



**Poolwerx Franchise Management LLC  
Franchise Disclosure Document**

**POOLWERX FRANCHISE MANAGEMENT LLC**

**FRANCHISE DISCLOSURE DOCUMENT**



Poolwerx Franchise Management  
LLC A Delaware limited liability  
company  
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Farmers Branch TX 75244  
(480) 854-2782  
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[www.poolwerx.com](http://www.poolwerx.com)

You will establish and operate a business that offers pool maintenance services, pool cleaning, installation and remodel services and retail pool supplies and services under the POOLWERX® trademark (“**Franchise**”). The business you are purchasing will consist of one or more service vehicles (“**Mobile Unit**”) and/or a retail store (“**Retail Location**”). Collectively the Mobile Unit and Retail Location are referred to in this disclosure document as the “**Franchised Business.**”

The total investment necessary to begin operation of a Franchised Business ranges from \$182,072 to \$430,322. This includes between \$124,572 to \$236,322 that must be paid to us, some of which is a pass-through expense that we then are responsible for to paying independent third-party suppliers that are not affiliated with us.

This Disclosure Document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact the Vice President – Franchise Development at 4801 Spring Valley Road, Suite 103A, Farmers Branch, TX 75244 (Tel. (480) 854 2782) or at [Franchising@poolwerx.com](mailto:Franchising@poolwerx.com).

The terms of your contract will govern your franchise relationship. Don’t rely on this Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as “*A Consumer’s Guide to Buying a Franchise,*” which can help you understand how to use this Disclosure Document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: May 22, 2023

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 and Exhibit E.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit B includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Poolwerx business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Poolwerx franchisee?</b>	Item 20 and Exhibit E list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## **What You Need To Know About Franchising *Generally***

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your Franchised Business or may harm your Franchised Business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your Franchised Business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### **Some States Require Registration**

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit C.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Texas. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Texas than in your own state.
2. **Sales Performance Required.** You must maintain minimum sales performance levels. Your inability to maintain these levels may result in loss of any territorial rights you are granted, termination of your franchise, and loss of your investment.
3. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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## EXHIBITS

- A. Franchise Agreement and State-Required Addenda
- B. Financial Statements
- C. State Administrators and Agents for Process of Service
- D. Manuals Tables of Contents
- E. Current Franchisees and Former Franchisees
- F. Form of General Release
- G. Form of Nondisclosure and Noncompetition Agreement For Franchisees’ Employees and Independent Contractors
- H. Lease Addendum
- I. State Effective Dates and Receipts

## ITEM 1 THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

To simplify the language in this Disclosure Document, “Poolwerx” or “we” means POOLWERX FRANCHISE MANAGEMENT LLC, referred to as “we,” “us,” “our” or “franchisor”. “You” or “Franchisee” means the individual person or entity who buys the franchise, including all equity owners of a corporation, general partnership, limited partnership, limited liability, or any other type of entity (an “Entity”).

We are a Delaware limited liability company that was organized on January 29, 2015. Poolwerx does business under its corporate name. Poolwerx’s principal business address is 4801 Spring Valley Road, Suite 103A, Farmers Branch TX 75244. To the extent that we have designated agents for service of process in any states, they are listed in **Exhibit C**. We began offering Franchises in March 2015 and have never offered any other franchises in any other line of business.

### **Our Parents, Predecessors and Affiliates**

Our predecessor, Cactus Valley Pools Services & Repairs, LLC (“**Cactus Valley**”) was an Arizona limited liability company formed on April 11, 2022 with a principal business address of 6341 East 34<sup>th</sup> Avenue, Apache Junction, AZ 85119. Neither Cactus Valley nor any of its affiliates, offer franchises in any line of business in the United States or offer products or services to our franchisees.

Our direct parent company, Poolwerx USA, LLC (“**Poolwerx USA**”), is a Delaware limited liability company that shares our principal place of business at 4801 Spring Valley Road, Suite 103A, Farmers Branch TX 75244. Except as provided below, we do not, nor do any of our affiliates, offer franchises in any line of business in the United States or offer products or services to our franchisees.

Our affiliate, Poolwerx Development LLC (“**Poolwerx Development**”), is a Delaware limited liability company that shares our principal place of business at 4801 Spring Valley Road, Suite 103A, Farmers Branch TX 75244. On March 2, 2015, Poolwerx Development purchased substantially all of the assets of Cactus Valley. Cactus Valley has been dissolved and no longer offers or sells franchises in any line of business or offers products or services to our franchisees, and Poolwerx no longer offers franchises under the Cactus trademark. Poolwerx Development does not offer franchises in any line of business.

Our affiliate, Poolwerx Operations, LLC (“**Poolwerx Operations**”), is a Delaware limited liability company that shares our principal place of business at 4801 Spring Valley Road, Suite 103A, Farmers Branch TX 75244. Poolwerx Operations does not offer franchises in any line of business.

