5) comprehensive plate glass insurance, if applicable. Franchisee must maintain all required policies in force during the entire term of this Agreement and any renewals thereof. Franchisor may periodically increase or decrease the amounts of coverage required under these insurance policies and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances. Each insurance policy must name Franchisor (and, if Franchisor so requests, the directors, employees or shareholders of Franchisor) as additional insureds and must provide Franchisor with thirty (30) days' advance written notice of any material modification, cancellation, or expiration of the policy.

Before the expiration of the term of each insurance policy, Franchisee must furnish Franchisor with a Certificate of Insurance for each policy to be maintained for the upcoming term, along with evidence of the payment of the premium for each. If Franchisee does not maintain the required insurance coverage, or does not furnish Franchisor with satisfactory evidence of the required insurance coverage and the payment of the premiums for same, Franchisor may obtain, at its option and in addition to its other rights and remedies under this Agreement, any required insurance coverage on Franchisee's behalf. If Franchisor does that, Franchisee agrees to fully cooperate with Franchisor in its effort to obtain the insurance policies, promptly execute all forms or instruments required to obtain or maintain the insurance, allow any inspections of the Fitness Center which are required to obtain or maintain the insurance and pay to Franchisor, on demand, any costs and premiums Franchisor incurs.

Franchisee's obligation to maintain insurance coverage, as described in this Agreement, will not be reduced in any manner by reason of any separate insurance Franchisor maintains on its own behalf, nor will Franchisor's maintenance of that insurance relieve Franchisee of any obligations under this Article XII.