

FRANCHISE AGREEMENT

EXHIBIT A

To

Fitniks Kids' Club

Franchise Offering Circular

FitniksSM Kids' Club
FRANCHISE AGREEMENT

TABLE OF CONTENTS

1. Incorporation of Recitals.....	2
2. Grant of Franchise.....	2
3. Franchise Fee and Site Approval.....	3
4. Term of the Franchise and Renewal Options.....	5
5. Location and Protected Territory.....	6
6. Design, Construction, Maintenance, and Repair.....	12
7. Training and Preopening Assistance.....	15
8. Operations, Obligations, and Assistance.....	17
9. Ongoing Fees.....	23
10. Advertising and Promotion.....	26
11. Accounting, Trade Accounts, and Charges for Late Payments.....	27
12. Insurance, Damage, and Destruction.....	29
13. Relationship of the Parties and Indemnification.....	31
14. Use and Protection of Our Commercial Symbols and Other Proprietary Property.....	33
15. Transfer of the Franchise and Our Right of First Refusal.....	35
16. Defaults, Cures, Termination and Remedies.....	41
17. Covenant Not to Compete.....	47
18. Dispute Resolution.....	48
19. Modification of This Agreement.....	49
20. Notices and Approvals.....	49
21. Consumer Price Index Adjustment.....	50
22. Heirs, Successors, and Assigns.....	50
23. Waivers.....	50
24. Severability.....	51
25. Covenant of Further Assurances.....	51
26. Governing Law.....	51
27. Counterparts.....	52
28. Headings and Gender.....	52
29. Miscellaneous.....	52
30. Inventions, Discoveries, and Ideas.....	53

31. Accord and Satisfaction..... 53
32. Joint and Several Liability. 54
33. Our Right to Act..... 54
34. Entire Agreement..... 54

Exhibits

- A. Location and Protected Territory
- B. Club Opening Schedule
- C. Continuing Guaranty
- D. Addendum to Lease Agreement

***Fitniks Kids' Club* SM**
FRANCHISE AGREEMENT

THIS AGREEMENT is entered into on _____
by _____,
a(n) _____, whose address is _____,
_____, identified in this Agreement
by words such as "you" and "your" and Fitniks Franchising, Inc., a California corporation, whose
address is 3000 Flying C Court, Cameron Park, California 95682, identified in this Agreement
by words such as "we", "us", and "our".

This Agreement is made with reference to the following facts, warranties,
representations, and purposes:

A. We are licensed to use and to license to others the trademarks, service marks, formats,
procedures, and systems of *Fitniks Kids' Clubs* by our parent corporation, Fitniks International,
Inc. which we refer to in this Agreement as "our licensor". We are developing a system of
youth-oriented *Fitniks Kids' Clubs*, physical training facilities catering to children 6-12 years of
age using the licensed material. We grant to third parties licenses to operate *Fitniks Kids' Clubs*
using the processes, procedures, format, practices, trade secrets, and other proprietary and
nonproprietary information and material we provide or otherwise specify.

B. In this Agreement the words "licensed assets" refer to all of the trademarks, trade
names, service marks, logotypes, other commercial symbols, processes, operating procedures,
formats, trade dress, equipment specifications, trade secrets, trade practices, copyrights, patents,
supplier lists, customer lists, manuals, forms, advertising and promotion material and practices,
merchandising techniques, communications, training material, goodwill, and all other tangible
and intangible property pertaining to *Fitniks Kids' Clubs* that we license to you.

C. You have applied for a franchise to own and operate one or more *Fitniks Kids' Clubs*.
In this Agreement we often refer to all of the *Fitniks Kids' Clubs* covered by this Agreement in
the singular even if this Agreement grants you the right to open more than one facility. We have
agreed to grant you a nonexclusive license to operate your *Fitniks Kids' Club* at the location
described on Exhibit A to this Agreement.

D. You warrant that you have fully and truthfully set forth all of the information we have
requested in your application, financial disclosure forms, and all other written and oral
communications between us and that everyone who will have an ownership interest in your
business and/or in the entity that will own this franchise have been disclosed to us in writing,
have provided all information we have requested, and, if we require, have signed or guaranteed
this Agreement.

E. You represent that you have investigated the region in which you desire to open your
Fitniks Kids' Club and have found no use of the name *Fitniks Kids' Club* or any similar trade
name or other commercial identification in that area.

F. You represent that neither we nor anyone claiming to act for us has made any promises or representations concerning the sales volumes that are likely to be experienced, the profits likely to be made, the likelihood of success, or any other matter in connection with this franchise or your Fitniks Kids' Club business other than those promises and representations that are set forth in this Agreement and in the Franchise Offering Circular we gave you with this Agreement. If any such promises or representations have been made, you are instructed to make sure that they are set forth in writing in this Agreement. If they are not, such promises and representations will not bind us and you will not be able to rely on them.

WHEREFORE, in consideration for the mutual promises set forth in this Agreement, and based on the above recitals, facts, representations, warranties, and purposes, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound, we mutually agree as follows:

1. Incorporation of Recitals.

1.01 The facts, warranties, representations, purposes, and the other statements set forth above are true and are incorporated into this Agreement by reference.

2. Grant of Franchise.

2.01 We hereby grant you a nonexclusive license to use the licensed assets for the term and in the manner set forth in this Agreement, but only as long as you are in compliance with all of the terms and conditions of this Agreement.

2.02 The franchise granted by this Agreement is only for the *Fitniks Kids' Club* described on Exhibit A to this Agreement. This franchise does not extend to the use of any of the licensed assets for any other purpose, at any other location or locations, or in any other manner. You agree to use the licensed assets only as allowed by this Agreement.

2.03 We and our licensor have the sole right to use, and to franchise others to use, the licensed assets. You do not have any rights in or to any of the licensed assets other than the rights licensed to you by this Agreement.

2.04 (a) All goodwill connected in any way with the licensed assets, your *Fitniks Kids' Club*, and the *Fitniks Kids' Club* system, belongs exclusively to us and our licensor and will so in the future.

(b) Any goodwill accruing because of the operation of your *Fitniks Kids' Club* will belong to us. You will have no claim against us for the value of that goodwill while this Agreement is in effect as well as after it ends. However, nothing in this section is intended to reduce any payment for goodwill you may obtain should you sell your *Fitniks Kids' Club* as allowed by this Agreement except as may be limited by other provisions of this Agreement.

2.05 If an entity owns any interest in this franchise, you agree to place a legend on the share or ownership certificates of the entity stating that the transfer of the shares or ownership

interests may be affected by this Agreement and this Agreement may be violated by an improper transfer of those shares or ownership interests.

2.06 *This confirms that we have advised you to obtain the advice of competent legal counsel when reviewing this Agreement and any other contracts you propose to enter in order to understand your rights and obligations under this Agreement and such other contracts prior to signing.*

3. Franchise Fee and Site Approval.

3.01 Initial Franchise Fee

(a) If this Agreement covers a single *Fitniks Kids' Club*, you agree to pay us the sum of \$39,000.00 upon signing this Agreement.

(b) If this Agreement grants you the right to open more than one *Fitniks Kids' Club*, the initial fee you must pay is equal to \$39,000.00 for your first *Fitniks Kids' Club* and \$31,200.00 for each additional *Fitniks Kids' Club* covered by this Agreement. The total franchise fee is payable as follows: \$19,500.00 times the total number of *Fitniks Kids' Clubs* covered by this Agreement payable when you sign this Agreement with the balance due for each facility payable when the lease for the facility is signed. As such, when the lease for your first *Fitniks Kids' Club* is signed, you pay us \$19,500.00. When the lease for each subsequent facility is signed, you pay us \$11,700.00 for that *Fitniks Kids' Club*.

(c) Once you are an existing *Fitniks Kids' Club* franchisee and desire to purchase a franchise for a subsequent club, the initial franchise fee for each of those clubs will be equal to 90% of the single-club franchise fee being charged at the time you sign your Franchise Agreement covering the additional club or clubs.

3.02 Finding a Location for a Single-Club Franchise

(a) If this Agreement covers a single *Fitniks Kids' Club*, upon signing this Agreement and paying the appropriate franchise fee, you will have the right to locate *Fitniks Kids' Club* in the following area, called "your designated area":

(b) You will have the exclusive right for 30 days from the date of this Agreement to find and lease a location for your *Fitniks Kids' Club* that meets our approval within your designated area. During the 30-day period, we will not grant another person the right to seek a location for a *Fitniks Kids' Club* in that area nor will we take a location in that area for a company-owned *Fitniks Kids' Club*. See Section 5 below for how to apply for approval of a site.

(c) If you do not find an acceptable location in your designated area within 30 days from the date of this Agreement, you will have another 90 days within which to find a location in that area on a nonexclusive basis. During the 90-day nonexclusive period, and any

extensions of that period we permit, we can allow other *Fitniks Kids' Club* franchisees to, and can ourselves, seek and take locations for a *Fitniks Kids' Club* within that area. The taking of sites in your designated area by us or by others may reduce or eliminate the acceptable locations available to you in the area.

(d) If you do not find an acceptable location in your designated area within 120 days of the date of this Agreement, we can terminate this Agreement and refund all but \$5,000.00 of your initial franchise fee to you. We can retain the balance of your initial fee in consideration for our efforts in connection of granting you this franchise and holding your designated area for you. If we do not terminate this Agreement following the 120-day period described above, you will continue to be able to look for a location that we can approve in that area on a nonexclusive basis but we will have the right to terminate this Agreement at any time prior to our approval of a site for your club upon 10 days notice to you. If we do so, we will refund all but \$5,000.00 of your initial franchise fee to you.