The parent company of Poolwerx USA is fully owned by Poolwerx U.S. Holdings LLC, is a Delaware limited liability company (“**Poolwerx US Holdings**”). Poolwerx US Holdings’ principal place of business is at 4801 Spring Valley Rd, Suite 103A, Farmers Branch, TX 75244.

Following an equity transaction that closed on June 29, 2022, the majority owner of Poolwerx US Holdings is Norwest Venture Partners XVI, LP, a Delaware limited partnership with its principal place of business at 1300 El Camino Real, Suite 200, Menlo Park, CA 94025 (“**NVP XVI**”).

The corporate parent of NVP XVI is Norwest Limited LP, LLLP, a Delaware limited liability partnership with its principal place of business as 1300 El Camino Real, Suite 200, Menlo Park, CA 94025 (“**NVP LLLP**”).

The corporate parent of NVP LLLP, and ultimate controlling entity of Poolwerx US Holdings, is Wells Fargo & Company, a Delaware corporation with its principal place of business at 420 Montgomery Street, San Francisco, CA 94104.

Poolwerx Holdings Pty Ltd ACN 094 349 247, an affiliate of Poolwerx, owns the trademarks that you will use in your Poolwerx franchise, Poolwerx Corporation Pty Ltd is an Australian company that sells Poolwerx franchises in Australia. Their address is 10 Camford Street, Milton, Queensland 4064, Australia. Neither has ever offered franchises in any line of business in the United States.

We have no affiliates that offer franchises in other lines of business.

In March 2015, Poolwerx Development purchased several company-owned “Cactus Valley” pool businesses and its small franchise system, all of which were eventually converted to operate under the POOLWERX trademark. In July 2015, Poolwerx Operations purchased several SC Pool & Spa Works and Crystal Tech/Vivopools retail stores in Arizona and California, all of which were eventually converted to operate under the POOLWERX trademark. In March 2017, Poolwerx Development purchased several Dolphin Pool Supply and Services retail stores in Dallas, Texas, all of which were eventually converted to operate under the POOLWERX trademark. Neither Poolwerx nor any of its affiliates intend to offer or sell any additional franchises or open any additional company-owned stores under these other brands. Except for Cactus Valley company- owned and franchised units, Poolwerx Development has never offered franchises in any line of business offering.

### **The Business and Franchises Offered**

We are offering, under the terms of this disclosure document, the opportunity to become a franchisee to develop a Franchised Business in a specified area. A Franchise operates under the mark POOLWERX<sup>®</sup>, and certain other trademarks, service marks, trade names, signs, associated designs, artwork, and logos (collectively, the “**Marks**”). We may designate other trade names, service marks, and trademarks as Marks.

A Franchised Business operates under a prescribed system of specifications and operating procedures that we have developed and will continue to develop (the “**System**”). The distinguishing characteristics of the System include, but are not limited to, our Franchise designs, layouts, and identification schemes (collectively, the “**Trade Dress**”); our specifications for equipment, inventory, and accessories; our relationships with vendors; our software and computer programs; the accumulated experience reflected in our training program, operating procedures, customer service standards methods, and marketing techniques; and the policies, procedures, standards, and specifications set out in our proprietary manuals (“**Manuals**”). We may change, improve, add to, and further develop the elements of the System from time to time.

You may purchase the right to market your Franchised Business within a designated territory (the “**Marketing Area**”). This right will be incorporated in an agreement to be executed by Poolwerx and you (the “**Franchise Agreement**”). Our current form of Franchise Agreement is included as **Exhibit A** to this disclosure document. Under the Franchise Agreement, you have no right to use the Marks to market your Franchised Business except within your Marketing Area. You may only use the System and the Marks in your Franchised Business and not in any wholesale, e-commerce or other channel of distribution.

### **Competition**

The market for pool cleaning services, pool supply stores, maintenance, installation and remodel services and retail pool supplies and services is competitive. Your Franchise will compete with many other stores that offer pool cleaning services and pool supply stores and mobile unit services. Some of your competitors will be independently owned; others may be parts of company-owned chains; and others may be franchised.

### **Industry-Specific Regulations**

You will have to comply with laws and regulations that are applicable to business generally (such as swimming pool and spa regulations, pool fencing, storage and use of chemicals, workers’ compensation, OSHA, and Americans with Disabilities Act requirements). Federal, state and local governmental laws, ordinances and regulations periodically change. It will be your responsibility to ascertain and comply with all federal, state and local governmental requirements. We do not assume any responsibility for advising you on these regulatory matters. You should consult with your attorney about laws and regulations that may affect your Franchise.

## **ITEM 2 BUSINESS EXPERIENCE**

The following is a list of our directors, trustees, general partners, principal officers, Entity managers and other individuals who will have management responsibility relating to the sale or operation of Franchises offered by this disclosure document. The list shows each person’s principal occupations and employers during the past five years.