(e) You must obtain a fully-signed lease for your site within 30 days after we approve the location.

(f) If you do not open your club within 90 days of signing a lease for the site unless in our reasonable judgment you are prevented by causes beyond your control except for your financial inability to proceed with the project, we can terminate this Agreement and retain all amounts you have paid to us.

3.03 Development of Multiple Clubs

(a) If this Agreement grants you the right to open more than one *Fitniks Kids' Club*, your club-opening schedule and your development area are set forth on Exhibit B. You must open each club by the date specified in that schedule or you will lose your right to open any clubs not then open or under active construction. The site selection and leasing requirements for each club are as set forth in Section 5 of this Agreement.

(b) If you default under your club-opening schedule, we can retain all fees you have paid to us as consideration for holding your development area from the market and granting you development rights.

(c) While this Agreement is in effect, its terms will govern all of the clubs you open pursuant to the development rights granted by this Agreement. Separate Franchise Agreements will not be signed for each club.

(d) Since we charge a reduced franchise fee for your second and subsequent clubs, we can, in our discretion, reduce or eliminate the initial services we provide in connection with the opening of those clubs.

4. Term of the Franchise and Renewal Options.

4.01 (a) The initial term of this Agreement is 5 years, beginning on the date your lease or sublease term commences. If the term of your lease is for 5 years or more and it begins not more than 6 months after the date of this Agreement, the term of this Agreement will be extended so that it will expire on the date that your lease is due to expire but any such extension will not be for more than 6 months. If you do not give us notice of your intention to renew this franchise as described in Section 4.02 below, and we do not notify you of our intention not to renew your franchise at least 6 months prior to its scheduled expiration, the term of this Agreement will continue on a month to month basis subject to termination by either party upon 30 days prior written notice to the other party.

(b) If you own the building in which your *Fitniks Kids' Club* is located, you must open your club within 90 days of the date of this Agreement and the term of this Agreement will begin on the date you open your *Fitniks Kids' Club* for business.

(c) If this Agreement covers more than one *Fitniks Kids' Club*, the term of this Agreement shall be extended to cover the initial lease term of each club covered by this Agreement, but the term will not be over 5 years for each *Fitniks Kids' Club*.

(d) If the term of the lease of any *Fitniks Kids' Club* covered by this Agreement, including any renewals and extensions of the lease term, expires prior to the end of the 5-year term of this Agreement covering that club, this Agreement will end for that club at the same time as the lease on that *Fitniks Kids' Club* ends.

4.02 (a) This franchise is renewable after the expiration of the initial term for unlimited additional periods of 5 years each. If you desire to renew your franchise, you must give us notice in writing of that intention not less than 6 months nor more than 12 months prior to the scheduled expiration date of the term then in effect. The renewal of this franchise will cover all of your *Fitniks Kids' Clubs* with the renewal term for each club beginning when the term covering that club expires.

(b) If you are in default under this Agreement at the time you give us notice of your desire to renew your franchise or at the time the renewal term is to begin, we can refuse to renew your franchise. Also, if you have been given 3 or more notices of default concerning violations of material provisions of this Agreement over the course of the franchise term then ending whether or not they were cured, we can refuse to renew your franchise.

4.03 (a) As a condition of our approving the renewal of your franchise, we can require you to sign the form of Franchise Agreement we are using for new *Fitniks Kids' Club* franchises at the time the renewal is to take effect. If no new franchises are then being offered, the form of Franchise Agreement that will be used will be one that we specify in our reasonable discretion at the time.

(b) The form of Franchise Agreement in effect at the time of renewal may contain material changes in the terms of the Agreement then in effect, including changes to provisions concerning payments and other significant matters.

(c) After we receive the notice of your desire to renew your franchise, we will send you the form of Franchise Agreement that will govern the renewal term for your review at least 60 days prior to the expiration of the initial term. You must agree to sign the required form of Franchise Agreement within 30 days of your receipt of that agreement or you will be deemed to have withdrawn your request to renew your *Fitniks Kids' Club* franchise and, thus, to have agreed to allow the franchise to terminate at the expiration of the term then in effect.

(d) As a condition of renewal, you will have to sign a general release of all claims against us, our licensor, and our other affiliates so that we do not start the renewal term with unresolved issues between us.

4.05 You will not be required to pay a new initial franchise fee upon renewal. However, in the event we incur expenses in connection with your renewal, you agree to reimburse us for any costs we incur in connection with your renewal, including an allowance for the time of our employees, and an administrative and overhead charge equal to 15% of the reimbursable costs. Any fees or charges in connection with subsequent renewals of this franchise will be governed by the Franchise Agreement in effect during the term then expiring.

4.06 As a condition of the renewal of this franchise, we can require you to update your *Fitniks Kids' Club*, your equipment, and your signs and to take such other action we may reasonably require in order to bring your *Fitniks Kids' Club* up to the standards of *Fitniks Kids' Clubs* opened closest in time to the commencement of your renewal term. We agree to notify you of such requirements and the time within which they must be accomplished at the time we provide you with a copy of the Franchise Agreement that will be used for your renewal term. By signing the new Franchise Agreement you agree to comply with our modernization requirements within the time periods we have specified.

4.07 If any renewal not otherwise permitted by this Agreement is mandated by any law, rule, regulation, statute, ordinance, or order, or is otherwise required by operation of law, to the extent allowed by the applicable law, rule, regulation, statute, ordinance, or order, the renewal period or periods, and the terms of that renewal, will be governed by the provisions of the Franchise Agreement we are using for new *Fitniks Kids' Club* franchisees at the time the relevant renewal period is due to start. If we are not offering new *Fitniks Kids' Club* franchises at that time, the renewal period or periods, and the new franchise terms, will be governed by the provisions governing renewal terms set forth in the Franchise Agreement that we were using at the time we stopped offering new *Fitniks Kids' Club* franchises.

5. Location and Protected Territory.

5.01 (a) As used in this Agreement, the word "lease" also means a sublease or other agreement or document by which you are allowed to occupy your *Fitniks Kids' Club* location, including a deed or other document by which you own it.

(b) Once you have found an acceptable location and signed a lease for your site, we will describe the location on Exhibit A to this Agreement.

(c) If this Agreement covers more than one *Fitniks Kids' Club*, Exhibit A will be amended as the location for each club covered by this Agreement is approved and any protected territory assigned in connection with the location is agreed to.

5.02 (a) We will consult with you regarding the general criteria for your *Fitniks Kids' Club* location so that you will know what type of location to look for. However, we have no responsibility to find a location for you. It is your responsibility to find a location for your *Fitniks Kids' Club* within the required time period.

(b) Sometimes the protected territories granted in connection with locations approved for other franchisees or that we maintain for company-owned *Fitniks Kids' Clubs* may overlap the area in which you have the right to look for a site. If such a protected territory has been granted to another franchisee or retained for a company-owned location before you find a location we approve, you will not be able to locate your *Fitniks Kids' Club* within that protected territory even though it is partially in your designated area.

5.03 (a) If you have been granted the right to open more than one *Fitniks Kids' Club*, the area within which you have the exclusive right to open your clubs and the time within which you must open each club are listed on Exhibit B. As long as you are in compliance with the requirements of that exhibit, we will not authorize other *Fitniks Kids' Club* franchisees to seek or take locations in that area and we will not do so ourselves. If you open all of the clubs called for by your club opening schedule, we will not grant franchises to third parties, and we will not open company-owned *Fitniks Kids' Clubs*, within that area as long as you are in good standing under this Agreement, except as provided below.

(b) Each *Fitniks Kids' Club* you open pursuant to your development schedule will be assigned a protected territory as discussed below. If you lose your exclusive right to open *Fitniks Kids' Clubs* in your development area, each club in good standing under this Agreement will be allowed to continue to operate and its protected territory will be honored.

(c) If you open more than one *Fitniks Kids' Club* pursuant to the club opening requirements described in Exhibit B, you must continuously own and operate all of those clubs during the term of this Agreement in order for your exclusive rights under this Agreement to remain in effect. If any of the *Fitniks Kids' Clubs* you are required to operate is closed, we will not terminate your exclusive rights if within 60 days of the closing you replace the closed club with a replacement *Fitniks Kids' Club* in your development area at a location which we approve as provided in this Agreement.

5.04 (a) When you find a *Fitniks Kids' Club* location, you must provide us with the details of the location. To assist us in deciding whether to approve the location, you should provide demographic data regarding the site, the region in which it is located, and the identity of other health clubs, fitness facilities, gymnasiums, and similar establishments in the same

shopping center, mall, complex, or area where your *Fitniks Kids' Club* is proposed to be located. In addition, such things as traffic patterns, the layout of the proposed space, the visibility and accessibility of the proposed location, as well as the other physical attributes of the location, a layout of the shopping center with the location of your proposed *Fitniks Kids' Club* indicated, and similar data should be provided to us if reasonably obtainable. If we request additional information for our evaluation of the proposed site, you agree to use your best efforts to provide the requested information promptly. All costs in connection with obtaining the information set forth above and supplying it to us are strictly your responsibility.

(b) We agree not to unreasonably withhold or delay our consent to your proposed location.

(c) If we approve the proposed location for your *Fitniks Kids' Club* we will notify you promptly of that approval. If we do not approve the site, we will notify you promptly of our objections and the steps you can take, if any, to make the site acceptable to us.

(d) If this Agreement covers more than one *Fitniks Kids' Club*, the foregoing criteria concerning approval of your site will apply to each of your proposed locations.

5.05 (a) You must provide the terms of your proposed lease to us for our approval prior to signing the lease. The terms that should be provided include the proposed term of the lease, any renewal options, rental and other charges, fees, or costs, limitations on the use of the premises and similar terms, along with the form lease proposed by the lessor. We must approve the lease form and leasing terms in writing before you may enter into the lease, unless we waive this requirement in writing.

(b) At our option, we can provide you with comments on the terms of your proposed lease. However, we are not responsible for any errors or omissions we may make in our comments on the lease, or, if we assist you in negotiating the terms of the lease, in our negotiation of the lease terms. We strongly advise you to obtain the advice of competent legal counsel when reviewing the lease to understand your rights and obligations.

(c) Neither by approving your site or lease do we guarantee in any way that the site or lease terms are adequate for your needs or purposes or guarantee you success.

(d) You agree to provide us with a copy of your fully-executed lease within 5 days of its execution.

5.06 As a condition of our approving your proposed lease, we can require you and the lessor of the site to enter into an agreement allowing the assignment of the lease to us in the event this Agreement expires or is terminated. That agreement may contain other terms concerning your occupancy and/or our rights upon the termination of this Agreement. The agreement we currently use for this purpose is attached to this Agreement as Exhibit D.

5.07 (a) Before you have found an acceptable location in your designated area, if we locate an acceptable site for a *Fitniks Kids' Club* within your designated area during the first 30

days after the date of this Agreement, we agree to make that location available to you. If we present you with a location we find acceptable, you will have 5 days from being notified of the location within which to accept the location. If you do not accept the location in writing within the 5-day period, we can offer the location to another *Fitniks Kids' Club* franchisee or we can retain the location for a company-owned *Fitniks Kids' Club* even during your 30-day exclusive site selection period. If at any time you have rejected 2 locations that we have offered to you, we can terminate this Agreement and refund your initial fee less \$5,000.00 which we can retain as consideration for our efforts in connection with granting you this franchise and offering you the proposed locations. If we do not terminate this Agreement for that reason, the provisions concerning your obligation to obtain a location for your *Fitniks Kids' Club* and the time periods within which you must do so remain in effect.

(b) If you accept a location we present to you, the conditions concerning lease acquisition and approval described above will apply.

5.08 (a) We base the boundaries of your protected territory on the population and the nature of the market within that area.

(b) If you desire a protected territory in connection with your *Fitniks Kids' Club*, we must mutually agree on any protected territory to be granted in connection with the proposed location within a reasonable time after we approve your site as a condition to the continuation of this Agreement. If we do not agree on a protected territory or agree that there will be no protected territory within a reasonable time after we approve your site, we can terminate this Agreement and refund the initial franchise fee you have paid us less \$5,000.00 which we can retain as consideration for granting you this franchise and approving your location.

(c) If and when we have agreed on a protected territory for your *Fitniks Kids' Club*, we both will execute Exhibit A to this Agreement which will contain a description of the approved site and of the protected territory granted in connection with it. When this process is accomplished, but not before, you will be authorized to enter into a lease for your *Fitniks Kids' Club* location. If for any reason you execute your lease prior to Exhibit A being executed by both of us, your *Fitniks Kids' Club* will be deemed not to have been granted any protected territory.

5.09 (a) Except as provided below, by granting you a protected territory we agree not to locate a business substantially similar to the type franchised by this Agreement within that territory during the term of this Agreement.

(b) Excluded from the restriction set forth in subsection (a) above are any competing units owned, operated, and/or franchised by any person or entity with whom or which we may merge, by whom or which we are acquired, or which we acquire or otherwise become affiliated after the date of this Agreement. However, we agree that no such entity will own, operate, or franchise any facilities using the principal service marks and trademarks that are licensed to you under this Agreement.

5.10 After the first 2 years of the term of this Agreement in the case of a single *Fitniks Kids' Club* franchise or upon the completion of your development schedule if this Agreement grants you the right to open more than one *Fitniks Kids' Club*, if in our reasonable business judgment the nature of the market within your protected territory or development area changes so that we feel that your protected territory or development area can support one or more additional *Fitniks Kids' Clubs* without materially diminishing the business of your club or clubs in that territory or area, we will notify you of our determination and will allow you a right of first refusal to open and operate the number of additional *Fitniks Kids' Clubs* we feel are justified by market conditions within that territory or area and, if we feel that more than one *Fitniks Kids' Club* is justified, the schedule of when those facilities must be opened. You will have 20 days after our notification to advise us whether you want to open the new *Fitniks Kids' Clubs* we propose. If you do not elect to open the new *Fitniks Kids' Clubs*, we will be free to open the new *Fitniks Kids' Clubs* as a company-owned units or we can franchise to others the right to open the proposed *Fitniks Kids' Clubs*. If you elect to exercise your right of first refusal, you must sign our then-current Franchise Agreement and comply with its requirements concerning opening and operating the new *Fitniks Kids' Clubs*.

5.11 (a) To the extent not expressly prohibited by this Agreement, we, our licensor, and our other affiliates reserve the right to own, operate, franchise, license, or otherwise conduct any other type of business at any location, including within your protected territory. However, we agree that no such business will engage in a business sufficiently similar to your *Fitniks Kids' Club* so as to constitute a direct competitor of your *Fitniks Kids' Club*.

(b) Nothing in this Agreement, including granting you a protected territory, prevents us, our licensor, or our other affiliates from opening, operating, franchising, and/or licensing any business, including *Fitniks Kids' Club* businesses, at any location outside of your protected territory even if such business has an adverse impact on your *Fitniks Kids' Club*.

5.12 (a) A "national or regional account" is an arrangement we may make with larger businesses or other entities in which we agree to discount the membership fees, however denominated, for *Fitniks Kids' Clubs* for those affiliated with the designed business or entity.

(b) We can solicit national or regional accounts from businesses and other entities whether their facilities are located in your protected territory or elsewhere.

(c) If we establish a national or regional accounts program, you agree to honor the discount we establish for such accounts.

5.13 (a) The granting of a protected territory does not grant or imply any marketing or clientele exclusivity within the territory. As such, except as provided in elsewhere in this Agreement, we, you, our other franchisees, our licensor, and our other affiliates, are not prohibited from soliciting memberships from prospective members wherever they live or work. As such, you are not prevented from soliciting memberships from prospective members who live or work inside the protected territories granted to other *Fitniks Kids' Club* franchisees and other *Fitniks Kids' Club* franchisees, and we, our licensor, our other affiliates are not prohibited from soliciting memberships from people who live or work within your protected territory. You are

not entitled to any compensation, allowance, payment, or other consideration on account of any memberships obtained by others from those who live or work within your protected territory and you need not pay any compensation if you sign up members who live or work within the protected territories of others.

(b) We, our licensor, our other affiliates, or others whom we or they authorize, have the exclusive right to market goods bearing the *Fitniks* names or marks, or names or marks similar or related to the name *Fitniks*, or any names or marks we may use, and/or license you to use, at a later time, or any other products or services, to independent retail outlets, at wholesale, by means of catalogs, by mail order, by electronic means, including over the Internet, whether such sales take place within your protected territory or elsewhere. Such goods may be the same as, or may be different from, goods you carry in your *Fitniks Kids' Club*. You will not be entitled to any compensation or other benefit as a result of the sales made as a result of such activities, even if such sales affect your business.

(c) You agree not to provide any goods or services related to your *Fitniks Kids' Club* business through independent retail outlets, at wholesale, by means of catalogs, by mail order, by electronic means, including over the Internet, or by other alternative means. Nothing in the foregoing will prohibit you from obtaining memberships over the Internet provided your Internet presence and content comply with the requirements of this Agreement.

5.14 (a) If you have the opportunity to provide *Fitniks* merchandise or services at special events in your protected territory, such as fairs, exhibitions, charity events, shows, conventions, and the like, you agree to notify us of the opportunity immediately. You must also advise us whether you want to participate in the event. If you want to participate in the special event, you agree to do so and to follow our requirements in that regard. If you do not want to participate in the special event, we, or any person or entity we designate, can do so even though the event is in your protected territory.

(b) Even though a special event takes place within your protected territory, we reserve the right to participate in the event directly or through an affiliate, or have a person or entity we designate participate in the event, rather than allowing you to participate in the event.

(c) If you do not participate in the special event and we, an affiliate, or a person or entity we designate, does so, you will not be entitled to any compensation because of such participation, or otherwise.

5.15 (a) You cannot relocate your *Fitniks Kids' Club*, whether within your protected territory or elsewhere, or open one or more additional *Fitniks Kids' Clubs* within your protected territory or elsewhere, without our prior written consent. As a condition of giving you our consent, you must sign a general release of all claims against us.