We have no directors or officers. The following persons are associated with our Parents or Affiliates:



**Secretary; Group Chief Financial Officer: Russell Beauchamp**

Mr. Beauchamp has served as Secretary for Poolwerx USA LLC since June 2022 and served as Chief Financial Officer for Poolwerx USA LLC from September 2017 to June 2022. Mr. Beauchamp has also served as Group Chief Financial Officer of Poolwerx Management Pty Ltd, Poolwerx Property Management Pty Ltd, Poolwerx NZ Pty Ltd, Poolwerx Holdings Pty Ltd, Poolwerx Corporation Pty Ltd, Poolwerx Priority Pty Ltd and Poolwerx Operations Pty Ltd since June 2022. Since September 2017, he has also concurrently served as Company Secretary of Poolwerx Management Pty Ltd, Poolwerx Property Management Pty Ltd, Poolwerx Priority Pty Ltd , Poolwerx NZ Pty Ltd, Poolwerx Holdings Pty Ltd, Poolwerx Corporation Pty Ltd and Poolwerx Operations Pty Ltd and Poolwerx Global Pty Ltd until June 2022. All positions are/were held in Queensland, Australia.

**Chief Executive Officer – North America - Andrew Kidd**

Mr. Kidd has served as Chief Executive Officer – USA for Poolwerx USA LLC since June 2022 in Dallas, Texas, and served as Chief Operating Officer for Poolwerx USA LLC from September 2019 to June 2022 in Dallas, Texas. From January 2018 to September 2019, Mr. Kidd was Chief Operating Officer of Poolwerx Corporation Pty Ltd, Poolwerx Holdings Pty Ltd, Poolwerx Property Management, Poolwerx NZ Pty Ltd, Poolwerx Operations Pty Ltd, Poolwerx Priority Pty Ltd and Poolwerx Management Pty Ltd. in Melbourne, Australia. From October 2012 to May 2016, Mr. Kidd was Business Development Manager and then Franchise Operations Manager of Poolwerx Corporation Pty Ltd. in Melbourne, Australia.

**Vice President of Franchise Development – USA – Jeffrey Powell**

Mr. Powell has served as Vice President Franchise Development since April 2023. Prior to that he served as Sr. Director of Franchise Recruitment at Full Speed Automotive of Colorado between May 2020 and April 2023. Prior to this he served as Vice President of Franchise Recruitment with Premium Service Brands of Virginia between January 2019 and May 2020. Prior to this he served as Chief Development Officer with Inexpress of Utah between March 2018 and January 2019. Prior to this, Mr. Powell was Vice President of Franchise recruitment for Pillar to Post of Florida between October 2015 and March 2018.

**Vice President of Franchise Operations – USA – Blake Overduin**

Mr. Overduin has been our Vice President of Franchise Operations in Dallas since May 2018. Prior to that, he was our Franchise Operations Manager in Dallas from January 2018 to April 2018. Prior to that he was our Company Operations Manager in Dallas from January 2017 to January 2018. Mr. Overduin was National Sales Manager for Express Franchise in Brisbane Australia from January 2016 to December 2016 and National Operations Manager for Local Appliance Rentals in Brisbane Australia from February 2015 to January 2016. He was also International Sales Manager with Poolsystems in Brisbane Australia from January 2014 to February 2015 and a Boost Juice Franchisee in Gold Coast, Australia from January 2013 to September 2016.

**Director of Franchise Sales – USA – Billie Pfeiffer**

Ms. Pfeiffer has been our Director of Franchise Sales since July 2020. Prior to that, Ms. Pfeiffer was Director of New Member Sales for United Aqua Group in Las Vegas, Nevada from June 2017 to January 2020.

**ITEM 3 LITIGATION**

There is no litigation that must be disclosed in this disclosure document.

**ITEM 4 BANKRUPTCY**

There is no bankruptcy that must be disclosed in this disclosure document.

## ITEM 5 INITIAL FEES

The initial franchise fee (the “**Initial Franchise Fee**”) for a start-up Franchise is \$49,500 which is due at signing of the Franchise Agreement. During our fiscal year ending December 31, 2022, we charged Initial Franchise Fees ranging from \$0 to \$49,000.

Qualified veterans, active-duty military and active Reserves, National Guard and Coast Guard members and qualified first responders: the Initial Franchise Fee will be discounted by 10%. This promotion cannot be combined with any other promotion or incentive discount.

You must pay us an initial training fee (“**Initial Training Fee**”) of \$2,000 for the necessary certification. These fees and costs are payable prior to execution of the Franchise Agreement or in any event before you begin operating your Mobile Unit. This fee covers the cost for one person to attend the initial training. All travel, accommodation and ancillary charges are payable by you. The Initial Training Fee is a uniform cost for all franchisees and non-refundable.

You must pay to us the convention fee, which is currently \$3,322, before you sign the Franchise Agreement.

You must pay us for signage, which is between \$2,000 and \$20,000 before you sign the Franchise Agreement.

You must pay us for the Point-of-Sale (“**POS**”), Hardware and Software for your Franchised Business, which is between \$2,000 and \$7,000.

You must pay us or approved suppliers for opening inventory, which is between \$15,000 and \$45,000.

You must pay us for Grand Opening Advertising, which is a minimum sum of \$8,000 on grand opening advertising and promotions beginning the two weeks prior to starting your Mobile Unit and an additional \$15,000 prior to starting your Retail Location.

You must pay us for equipment used in business operations, which is between \$2,000 and \$5,000.

You must pay us for uniforms in the operation of your Franchised Business, which is between \$750 and \$1,500.

You must pay us for furniture and fixtures, which is between \$40,000 and \$80,000.

Poolwerx currently acts as the purchasing agent on a “pass through” cost basis for certain initial equipment, computer systems, signage, advertising, supplies, uniforms, and other items identified in the charts in Item 7. Poolwerx typically collects payments from you and then remits them to the designated suppliers. See Item 8. These payments are set by the specific third party and are not uniform for the reasons described in the charts in Item 7.

None of the fees or costs in this Item are refundable.

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## ITEM 6 OTHER FEES

Type of Fee	Amount	Due Date	Remarks
Franchise Fees (See Note 1)	You will pay the applicable Franchise Fee shown in the table in Note 1 below. The fee is between 5% and 7% based on the total Gross Revenue (defined below) you produced in the prior Calendar Year.	Currently due monthly within 15 days after the end of each calendar month	<p>The Franchise Fees are based on a percentage of the Gross Revenue. Gross Revenue may be adjusted annually based on the CPI Increase.</p> <p>See Note 1 for more information on our yearly review of the system- wide Franchise Fee as part of our incentive-based fee structure program, the definition of “Gross Revenue” and “CPI Increase”</p>
Marketing Fee	You will pay the applicable Marketing Fee shown in the table in Note 1 below. The fee is between 1% and 3% based on the total Gross Revenue (defined below) you produced in the prior Calendar Year.	Currently due monthly within 15 business days after the end of each calendar month	<p>The Marketing Fees are based on a percentage of the Gross Revenue. Gross Revenue may be adjusted annually based on the CPI Increase.</p> <p>See Note 1 for more information on our yearly review of the system- wide Marketing Fee as part of our incentive-based fee structure program and the definition of “Gross Revenue” and “CPI Increase”</p>
Additional Training Fee	\$5,000 per person	As incurred	We reserve the right to charge a reasonable fee for additional training, in addition to initial training, for (i) persons in addition to the required trainees, even if they attend the same training session as any required trainees, (ii) persons who are repeating the course or replacing a person who did not pass, and (iii) subsequent employees who attend the course.
Technology Fee	Currently 2% of your Gross Revenue	Currently due monthly within 15 business days after the end of each calendar month	The Technology Fee may cover, among other things, subsidiary licenses, POS user fees, admin fees, technician fees, and other current or future technology focused fees or costs incurred in developing, operating and enhancing you Franchised Business generally. The Technology Fee may be increased or decreased by us in our sole discretion on an annual, calendar year basis to account for the pro rata aggregated system-wide technology and innovation costs anticipated by us for the upcoming calendar year.
Optional or Required Maintenance to Computer Systems	\$250 - \$2,000		We estimate this is the annual cost incurred by you for optional or required maintenance for your Computer Systems and any related updating, upgrading or support contracts. We will establish reasonable deadlines for

Type of Fee	Amount	Due Date	Remarks
			implementation of any changes to our Computer System or technology requirements.
Convention Fee	\$3,322 per Franchisee – this is for the Annual Convention attended by the Franchisee’s primary equity owner and his/her partner.	Payable in 6 equal installments, or as otherwise specified in the Manuals	The Convention Fee may be adjusted annually based upon the CPI Increase (see Note 1) and costs associated with that year’s Venue.
Additional Consulting Services	\$800 for each employee or agent rendering consulting services for each day or partial day services are rendered, plus costs and expenses	Within 10 days after such services are rendered	<p>We may provide such additional consulting services through the distribution of printed or filmed material, an Intranet or other electronic forum, meetings or seminars, teleconferences, webinars, or in person. If consulting services are rendered in person other than at our offices, you must pay us an additional consulting service fee plus costs and expenses.</p> <p>This sum is subject to revisions based on Consumer Price Index changes.</p> <p>We may increase the amount to be charged for such requested consulting services upon 60 days prior written notice, but such fees may not be increased more than once during any six-month period.</p>
Inspection and evaluation of products proposed by you	Not to exceed the reasonable cost of the inspection and our actual cost of testing the proposed product or evaluating the proposed service or service provider, including personnel and travel costs	As incurred	<p>We have the right to inspect the proposed supplier’s facilities and test samples of the proposed products and to evaluate the proposed service provider and the proposed service offerings. We have the right to grant, deny, or revoke approval of products, services, suppliers, or service providers based solely on our judgment.</p> <p>If you would like to offer products or use any supplies, equipment, or services that we have not approved or to purchase or lease from a supplier or service provider that we have not approved, you must submit a written request for approval and provide us with any information that we request. You should refer to the Operations Manual for a complete understanding of this approval process.</p>
Regional Area Marketing Fee	\$1,500 per year	Quarterly payments in advance or as	The Regional Area Marketing Fee amount is revised annually based on the changes in the consumer price index.