(b) If we agree to a relocation of your *Fitniks Kids' Club*, you agree to pay us a relocation fee equal to 40% of the franchise fee being charged for new *Fitniks Kids' Club* franchises, payable upon our approval of the site for your relocated *Fitniks Kids' Club*. If no new franchises are being granted at the time of the relocation, the relocation fee will be equal to

40% of the franchise fee which was charged for new *Fitniks Kids' Club* franchises at the time we ceased granting new franchises, as that amount may be adjusted by any increase in the Consumer Price Index between the date on which we stopped granting such new franchises and the date on which we approve your new *Fitniks Kids' Club* location. The procedure regarding Consumer Price Index increases is discussed in Section 21 of this Agreement. The relocation fee is designed to compensate us for our efforts and services in connection with your relocated *Fitniks Kids' Club*.

(c) The site, lease, design, construction, decoration, equipping, and all other aspects of your relocated *Fitniks Kids' Club* must be in compliance with our requirements at the time of the relocation.

(d) If you relocate in conjunction with the renewal of your franchise, you will only have to pay the relocation fee and not the amounts discussed in Section 4.05 above.

5.16 (a) Without our prior written consent, only the business franchised by this Agreement can be located at the premises used for your *Fitniks Kids' Club*. You further agree not to locate your *Fitniks Kids' Club* within the business premises of another without our prior written consent.

5.17 We can grant or withhold the consents and approvals described in this Section 5 in our sole and absolute discretion, except for the relocation of your *Fitniks Kids' Club* in the shopping center or other commercial development within which your *Fitniks Kids' Club* is located in which instance we agree not to withhold our consent unreasonably. In all other instances, all of our consents can be granted or withheld without consideration as to their reasonableness.

6. Design, Construction, Maintenance, and Repair.

6.01 At our expense we will provide you with one set of typical plans and specifications for your *Fitniks Kids' Club*. These plans will not be drawn specifically for your space or, necessarily, in accordance with the requirements of local laws and requirements. All design, architectural, and engineering services required to conform the provided plans and specifications to your actual *Fitniks Kids' Club* location and to local laws and requirements must be obtained at your expense.

6.02 (a) You must provide a copy of the proposed layout for your *Fitniks Kids' Club* for our approval as soon as your architect or designer completes it. When we have approved the proposed layout of your *Fitniks Kids' Club*, you may have your architect or designer complete the final plans and specifications for your location. You must provide us with the final plans and specifications proposed for the construction of your *Fitniks Kids' Club*. We must review and approve your final plans and specifications before they are used in construction. All plans and specifications provided to us must be provided at your expense.

(b) Since the details of our layout, designs, and specifications are proprietary, if this franchise is terminated for any reason after you send us any plans and specifications for your

proposed facility, all of those plans and/or specifications become our property without us having to pay you for them.

6.03 (a) You agree to purchase all of the signs, trade fixtures, equipment, interior decoration items, and inventory we specify for your *Fitniks Kids' Club*, including those items shown on your final plans and specifications. You must purchase the equipment, décor, furniture, fixtures, and other items we specify from the supplier or suppliers we designate. We coordinate these purchases for you under our "Business in a Box" program in an effort to make sure you have the proper equipment and other items needed for the prompt opening of your *Fitniks Kids' Club*. We can have our designated supplier or suppliers mark-up the costs of the items you are required to purchase and remit that mark-up to us to compensate us for our efforts in procuring the items, assembling them, and having them delivered to you. We agree that mark-up will not exceed 20% of the cost of the items you purchase.

(b) At our request, you agree to give us a security interest in the assets of your *Fitniks Kids' Club* to secure the payments you are required to make under, and your faithful compliance with the terms of, this Agreement and to assist us in perfecting that security interest as required by applicable law.

6.04 We will be available to consult with you on the telephone regarding your design and construction obligations. However, it is your responsibility to see that your *Fitniks Kids' Club* is built, equipped, decorated, and opened without delay and in strict accordance with the plans and specifications we have approved.

6.05 If your plans and specifications are changed in any material manner before or during construction, we must approve such changes before the changes are implemented.

6.06 If your *Fitniks Kids' Club* is not open for business within 90 days after you sign your lease, unless you are prevented from doing so by causes beyond your reasonable control other than because of your financial inability to complete the project, we can terminate this Agreement without giving you a refund or having any other liability to you.

6.07 Unless we agree otherwise, a licensed general contractor must perform the construction of your *Fitniks Kids' Club*. We can require your contractor to carry at its expense the policies of insurance we specify, including the posting of a payment and performance bond. We can require that we be named as an additional insured under all of your contractor's insurance policies as our interests may appear.

6.08 (a) Our approval of your plans and specifications, the requirement of any insurance to be carried by your contractor, and any other action or inaction we may take or withhold in connection with the design, construction, equipping, and opening of your *Fitniks Kids' Club* are solely for our own purposes and not to protect you. Therefore, we do not warrant or guarantee in any way that your plans and specifications are suitable or adequate, that your contractor or contractors are suitable, competent, reliable, or otherwise able to perform the tasks for which they are hired, or that any insurance they may carry is adequate for any purpose.

(b) We have no responsibility for the work of independent contractors whether they are employed by you or by us.

6.09 (a) We have the right to inspect the construction activity at your site at any reasonable time. You agree to cooperate, and to require your contractor or contractors to cooperate, with our representatives during such inspections. Any inspections we undertake are for our own purposes and are not designed to protect you or to guarantee that the construction is adequate or is in accordance with the approved plans and specifications.

(b) We have the right to make a final inspection of your premises prior to its opening. If we notify you that we want to make such an inspection, you agree not to open your *Fitniks Kids' Club* for business until we conduct the final inspection and approve the opening of your club in writing.

6.10 All of the furniture, fixtures, equipment, and supplies used in your *Fitniks Kids' Club* must comply with our specifications. We can specify these items by manufacturer and model number or by the characteristics and capabilities that must be met by the items to be approved.

6.11 We must approve all signs used on, in, or in connection with your *Fitniks Kids' Club*. We will provide you with our exterior sign criteria by the time we approve your final plans and specifications. If our exterior sign criteria cannot be followed because of the requirements of local laws or shopping center requirements, we must approve any changes to our criteria prior to the construction of your sign or signs. We agree not to unreasonably withhold our consent to any modifications of our sign criteria required by local law or shopping center requirements.

6.12 Once your *Fitniks Kids' Club* is built and opened for business, no material alteration of the interior or exterior of the facility may be made without our prior written consent.

6.13 (a) The maintenance and repair of your *Fitniks Kids' Club* is your sole responsibility. You agree to keep and maintain your *Fitniks Kids' Club*, including the interior, exterior, immediately surrounding areas, signs, trade fixtures, equipment, decor, furnishings, and all other tangible property used in connection with the facility in a high condition of safety, cleanliness, repair, and appearance, and to replace promptly anything that is not capable of being maintained in that condition.

(b) All replacements, remodeling, refurbishing, alterations, modifications, and/or redecoration of your *Fitniks Kids' Club* shall be done only with our prior written consent.

6.14 You agree to repair, refinish, repaint, replace, and/or otherwise redo your *Fitniks Kids' Club*, the furnishings, fixtures, decor, equipment, signs, and all other parts of the facility at your expense at such times as we reasonably may direct. However we agree not to require you to do a remodeling of your *Fitniks Kids' Club* that will cost more than \$20,000.00, as that sum may be adjusted by any increase in the Consumer Price Index as described in Section 21, below, more often than once every 5 years.

6.15 We have the right to modify the *Fitniks Kids' Club* concept, format, design, signage, identity, commercial symbols, decor, products, services, and/or all other aspects of the *Fitniks Kids' Club* system and/or business when in our reasonable business judgment it is advisable to do so to meet competition and to attempt to enhance the business of *Fitniks Kids' Clubs* or as a result of any merger, acquisition, or other event in which we are involved. Subject to the limitation set forth in Section 6.14 above, in the event that we make such changes, you agree to adhere to the changes we specify in the manner and within the time periods we reasonably require.

7. Training and Preopening Assistance.

7.01 (a) We will train you in the operation of your *Fitniks Kids' Club* prior to the scheduled opening of your facility. The training will take place at the time and location we specify.

(b) If you are a partnership, corporation, limited liability company, or other entity, at least one of the trainees must be a general partner, a principal shareholder, a member, or owner, as appropriate, unless we otherwise approve.

(c) Your *Fitniks Kids' Club* must be under the overall supervision of a person who has successfully completed our training course.

(d) At the time and place of your training, we will also train your *Fitniks Kids' Club* manager. You agree to have your *Fitniks Kids' Club* manager attend our training course with you.

(e) If you already own a *Fitniks Kids' Club* franchise and have satisfactorily completed our training course, we will train one additional person, usually that club's manager, in connection with your second and each subsequent franchise.

7.02 (a) Both before and after your club opens for business, we can require you and your employees to take the electronic and on-site training that we specify and to pass any required tests in connection with that training at such times as we direct. You agree to follow our requirements in this regard including certifying to us that any such training and tests have been completed in accordance with our requirements.

(b) To the extent we require you and your manager to complete electronic training prior to attending our on-site training, you agree to comply with our directives in this regard.

7.03 (a) All of the people we train, including you, must complete our training course to our reasonable satisfaction prior to the opening of the concerned *Fitniks Kids' Club*.

(b) If you do not complete our training course to our reasonable satisfaction, we can terminate this Agreement. If any of your employees do not complete our training course to our reasonable satisfaction, you agree not to employ that person in your *Fitniks Kids' Club*.