Type of Fee	Amount	Due Date	Remarks
		otherwise provided by us	Regional marketing co-operatives are operated in regions where there are more than 6 Franchised Business operating.
Local Marketing Advertising	A minimum of 1% of Gross Revenue annually on local advertising and promotional activities	To be spent as provided in Poolwerx's and your agreed upon business plan	You must participate in such advertising and promotional programs that we may specify from time to time, at your own expense. You must use your best efforts to promote the use of the Marks in your marketing area. Any media advertising or direct mail marketing that you conduct must be predominantly focused within your marketing are. Your local spending obligation is in addition to your Marketing Fee or Regional Market Fee.
Grand Opening Advertising	A minimum of \$8,000 for grand opening advertising and promotion of Mobile Unit and a further \$15,000 for grand opening advertising and promotion of the Retail Location	Between the 4 weeks prior to opening the Retail Location or commencement of operations by a Mobile Unit, and the 4 weeks after opening the Retail Location or commencement of operations by a Mobile Unit.	In connection with the opening of the Franchise, you must submit a grand opening plan to us for our approval. We have the right to modify your grand opening plan, in our sole discretion, and may require you to use a public relations firm to assist with your grand opening. We may, in our sole discretion, implement grand opening advertising and promotions on your behalf and you must reimburse us for the expenses we incur in doing so, which shall count towards your grand opening advertising obligation.
Audit	Costs and expenses	Within 5 days of demand	Payable if audit or review shows an understatement of Gross Revenues for the audited or reviewed period of 2% or more.
Renewal Fee	\$10,000 plus all associated costs incurred by Poolwerx.	Upon execution of renewal Franchise Agreement	This sum is subject to annual adjustment based on the CPI Increase (See Note 1).
Transfer Fee	\$10,000, plus any applicable sales/broker commissions in relation to the sale unless the transferee is already a Poolwerx franchisee, in which case the Transfer Fee shall be \$5,000,	On the date of takeover of the Franchised Business	You should refer to clause 33 of the Franchise Agreement for a complete understanding of the process and cost involved in transferring your Franchise. Transfer Fee amounts may be adjusted annually based on changes in administrative costs and the CPI Increase (See Note 1).

Type of Fee	Amount	Due Date	Remarks
	plus in each case associated costs incurred by Poolwerx including commissions payable to third parties and brokers.		
Late Fee	The then-current prime rate published by the Wall Street Journal plus 4 percentage points or the maximum interest rate allowed by law, whichever is less calculated from the due date until paid.	Upon demand	Required whenever a payment to us is made after its due date.
Insufficient Funds Fee	\$60	Upon demand	Fee is chargeable if payment is rejected by a bank.
Indemnification	Amount of our liabilities, fines, losses, damages, costs and expenses (including reasonable attorneys' fees)	Upon demand	Payable if we incur losses due to your breach of the Franchise Agreement or any other action or inaction by you or any other person relating to your Franchised Business.
Legal Costs	Our legal fees	Upon demand	Our legal fees are estimated to be approximately \$2,000 in relation to the negotiation, preparation, execution of any Lease Addendum or any other document granting us the right to take control of the Retail Location if the Franchise Agreement is terminated.

Notes:

1. You will pay the applicable the Franchise Fee and Marketing Fee based on your Gross Revenue for the previous calendar year as detailed in the table shown below.

Gross Revenue	Franchise Fee	Marketing Fee
\$0 - \$1,065,000	7%	3%
\$1,065,001 - \$1,597,500	6%	3%
\$1,597,501 - \$2,662,500	5%	2%
\$2,662,501 - \$5,325,000	5%	1.5%
>\$5,325,000	5%	1%

- a. “**Gross Revenue**” means the aggregate of prices charged or chargeable by the Franchised Business and all other income and remuneration received or receivable by the Franchised Business in the conduct of the Franchised Business and includes the proceeds of your business interruption insurance policy, direct supplier rebates and any promotional fees, commissions paid from referral sourced sales leads arrangements

or other income received, but excludes: (a) the gross amount of sales taxes included in the prices charged or chargeable and any sales credits such as the sale price of any product returned by clients where cash or allowances have been refunded or made to the client; and (b) rebates negotiated by us and paid directly to the Franchised Business by Approved Suppliers. If any gross receipts tax or other tax (but excluding any tax based upon our income) is imposed or assessed on the Franchise Fees, Marketing Fees or Technology Fees that you are obligated to pay to us, the amount of the Franchise Fees, Marketing Fees or Technology Fees will be increased so that the amount received by us, after payment of such tax, will equal the stated amount that would have been paid to us absent such imposed or assessed tax.

- b. As part of our incentive-based fee structure program, at the conclusion of each “**Financial Year**” (currently a year commencing January 1 and finishing on December 31 of that same year), we will conduct an internal review of the Franchise Fees and Marketing Fees payable by all new and existing franchisees, and we will make a unilateral decision within 30 days of the end of the Financial Year whether we will make any change to the Franchise Fees and/or Marketing Fees that will be payable to us by all new and existing franchisees during the following Financial Year. Any change we make will be detailed in full in the Operations Manual and will be retroactive to apply for the full following Financial Year. We may increase or decrease the Franchise Fees and/or Marketing Fees that will be payable to us by all new and existing franchisees during the following Financial Year, but in no case will your Franchise Fees exceed 7% of Gross Revenue and Marketing Fees exceed 3% of Gross Revenue.
- c. We will apply the changes to the Franchise Fees and/or Marketing Fees equally to all franchisees on a Financial Year basis, except that in the event of a partial sale of your Franchised Business, expansion of your Franchised Business, establishment of an additional Retail Location, or closure of the Retail Location, we may make an additional review of the Franchise Fees and/or Marketing Fees applicable to the particular franchisee and determine if any changes to the Franchisee’s Franchise Fees and/or Marketing Fees from the first day of the month following the relevant event are warranted. We reserve all rights to modify or eliminate the incentive-based fee structure program as it deems fit.
- d. “**CPI Increase**” means an increase equivalent to the percentage increase (if any) in the CPI in effect as of December 31 of the immediately preceding calendar year.

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**ITEM 7 ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type of Expenditure</b>	<b>Low Estimate</b>	<b>High Estimate</b>	<b>Payment Method</b>	<b>When Paid</b>	<b>Payment To</b>
Initial Franchise Fee See Note 1	\$49,500	\$49,500	Lump Sum	See Note 1	Us
Leasehold Improvements See Note 2	\$10,000	\$70,000	As incurred	As incurred	Contractors
Lease and Utility Security Deposits See Note 3	\$0	\$3,000	As incurred	As incurred	Lessor and Utility Companies
Signage See Note 4	\$2,000	\$20,000	As incurred	As incurred	Us
Furniture and Fixtures See Note 5	\$40,000	\$80,000	As incurred	As incurred	Us
Office Equipment and Supplies See Note 6	\$0	\$3,000	As incurred	As incurred	Suppliers
POS Hardware & Software See Note 7	\$2,000	\$7,000	Lump sum	At signing of Franchise Agreement	Us
Business Licenses & Permits See Note 8	\$500	\$2,000	As incurred	As incurred	Local Jurisdictions
Professional Fees See Note 9	\$4,000	\$7,000	As incurred	As incurred	Attorneys Accountants, Business Advisors
Opening Inventory See Note 10	\$15,000	\$45,000	Lump sum	At signing of Franchise Agreement or as incurred	Us
Business Insurance See Note 11	\$3,000	\$6,000	As incurred	As incurred	Insurance companies
Initial Training Fee	\$2,000	\$2,000	Lump sum	At signing of Franchise Agreement	Us
Cost and Living Expenses while Training. See Note 12	\$0	\$8,000	As incurred	As incurred	Airlines, Hotels, and Restaurants
Grand Opening Advertising See Note 13	\$8,000	\$23,000	Lump sum	At signing of Franchise Agreement	Us
Convention Fee	\$3,322	\$3,322	Lump sum	At signing of Franchise Agreement	Us



Type of Expenditure	Low Estimate	High Estimate	Payment Method	When Paid	Payment To
Equipment used in Business Operations See Note 14	\$2,000	\$5,000	As incurred	As incurred	Us
Uniforms	\$750	\$1,500	Lump sum	At signing of Franchise Agreement	Us
Vehicle Cost See Note 15	\$15,000	\$45,000	As incurred	As incurred	Suppliers
Additional Funds See Note 16	\$25,000	\$50,000	As incurred	As incurred	Suppliers
<b>Total</b>	<b>\$182,072</b>	<b>\$430,322</b>			

Notes:

\*UNLESS OTHERWISE PERMITTED BY YOUR PARTICULAR THIRD PARTY VENDOR, ALL PAYMENTS DESCRIBED IN THE ABOVE CHART ARE NON-REFUNDABLE ONCE PAID.