(c) If any of your employees do not complete our training course to our reasonable satisfaction, you can send a replacement employee to the course. In that event, you must pay our additional training fee as described below. Since we do not have an ongoing training schedule, we may have to delay the training of any replacement employees you are required to send to our training course.

(d) We can require you to delay the opening of your facility if we feel that you do not have an adequate number of trained employees to operate your facility in the manner required by this Agreement.

(e) If at any time we reasonably determine that any of your personnel are not trained adequately to perform their tasks, we will so notify you. You agree to retrain such people promptly. If we still find them to be inadequately trained, we have the right to require any or all of those employees to attend our training course, or the portion of that course that we designate, at the times and places we specify. If we do so, you agree to pay our additional training fee and the salaries, benefits, and expenses of your employees in connection with our additional training.

(e) By having the right to train certain of your personnel, we do not waive any rights we may have to enforce the provisions of this Agreement because of the actions or inactions of the employees we trained, or have the right to train, whether the actions or inactions occur before or after such training.

7.04 You agree to pay all of your own travel, living, and other expenses, including salaries, benefits, and the like, that you incur in connection with attending our training course, as well as those of your employees whom we train.

7.05 Should you be required to send one or more additional people to attend our training course, or should you request that we train any additional employee at any time, we can charge an additional training fee in the amount of \$500.00 per day per trainee for this additional service. The foregoing amount will be adjusted by any increase in the Consumer Price Index as described in Section 21 of this Agreement.

7.06 The training of your employees, other than the employees who attend our training course, is your responsibility. You agree to provide adequate initial and on-going training for your employees so that they perform their duties in a manner complying with the requirements set forth in this Agreement, our manuals, and our other directives.

7.07 (a) You must notify us of the planned opening date of your *Fitniks Kids' Club* at least 30 days prior to its opening. We will use commercially reasonable efforts provide you with the services of at least one of our staff at your facility approximately 3 days before you open to advise and assist you during the period immediately before and immediately after the opening. When our representative arrives at your facility and the length of time he or she will stay is strictly within our discretion.

(b) If your *Fitniks Kids' Club* is not ready when our representative arrives and for that reason our representative cannot perform the functions for which he or she was sent, you agree to pay the added lodging and subsistence costs of our representative as well as paying us a fee for each day that our representative is prevented from completing the functions for which he or she was sent to your facility. The fee that we will charge will not exceed \$500.00 per day. A deposit against this fee must be paid when we request it or we can recall our representative and charge you for the costs of sending our representative back to your facility when it is ready in addition to charging you for the time and costs incurred by our representative in traveling to and from your facility for the initial visit.

7.08 You agree to cooperate, and to cause your employees to cooperate, with us and with our representatives and those of our licensor and other affiliates in all matters related to your *Fitniks Kids' Club* and your compliance with this Agreement.

7.09 (a) If we offer refresher courses, seminars, conventions, meetings, or similar programs for *Fitniks Kids' Club* owners and/or for their employees, you agree to attend, and to have such of your employees as we may request attend, such meetings, up to a maximum of 2 such programs within any 12 month period.

(b) In addition to the meetings described above, should we provide any regional training seminars or other meetings of any nature for you and/or for your employees in the region in which your *Fitniks Kids' Club* is located, you agree to attend all such meetings and to send to those meetings the employees we specify.

(c) We can charge you a reasonable fee for attending the above-described meetings.

(d) You agree to pay all of your own travel, living, and other expenses, including salaries, benefits, and the like that are incurred in connection with attending these meetings as well as those of your employees.

8. Operations, Obligations, and Assistance.

8.01 You agree to follow all systems, procedures, techniques, processes, supply requirements, formats, practices, and other obligations that we periodically specify for the operation of your *Fitniks Kids' Club* whether they are in our manuals or in our notices, bulletins, or other communications.

8.02 (a) Much of the material and information that we provide to you contains our trade secrets and other proprietary information including our sources of supply, equipment specifications, procedures, plans, techniques, processes, financial information, and so forth. You agree not to disclose our confidential information to persons we do not authorize. You also agree to use your best efforts to prevent such unauthorized disclosure by your employees, agents, and others over whom you have control.

(b) You agree to take reasonable steps to safeguard any material that we designate as confidential and to employ such security measures concerning our trade secrets, confidential information, and proprietary material as we may specify from time to time.

(c) You agree to use our confidential information only in connection with establishing and operating your *Fitniks Kids' Club*.

(d) After the termination or expiration of this Agreement you agree not use or disclose our confidential information for any purpose whatsoever.

(e) You agree to return to us all copies of our confidential, trade secret, and proprietary material you obtain from or through us promptly upon the expiration or termination of this Agreement or at such other r times as we direct.

(f) You agree not to copy or otherwise duplicate our proprietary material except as we may direct or approve in writing.

8.03 We have the right to make additions, deletions, modifications, and/or other changes to our manuals, materials, confidential information, processes, systems, techniques, sources, supplies, and other aspects of *Fitniks Kids' Clubs* and the *Fitniks Kids' Club* system, and to specify additional, different, or other requirements that you must use and follow. You agree to comply with these changes at the times and in the manner we specify. We agree that such changes will not unreasonably increase your obligations, including your economic obligations, during the term of this Agreement.

8.04 You agree to use your best efforts to produce the maximum volume of sales from your *Fitniks Kids' Club* in a manner consistent with the terms of this Agreement and to devote an amount of time to your *Fitniks Kids' Club* business adequate for this purpose.

8.05 (a) You agree to operate your *Fitniks Kids' Club* continuously for the full term of this Agreement unless you transfer this franchise as provided below.

(b) You can set your own hours and days of operation. However, if, in our reasonable business judgment, your minimum hours or days of operation are not commercially reasonable, we can specify the hours and days of operation you must be open for business.

8.06 (a) We can specify the services you will provide and the merchandise you must carry in your *Fitniks Kids' Club*. You agree not to provide any services, or to carry or sell any merchandise other than that we specify or otherwise approve in advance in writing. If given, these approvals can be altered or withdrawn at any time.

(b) You agree to accept the credit cards and other payment methods we require. We can change these requirements periodically and you agree to adhere to the payment requirements we specify. We can change the approved electronic funds transfer service and/or the credit cards we approve from time to time or can take over one or more of those functions ourselves.

8.07 You agree to follow our specifications regarding the type, style, decoration, and characteristics of all uniforms, packaging, and other items used in connection with, or sold or provided to customers of, your *Fitniks Kids' Club* whether or not they bear the *Fitniks Kids' Club* names or marks.

8.08 Since they pertain to the goodwill associated with the *Fitniks Kids' Club* system, all of the approvals and specifications called for in this Section 8 can be given or withheld in our sole and absolute discretion and without regard to their reasonableness except as elsewhere provided.

8.09 (a) We, our licensor, our other affiliates, and those we designate may create private-labeled merchandise bearing the *Fitniks Kids' Club* names and/or marks. If you are allowed to sell that merchandise, you agree to do so only from your *Fitniks Kids' Club*, only at retail, only to the customers to whom you provide your services, and only in the manner we specify.

(b) If we require, you agree to purchase, carry, sell, and use in your *Fitniks Kids' Club* the minimum quantity of such private-labeled merchandise that we reasonably specify.

(c) You can purchase items bearing our names and marks only from suppliers we have approved. We may be the only suppliers of some or all of these items.

8.10 You agree to hire and satisfactorily train a sufficient number of personnel to handle adequately the volume of business of your *Fitniks Kids' Club* and to provide courteous and capable service to your members.

8.11 You agree to use your best efforts to insure that your personnel maintain the standards of appearance, cleanliness, and demeanor that we specify but, in any event, standards that will enhance the conduct and image of the *Fitniks Kids' Club* system.

8.12 (a) Except as otherwise provided in this Agreement, prices you charge to your customers are strictly up to you. If we consult with you regarding prices, or if we suggest prices to you from time to time, you are under no obligation to follow any such recommendations or suggestions, except as described below.

(b) If we conduct advertising in which prices for services or goods are indicated, such prices are not binding on you. However, you agree to honor the discounts we specify for national accounts as discussed in Section 5.12 and any other discount programs we specify.

(c) We can determine, and you agree not to exceed, the maximum prices that may be charged for any services or goods you provide if, in our reasonable judgment, such a limitation is necessary to enhance our competitive position in the marketplace.

(d) If at any time we determine that our specifying minimum prices for your goods and/or services is in the best interests of the *Fitniks Kids' Club* system, you agree to follow our requirements in that regard.

8.13 (a) You agree to inform us of the identity, experience, background, and training of all of your managers and such of your other employees as we may request.

(b) You agree at your expense to have such background checks conducted on your employees as we may require from time to time.

8.14 If one or more managers supervise the operation of your *Fitniks Kids' Club*, you should notify us of any limitations on the authority of your managerial personnel. In the absence of such advice we can rely on the commitments undertaken by your managerial personnel and their undertakings will be binding upon you.

8.15 At our election you agree to require all of your employees, or such of them as we specify, and others with access to any of our confidential information, trade secrets, and/or other proprietary information, to execute a noncompetition and/or confidentiality agreement in the form we require.

8.16 (a) You must provide us with the reports that we periodically specify at the times and in the manner and form we require.

(b) You agree that we can require your suppliers to provide us with the reports we request, including reports of your purchases from them, including reports of your electronic fund transfers, credit card activity, and similar payment-receipt transactions.