1. The Initial Franchise Fee is for the marketing rights for the grant of one Marketing Area and is payable upon execution of the Franchise Agreement and irrespective of whether a Mobile Unit or a Retail location commences business first. Qualified veterans, active-duty military and active Reserves, National Guard and Coast Guard members and qualified first responders: the Initial Franchise Fee will be discounted by 10%. This promotion cannot be combined with any other promotion or incentive discount.
2. This estimate is for the cost of purchasing the Mobile Unit, locating a site for a Retail Location and designing and constructing a Retail Location ranging in size from 1,000 to 2,000 square feet. We suggest you find a space for your Retail Location needing minimal leasehold improvements or fixtures. In most cases, you will need to alter the interior of your Retail Location before you open for operation according to our specifications. Real estate improvement costs will vary widely and may be significantly higher than what is projected in the table above depending on factors such as property location, the condition of the property and the extent of alterations required for the property. You may be able to negotiate with your landlord to obtain a tenant improvement allowance whereby your landlord will give you a sum of money upon or following execution of your lease for you to use for Leasehold Improvements, and the amount of any allowance will typically be added into your rent payments and amortized over the initial term of your lease. You should investigate all these costs in the area in which you wish to establish your Franchised Business.
3. This estimate includes prepaid rent and deposits payable to the landlord but does not include annual rent. Your annual rent will be dependent upon factors such as the size and type of location, geographic area, and market conditions. This estimate also includes any deposits on utilities required to open the Retail Location.
4. Signage includes outdoor identification on the Retail Location, displays, and signage throughout the Retail Location. This also includes the signage for one vehicle. This is part of the set-up costs.
5. This estimate includes the cost of furniture and fixtures used in the Retail Location.
6. This estimate includes the cost of purchasing a printer, and supplies. You must also provide the internet connections that we specify. This is part of your set-up costs.
7. This estimate includes the cost of purchasing our required software from approved suppliers. You must also provide the internet connections that we specify. This is part of your set-up costs.
8. This estimate includes the cost of acquiring business licenses and permits. Your costs will vary depending upon your Retail Location's location.

9. This estimate is for the cost of engaging an attorney, accountant, or other business advisors to assist you in reviewing this Disclosure Document, the Franchise Agreement, your business plan, and any other contracts that you enter into related to this Franchise, as well as an amount to reimburse us our legal costs related to the transaction. We may require that you engage an attorney to review your lease or purchase agreement for the accepted Site and supply us with reasonable documentation in connection with such review, including a lease abstract and confirmation that (i) the Lease Addendum we require has been signed (if you lease the Site) and (ii) the terms in the agreement accurately reflect the terms in any letter of intent or contract between you and the third party seller or lessor. We strongly recommend that you seek the assistance of professional advisors when evaluating this Franchise opportunity. The estimates represented in this chart are based on professional fees in the State of Texas. You may experience different rates for professional fees in your market. It is best to ask your professional advisors for their fee schedule prior to engaging them to perform any services on your behalf. At our request, you must retain and use, at your expense, the services of an accountant or accounting firm that we approve for the first 12 months of operation.

10. The minimum opening inventory is based on our assessment of your projected sales and inventory turnover. You must obtain your entire minimum opening inventory from us or approved suppliers. Amounts shown do not include shipping costs. This will form part of your set-up costs.

11. This estimate is for the cost of an initial three (3) month period for your insurances. You will need to check with your insurance carrier for actual premium quotes and costs, as well as for the actual amount of the deposit. The cost of coverage will vary based upon the area in which your business will be located, your experience with the insurance carrier, the loss experience of the carrier, the amount of deductibles and of coverage, and other factors beyond our control. You should also check with your insurance agent or broker regarding any additional insurance that you may wish to carry above our required minimums.

12. This estimate is for the cost of attending initial training in Texas. Poolwerx will arrange for approved Instructors to provide you with the Initial Training. The facilities, and materials for the initial training program will be provided by Poolwerx. You are responsible for the travel and living/accommodation expenses, wages, and other expenses incurred by your trainees during initial training. The actual cost will depend on your point of origin, method of travel, class of accommodations, and dining choices.

13. You must spend the minimum sum stated in the table for grand opening advertising and promotions beginning the two weeks prior to starting your Franchised Business and continuing through the first 12 months. These funds should be allocated according to the plan that you submit to us. Your cost may be higher based on the length of time you wish to run opening promotions. We have the right to modify your grand opening plan, in our sole discretion. You must provide us with supporting documentation evidencing these expenditures upon our request. This estimate does not include the Marketing Fees that you must pay us for the Marketing Fund described in Item 11 or any Regional Marketing Fee, as described in Item 6.