8.17 If you request our assistance or advice at any time in connection with your *Fitniks Kids' Club*, a representative will respond to you by telephone within a reasonable time after you request such assistance or advice.

8.18 (a) We and our licensor can send one or more representatives to visit your *Fitniks Kids' Club* at such times as we may determine. It is agreed that we need not inform you in advance of these visits.

(b) Upon prior notice you agree to be present during the visits of the representatives and to cooperate fully with them during such visits. You agree to use your best efforts also to have available during such visits the other people we request.

(c) You agree to make available to the representatives during their visits, and at such other times as we may reasonably request, such reports, accounts, books, records, orders, receipts, bank statements, complaint forms, letters, and other such information we may require.

(d) You agree that the representatives will have full access to your business premises and your sales recordation system, computer system, and other business machines, to the information contained in them, and to the reports produced by them, to the extent such

information pertains to your *Fitniks Kids' Club* and/or your compliance with this Agreement. The representatives can make and take copies of your records during such visits and can photograph and make other accounts of your premises and your operations.

(e) We agree that all visits by our personnel and those of our licensor will be during your normal business hours and will take place at your *Fitniks Kids' Club* unless we both agree otherwise.

(f) You agree that we and our licensor can contact your present and former managers, employees, and/or customers in order to deal with complaints, obtain their comments on your services and for any other reason.

(g) We and our licensor can employ "secret shoppers" or their equivalent to observe and report on the services performed and goods provided by your *Fitniks Kids' Club*.

(h) You agree to direct all of your employees to cooperate fully with our representatives and those of our licensor during their visits.

8.19 If you request a special visit to your *Fitniks Kids' Club* by one of our representatives and we agree to provide the a visit, we can condition the visit on such prerequisites as we may determine, such as the prepayment and/or the reimbursement of the travel and other expenses of our representative, and/or a set payment for each day our representative is at your *Fitniks Kids' Club*.

8.20 If we notify you at any time of defects, deficiencies, or unsatisfactory conditions in the appearance or operation of your *Fitniks Kids' Club*, you agree to correct the defects, deficiencies, and unsatisfactory conditions promptly in the manner we specify.

8.21 (a) You agree to operate your *Fitniks Kids' Club* in compliance with all laws, statutes, ordinances, rules, regulations, governmental orders, and the like, including those that are related to employment, labor, health, safety, the environment, health studios or clubs and hazardous or toxic materials, whether those laws, statutes, ordinances, rules, regulations, orders, and the like, now exist or are enacted or issued at a later time. You agree to be responsible for the consequences of any noncompliance both during the term of this Agreement any extensions or renewals of this Agreement as well as after it ends.

(b) You agree to obtain and maintain at your expense all licenses and permits necessary for the operation of your *Fitniks Kids' Club* and the other activities you undertake under to this Agreement.

(c) You agree to comply immediately with the orders, regulations, rules, and directives of government officials in the conduct of their official duties pertaining to the operation and conduct of your *Fitniks Kids' Club*. You agree to notify us immediately of any significant governmental orders or directives you receive, the reasons for them, and the corrective action you have taken, or plan to take, related to them.

8.22 (a) You agree to record all of your receipts and expenses, orders, invoices, and other business information promptly in the computer system we specify.

(b) You agree to obtain the computers, printers, and related equipment as well as the accounting, business operation, and other software, and the type of electronic communication system, we specify or otherwise approve. In addition, you must obtain DSL Internet access through any major provider as well as the networking equipment and other components that we specify. You agree to procure the computer and software maintenance and support contracts that we require.

(c) We can periodically change the specifications for the computer and other systems and software you must use in your *Fitniks Kids' Club*. However, we agree that you will have a reasonable time to amortize the cost of the system and software then in use prior to requiring you to replace that system with another or to replace the software with that we specify.

8.23 The customer lists you compile and/or that originate from business done by your *Fitniks Kids' Club* belong to us. During the term of this Agreement and following its expiration or termination, all customer lists related to your *Fitniks Kids' Club* are our trade secrets. As such, you agree not to divulge the names, addresses, telephone numbers, and other details of your customers to any person or entity we do not previously authorize in writing to receive them. You agree to provide us with copies of the customer lists you develop at such times as we request.

8.24 You are solely responsible for all taxes, liens, assessments, costs, expenses, debts, salaries, benefits, accounts, liabilities, charges, duties, imposts, fees, damages, and all other obligations of every kind involving the payment of money or performance of any other nature, incurred in, resulting from, or otherwise related to the operation of your *Fitniks Kids' Club*.

8.25 (a) If a partnership, corporation, limited liability company, or other entity owns this franchise, you agree to designate one person to be the principal agent of the entity. This is the person who will deal with us in connection with your franchise, your *Fitniks Kids' Club* and your compliance with this Agreement. This person is referred to in this Agreement as "your managing agent". You warrant to us that your managing agent will have the authority to speak for and bind the franchisee entity in all matters pertaining to this Agreement and your *Fitniks Kids' Club*. You further warrant to us that we can rely on that authority until such time as we are notified in writing of a change in your managing agent. If your managing agent is removed or resigns, you agree to replace your managing agent immediately and to notify us of the identity and contact information of your new managing agent.

(b) If we so require, your managing agent, and any person by whom your managing agent is replaced, must attend such training at the time, for the duration, and at the location we specify and must complete that training to our reasonable satisfaction as a condition of the continuation of this Agreement.

(c) Your managing agent cannot be a person who was the principal operator of a *Fitniks Kids' Club* that had its Franchise Agreement terminated because of a default, nor can your managing agent be any other person to whom we have reasonable cause to object.

8.27 We have the right to establish one or more franchisee advisory councils to consult with us on matters of mutual interest. If we establish such a council, we have the right to determine its rules. You agree to follow those rules and, if we request, to participate in the activities of that council in the manner and to the extent we require.

9. Ongoing Fees

9.01 (a) In consideration for the grant of this franchise, the assistance provided in connection with establishing your *Fitniks Kids' Club*, and the continuing right to use the licensed assets, you agree to pay us a monthly fee equal to 5% of your membership revenues throughout the term of this Agreement. You agree to make these payments to us by electronic funds transfer to the account we specify by the 5th day of each month based on your membership receipts for the previous month.

(b) You need not pay us as part of your monthly fee any amounts you receive from sales of merchandise you have purchased directly from us or from our affiliates. If you are allowed to purchase any merchandise from any third-party vendors, you must include in your membership revenues the retail sales price of such items and pay us the indicated percentage as part of your monthly fee.

(c) At the time payment of your monthly fee is due, you agree to send to us in the form and manner we specify, a report of your membership revenues, advertising expenditures, and such other information as we may require. You must certify to us that these reports are complete, true, and correct no matter how, or by whom, they are prepared.

(d) We reserve the right to change the method of payment of your fees and other charges and you agree to follow those changes in the manner we require at the time.

9.02 As of the date of this Agreement, we have no cooperative advertising program. However, we retain the right to begin such a program on a national and/or regional level. When we begin a regional and/or national advertising program you agree to contribute to the program the amount we specify up to 4% of your membership revenues per month. The account established to handle the receipts and expenses of our program or programs is referred to in this Agreement as the "Advertising Fund", even though there may be more than one fund, account, or program. We can modify the amount you will be required to contribute to the Advertising Fund periodically. However, in no event will the amount that you are required to contribute to the Advertising Fund exceed the amount set forth above without your prior written consent. The payments to the Advertising Fund are to be made at the same time and in the same manner as the payment of the continuing monthly fee described in Section 9.01 above.

9.03 If and when we establish the Advertising Fund, we agree to maintain that fund apart from our other accounts. We will account to you at least annually for the receipts and expenditures of the Advertising Fund.

9.04 (a) We will use the Advertising Fund for the production and execution of advertising, promotional, and public relations materials and/or activities designed to benefit the *Fitniks Kids' Club* system on a regional and/or national basis. We have complete and absolute discretion over how and when sums from the Advertising Fund are spent and over what items are to be charged to that fund. However, we agree to use the Advertising Fund only for the planning, production, and implementation of advertising, promotional, and/or public relations materials, programs, and events, including market research and analysis, the employment of advertising and public relations agencies, purchasing media time and/or space, and for similar purposes. We can charge the Advertising Fund reasonable amounts for the time, overhead, and expenses of our employees to the extent they work on advertising, promotional, and/or public relations activities designed to benefit the *Fitniks Kids' Club* system on a regional or national basis. However, rather than trying to determine the exact amount of these charges and costs, we can charge the Advertising Fund for this purpose an amount equal to 10% of the funds collected by the fund.

(b) Until there are enough *Fitniks Kids' Clubs* to make national advertising practical, we can use the Advertising Fund for local and regional advertising, promotion, and public relations activities.

(c) We are not obligated to spend receipts from the Advertising Fund in any particular region even if a disproportionate amount comes from a particular area, nor within any particular time period.

(d) If the Advertising Fund is created, we agree that company-owned *Fitniks Kids' Clubs* will contribute a like percentage of their membership revenues to that fund.

9.05 We have the right to establish regional and/or national advertising councils to advise us on our advertising, promotion, and/or public relations programs. If we establish such councils, we have the right to determine their rules. You agree to follow those rules and, if we so request, to participate in the activities of those councils in the manner and to the extent we specify.

9.06 (a) In addition to the activities conducted by the Advertising Fund, we can establish local or regional advertising programs in which you may be required to participate. If we do so, you agree to pay toward such programs the amounts we indicate, which amounts will be credited against, and will not exceed, your local advertising requirements described in Section 10 below. We can specify the advertising, promotion, and public relations activities to be undertaken by these programs.

(b) We agree that company-owned *Fitniks Kids' Clubs* within the concerned local or regional area will contribute a like percentage of their proceeds to these programs.

9.07 The term "membership revenues" as used in this Agreement means the proceeds from all of your sales and services from whatever sources received, whether in cash or on credit. Credit transactions are considered made when the transaction giving rise to the extension of credit occurs. Credit card and other transactions result in "membership revenues" in the full amount of customers' transactions without any allowance for bad debts, uncollectable accounts, or credit card fees and charges. "Membership revenues" shall not include any of the following:

(a) The selling price of any merchandise or services to the extent you grant a credit, discount, refund, or similar allowance as a result of a return by or settlement with a customer. An exchange of merchandise or services shall not be deducted from "membership revenues" except to the extent of any accompanying credit, discount, refund, or other allowance;

(b) Merchandise returned to its source for credit or other allowance;

(c) Amounts or credits received on claims for loss or damage to merchandise or other *Fitniks Kids' Club* assets;

(d) Sales and/or use taxes, or other similar taxes determined and/or imposed on the sale of merchandise or services by a governmental entity but only to the extent that such taxes are added to the selling price of the merchandise or services and are separately stated to and collected from customers;

(e) Sales of trade fixtures, equipment, or similar property not constituting merchandise of your *Fitniks Kids' Club*.

(f) Sales of merchandise purchased directly from us or one of our affiliates.

9.08 All exemptions allowed by subsection 9.07 shall be separately stated and shown on your reports of membership revenues.

9.09 (a) We have the right to inspect and/or audit your books and records at any reasonable time at your *Fitniks Kids' Club*. If the inspection or audit reveals an intentional underreporting of membership revenues, an understatement of membership revenues for any month in an amount of 3% or more, or if the inspection or audit is necessary because you have failed to comply with the financial reporting requirements of this Agreement, you agree immediately to pay the costs of the inspection or audit including the costs and expenses of our employees, accountants, or any others for or with whom we have incurred costs in connection with the audit in addition to any other sums that are due.

(b) If we discover any intentional underreporting of membership revenues, or an underreporting of membership revenues in excess of 5% in any reporting period, whether or not intentional, we have the right to terminate this Agreement in addition to having all other rights and remedies allowed to us by this Agreement and by applicable law.

10. Advertising and Promotion.

10.01 You agree to spend at least \$7,500.00 on grand opening advertising and promotion activities at the time we specify for each *Fitniks Kids' Club* location you open. We will consult with you on each such promotion. We must approve your grand opening advertising and promotion plans in the manner and within the time limits set forth below before you can undertake those activities.

10.02 In addition to the amounts you contribute to the Advertising Fund, any regional advertising fund, and your grand opening promotion, you agree to expend on a quarterly basis an amount equal to at least 4% of your membership revenues on the advertising and promotion of your *Fitniks Kids' Club*. If you do not spend the required amount during any quarter, the balance can be carried over to the next quarter. At the end of each 12-month period, the difference between what you did spend and the amount you are required to spend must be paid to the Advertising Fund.

10.03 For the good of the *Fitniks Kids' Club* system, all advertising, promotion, and public relations activities must be in good taste, must display a high degree of consistency throughout the *Fitniks Kids' Club* system, and must reflect favorably on *Fitniks Kids' Club* services, products, and our system of *Fitniks Kids' Clubs*. Therefore, except in cases where you use material we provide, or that provided by the Advertising Fund or an approved local or regional advertising program, you agree to submit to us prior to use, copies of all advertising, promotion, and public relations plans and material and a description of all advertising, promotion, and public relations programs you propose to use along with a description of how they are to be used, by what media published, the amounts to be spent, and such additional information that we request. You agree not to use any such material or to initiate any such programs or activities without our prior written consent. You agree to use the items and materials, and to conduct the programs and activities, we have approved only in the way and by the means so approved. We have complete and absolute discretion in deciding whether to approve your advertising, promotion, and public relations material, programs, and activities.

10.04 We will review and approve or disapprove your advertising, promotion, and/or public relations items, material, plans, events, and/or programs within 5 business days of when we receive all information that we request regarding them. All material, programs, activities, plans, and the like, that we approve, become our property and we can use them for any purpose without compensating you for their use.

10.05 At our direction you agree to purchase reasonable quantities of such advertising and/or promotion items for use in and by your *Fitniks Kids' Club* from sources we designate. We may be the supplier of some or all of these items. We may mark-up the cost of these items by not more than 10% to cover our shipping and handling costs.

10.06 If we so require, in addition to your contributions to the Advertising Fund and to any local or regional advertising fund, and in addition to the local advertising requirement described above, you agree to pay your pro rata portion for one or more Yellow Pages advertisements in the telephone directory or directories serving the area in which your *Fitniks Kids' Club* is located. If other *Fitniks Kids' Clubs*, including company-owned *Fitniks Kids'*

Clubs, are also served by those directories, they will pay their pro rata portion of the cost of those advertisements as well. We have sole discretion as to the size, number, placement, categories, and other attributes of all Yellow Pages and similar advertisements and the directories in which they are placed.

10.07 (a) You agree to follow all of our policies and procedures concerning your use of the Internet, other electronic media, and any other means or media not otherwise specified in this Agreement, whether such media now exists or may be developed in the future, including its use in connection with your advertising, promotions, marketing, or other activities.

(b) Unless we agree otherwise, your exclusive presence on the Internet and on or in any other electronic or alternative media will be on or through our Internet site or on or through such other media as we specify. Without our prior written consent you agree not to use any of the licensed assets, our names or marks or any names or marks confusingly similar to them in connection with any use you make of the Internet or other media. We have the right to specify or otherwise approve the appearance and content of your Internet and other media presence. We will maintain our web site and control its content. We can assign the maintenance of our web site to a third party in our discretion although we will control its format and content. We can charge a reasonable amount for our web-site maintenance and you agree to pay your pro rata portion of that sum at the time and in the manner we require.

(c) Upon the expiration or termination of this Agreement, any sites, domain names, and all other identifying names, marks, symbols, and means of identification that you own or use in connection with your *Fitniks Kids' Club* will become our property and will be transferred to us in the same manner as your telephone listing as described in Section 16 below.

(d) If we allow you to have your own Internet site or if you have any other electronic or alternative media presence, you agree not to use or authorize the use of any means of referring to your site, such as by meta tags, links, or similar reference devices, without our prior written consent. In addition, your site or presence must not refer to or show the site of another, such as by the use of frames, without our prior written consent.

(e) You agree to use any intranet, extranet, or the like, that we maintain for the internal use of *Fitniks Kids' Club* owners for information, reporting, training, testing, and other purposes, but only in the manner we specify. You further agree not to inform any third person, other than those we may authorize in writing, how to access or derive information from our nonpublic sites. The manner of accessing and obtaining information from such sites, as well as the information contained on such sites, are our trade secrets and are subject to the provisions regarding trade secrets and proprietary information set forth elsewhere in this Agreement.

11. Accounting; Trade Accounts, and Charges for Late Payments.

11.01 You agree to keep and maintain accurate books, records, accounts, tax returns, and all related back-up material pertaining to the operation of your *Fitniks Kids' Club*. You agree to retain all of your business records and related back-up material for at least as long as required by law or 3 years following the end of the year to which the items pertain, whichever

period is longer. You agree to make all of this material available to our representatives when we reasonably request.

11.02 All of your books and records must be kept as required by our manuals and other directives.

11.03 (a) You agree at your expense to provide us with the reports on your operations, finances, and other data concerning your *Fitniks Kids' Club* that we request from time to time.

(b) You agree that we can require your club software provider to submit various reports to us on your operations so that we can assist you in your operation and to confirm the information you otherwise provide to us.

11.04 (a) You agree to send to us at your expense a quarterly income (profit and loss) statement in the form we prescribe by the 20th day following the end of the quarter to which the statement pertains.

(b) You agree at your expense to provide us with an annual balance sheet and income (profit and loss) statement in the form we require within 60 days after the end of your fiscal year.

11.05 If we specify a particular accounting system or accounting software that you must use, or a chart of accounts for you to use as a part of your accounting system, you agree to use the system, software, and chart of accounts in the manner and at the time we direct.

11.06 If you have repeatedly underreported your membership revenues or failed to provide the financial statements or reports required by this Agreement, we can require that your financial statements be prepared by an independent certified public accountant. If we direct that an independent certified public accountant prepare your financial statements, we will indicate on what basis those statements have to be presented, such as on a compilation, review, or audited basis. We can change these requirements whenever we feel that it is necessary in order to get timely and accurate financial statements from you.

11.07 (a) All amounts that you owe us that are past due are subject to a late charge of 1½% per month.

(b) If the late charge set forth above is not allowed by applicable law, the late charge will be equal to the highest lawful rate on loans between businesses in the state whose law governs this Agreement.

(c) Neither because we impose nor because you pay a late charge does such payment waive or otherwise affect any right or remedy we have under this Agreement or under law except as may be set forth elsewhere in this Agreement.

12. Insurance, Damage, and Destruction.

12.01 (a) Before you begin the construction of your *Fitniks Kids' Club*, and each of your *Fitniks Kids' Clubs* if you are granted the right to open more than one, you agree to procure, and while this Agreement is in effect maintain, commercial general liability insurance on the form we approve. Your insurance must cover your premises and operations, products and completed operations, contractual liability, property damage, and personal injury liability in the minimum amount of \$1,000,000.00 for each occurrence. This coverage may be obtained with a combined single limit for bodily injury and property damage. You must also obtain and maintain automobile liability insurance, including coverage for all owned, hired, and nonowned vehicles, in a minimum amount of \$1,000,000.00 combined single limit for each accident. In addition, you must obtain and maintain a general aggregate ("umbrella") liability policy in the minimum amount of \$2,000,000.00.

(b) Your liability insurance policies must be written on an "occurrence" and not on a "claims made" basis.

12.02 You also agree to obtain and maintain on each of your *Fitniks Kids' Clubs* throughout the term of this Agreement insurance on your leasehold improvements, furniture, fixtures, equipment, décor, and the other physical assets of your *Fitniks Kids' Club*, including fire and extended coverage insurance on a replacement cost basis in amounts adequate to reconstruct, redecorate, resupply, and reopen each *Fitniks Kids' Club* in the event of a covered loss.

12.03 Your insurance policies must comply with the following requirements:

(a) Your insurance carrier must have and maintain a Best rating of at least "A-7" or its equivalent.

(b) Your insurance policies must not contain a coinsurance clause.

(c) The deductible portion of any claim or loss under any of your insurance policies cannot exceed \$5,000.00.

(d) Your insurance policies must be written as primary policies regardless of whatever other policies you carry or those carried by us, our licensor, or our other affiliates.

12.04 In addition to the insurance coverage described above, you agree to carry such additional insurance as may be required by the lease of your *Fitniks Kids' Club* premises and that required by your lender or equipment lessor, if any. You also must carry workers' compensation and employer's liability insurance as required by law. Employer's liability insurance shall be obtained in an amount of not less than \$1,000,000.00 per accident for bodily injury by accident and \$1,000,000.00 per employee for bodily injury by disease with a \$1,000,000.00 policy limit by disease.

12.05 We have the right to require that you carry different limits and/or different types of insurance coverage if we believe that is reasonably necessary or prudent. You must comply with our requirements promptly upon receipt of written notice of those requirements.

12.06 The limits on your insurance policies do not limit your liability to us under your indemnification obligations under Section 13 of, or your other obligations under, this Agreement.

12.07 (a) You agree at your expense to name us, our licensor, and those of our other affiliates we may specify and our and their officers, directors, shareholders, members, and employees as additional insureds on each and all of your policies of liability insurance including your general liability, vehicle liability, and any umbrella liability policies you may carry as long as that can be done at a minimal cost to you.

(b) We can designate other entities and/or persons to be named as additional insureds on your insurance policies from time to time and you agree to include such persons or entities on such policies at your expense.

(c) You agree to have your insurance carriers provide each additional insured with a certificate of insurance evidencing the required coverage.

(d) All of your insurance policies must specify that the insurance carrier will give 30 days prior written notice to each additional insured under that policy if the policy in which such persons or entities are named is to be canceled or not renewed.

(e) You agree to provide us with copies of those of your insurance policies that we request.

12.08 (a) If during the term of this Agreement all or part of your *Fitniks Kids' Club* is damaged or destroyed by fire or other casualty, you must repair, restore, or rebuild your *Fitniks Kids' Club* to the extent allowed by, and in compliance with, the terms of your lease and applicable law except under the circumstances described below.

(b) If you are allowed to rebuild your *Fitniks Kids' Club* under the terms of your lease and applicable law, the term of this Agreement will be extended for a period of time equal to the time your *Fitniks Kids' Club* was closed due to the damage or destruction but not in excess of 12 months from the date of the damage or destruction.

(c) All of the proceeds of any property insurance payable on account of the damage or destruction must be used to pay for restoring your *Fitniks Kids' Club*. The restoration of your *Fitniks Kids' Club* must comply with our standards at the time for the construction of new *Fitniks Kids' Clubs*.

(d) You agree to begin the restoration of your *Fitniks Kids' Club* within 90 days after the damage or destruction occurs and to proceed with the reconstruction and reopening of your *Fitniks Kids' Club* with due diligence except to the extent prevented by circumstances

beyond your reasonable control except for your financial inability to proceed unless your financial inability is caused by a delay in the receipt of your insurance proceeds.

12.09 If during the term of this Agreement your *Fitniks Kids' Club* is totally destroyed, is damaged by an uninsured casualty in excess of 50% of its replacement cost, or the cost of repairing and restoring your *Fitniks Kids' Club* is in excess of 110% of the proceeds of your insurance coverage, you have the option to terminate this Agreement by giving us written notice of your election to terminate within 60 days after the damage or destruction. If your insurance coverage is less than you are required to carry under this Agreement, the foregoing option to terminate this Agreement will not apply and you will be required to rebuild and restore your *Fitniks Kids' Club* unless the destruction is total.

12.10 (a) If your *Fitniks Kids' Club* or the premises in which it is located is taken in an eminent domain; condemnation, compulsory acquisition, or similar proceeding for any public or quasi-public use or purpose, or is sold under the threat of such an action, and if it is not feasible or prudent in our reasonable opinion to use the remaining portion for the operation of a *Fitniks Kids' Club*, this Agreement shall terminate as of the date of the taking. In the event that this Agreement is terminated for this reason, you agree to pay us out of the compensation you receive as restitution for the taking or from the proceeds of the sale an amount equal to the payments required to be made by Section 9.01(a) above for the 12 months immediately preceding the date of the termination of this Agreement or the actual time your *Fitniks Kids' Club* was open, if it was open less than 12 months.

(b) If the taking is only partial and the remaining portion of the premises and of your *Fitniks Kids' Club* is sufficient in our reasonable judgment to continue the operation of your *Fitniks Kids' Club*, you agree promptly to restore your *Fitniks Kids' Club* to a condition adequate for the conduct of your *Fitniks Kids' Club's* business, subject to the consents and approvals you are required to obtain from us as in specified in Section 6 above.

13. Relationship of the Parties and Indemnification.

13.01 In all matters you are an independent contractor.

13.02 (a) Nothing in this Agreement, in the relationship created by this Agreement, or elsewhere, constitutes either of us as agents of, or partners or joint venturers with, each other.

(b) You acknowledge that our licensor is a separate entity that is not responsible or liable for our acts or omissions. If we have our licensor perform any services for us, it does so as an independent contractor. You hereby waive and release any claims you may have or later acquire against our licensor based solely on its relationship with us and not on its own actions or inactions.

13.03 Neither you nor we are liable for the debts, liabilities, taxes, duties, obligations, defaults, compliance, intentional acts, negligence, errors, or omissions of the other.

13.04 You and we agree not to hold ourselves out as other than franchisee and franchisor. We each agree to indemnify the other against any liability, cost, or expense,

including attorneys' fees, incurred as a result of any finding or result to the contrary caused by the actions or inactions of the indemnifying party.

13.05 None of your employees shall be deemed to be our employees and none of our employees shall be deemed to be your employees for any purpose.

13.06 As used in this Section 13, "we" also means our licensor and our and their officers, directors, shareholders, members, owners, employees, and agents, as well as any persons or entities with whom or which we or they are or may become affiliated.

13.07 You agree promptly to post, display, include, and otherwise use and maintain all signs and/or notices we specify and any that are required by applicable law indicating the status of our relationship and that your *Fitniks Kids' Club* is franchised including notices on stationery, business cards, signs, in advertising, promotion, and public relations material.

13.08 You agree to defend, indemnify, and hold harmless us, our licensor, our other affiliates, and our and their officers, directors, shareholders, members, owners, agents, and employees from and against any and all losses, liabilities, damages, costs, and expenses, including attorneys' fees, resulting directly or indirectly from, or in any way pertaining to, the operations, sales, policies, procedures, practices, actions, hiring practices, employment practices, employer or employee conduct, personnel policies, or any other activities of your *Fitniks Kids' Club* including your intentional acts and negligence and those of your agents, officers, directors, partners, shareholders, members, owners, employees, or any others with whose conduct you are chargeable, as well as from all costs, taxes, and expenses for which you are responsible in connection with the operation of your *Fitniks Kids' Club* and your other activities. However, we shall be responsible for, and will indemnify you against, any losses, costs, or damages resulting from your compliance with our policies, procedures, and directives but only as long as you have complied with our requirements at the times and in the manner specified.

13.09 (a) Should we become aware of a claim or potential claim against which you have indemnified us or the other indemnified parties, we will notify you of the claim or potential claim. You agree to defend us and the other indemnified parties against the claim at your expense with counsel of your choosing. In the event that the claim is one that can affect more than one *Fitniks Kids' Club*, we can take over the defense of the matter with counsel of our choosing but you will still be responsible for the costs of the defense including attorneys' fees.

(b) If you are defending us or another indemnified party in any action, you agree not to settle the matter until we, and the other indemnified party or parties, if any, approve the terms of the settlement. You cannot commit us or any of the other indemnified parties to making any expenditure or taking or withholding any action as a part of any settlement without our, and their, prior written consent.

13.10 If you become aware of any claim or potential claim against which we have indemnified you, you agree to notify us promptly of the claim, or potential claim and the details of the claim or potential claim. You agree to cooperate with us, our attorneys, and our