14. This cost comprises the operational equipment used in the business and must be obtained from approved suppliers only, at the commencement of the franchise.

15. This is the cost of one new vehicle and the internal racking and must be purchased from an approved supplier. The cost for one new vehicle will vary depending on whether you elect to buy, lease or hire the vehicle. The minimum cost is an estimate of the lease charge for a one-year period. You should seek professional advice on which option, i.e., buy, lease or hire, is most suitable for your business.

16. This is an estimate of the amount of additional operating capital that you may need during the first three months after opening your business. This estimate includes additional funds you may need to pay employee salaries and wages, utilities, items as payroll taxes (including payroll to cover the pre-opening training period for your staff), legal and accounting fees, additional advertising, health and workers' compensation insurance, bank charges, miscellaneous supplies and equipment, staff recruiting expenses, state tax and license fees, deposits, prepaid expenses, and other miscellaneous items.

## ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You must obtain each approved product or service only from an approved supplier, unless we grant you written approval to obtain any product or service from an alternate supplier in accordance with clause 10.2 of the Franchise Agreement.

### **Authorized Products and Services**

You may offer for sale in the Franchised Business only the products and services that we have approved in writing, as specified in the Manuals. We may, in our sole discretion, change these specifications periodically, change the authorized products and services at our discretion, and designate specific products or services as optional or mandatory. You must offer all items that we designate as mandatory. You may sell products only in the varieties, forms, and packages that we have approved. If we revoke approval of a previously-approved product that you have been selling, you may continue to sell the product only from your existing inventory for up to 60 days following our disapproval. We have the right to shorten this period if, in our opinion, the continued sale of the product would prove detrimental to our reputation, the reputation of our brand or to the POOLWERX Marks. After the 60-day period or such shorter period that we may designate, you must dispose of your remaining formerly-approved inventory as we direct.

We have the right to require that products, supplies, equipment (including without limitation vehicles), and services that you purchase for resale or purchase or lease for use in your Franchised Business: (i) meet specifications that we establish from time to time; and/or (ii) be purchased or leased only from suppliers or service providers that we have expressly approved; and/or (iii) be purchased or leased only from a single source that we designate (which may include us or our affiliates or a buying cooperative organized by us or our affiliates). We can impose purchasing restrictions for any reason, but the most likely purposes would be to control the quality and consistency of the merchandise and to facilitate volume-discount pricing arrangements.

We have the right to require you to offer for sale in the Franchise specified pool supply items with any trademark that we select. You must sell such private label goods only through the Franchise at retail directly to the ultimate consumer, and you must not permit such goods to be sold to or by any other person or Entity.

Except for us and our affiliates identified above, none of our officers owns any interest in any supplier with whom you are required or recommended to do business.

We do not provide any material additional benefits to franchisees (for example, renewal or granting additional franchises) based upon their purchase or lease of particular products, items, or services or use of particular suppliers or service providers. However, failure to purchase or lease products or services in accordance with our approved supplier lists or in accordance with our specifications is a breach of your Franchise Agreement.

To the extent that we establish specifications, require approval of suppliers or service providers, or designate specific suppliers or service providers for particular items or services, we will publish our requirements in the Manuals. We may, at any time, in our discretion, change, delete, or add to any of our specifications or quality standards. Such modifications, however, will generally be uniform for all franchisees.

We estimate that the cost to purchase and lease all equipment, inventory and other items and services that we require you to obtain from us or our affiliates, from designated suppliers, or in accordance with our specifications are in excess of 80% of the total cost to purchase and lease equipment, inventory, and other items necessary to establish a Franchised Business and in excess of 80% of the total cost to purchase and lease equipment, inventory, and other items necessary to operate a Franchised Business.

### **Approval Process**

Our criteria for supplier approval may be found in the Manuals. If you would like to offer products or use any supplies, equipment, or services that we have not approved or to purchase or lease from a supplier or service provider that we have not approved, you must submit a written request for approval and provide us with any information that we request. In most cases, we base our approval of suppliers on their reputation within the industry,

price, delivery terms, adequate quality controls and the capacity and scope of coverage within the U.S. or region, to supply needs promptly and reliably. However, we have the right to inspect the proposed supplier's facilities and test samples of the proposed products and to evaluate the proposed service provider and the proposed service offerings. You must pay us a charge not to exceed the reasonable cost of the inspection and our actual cost of testing the proposed product or evaluating the proposed service or service provider, including personnel and travel costs, whether or not the item, service, supplier, or service provider is approved. We have the right to grant, deny, or revoke approval of products, services, suppliers, or service providers based solely on our judgment, even if the products, services, suppliers, or service providers satisfy our published requirements and criteria. We will notify you in writing of our decision as soon as practicable following our evaluation. If you do not receive our approval within 30 days after submitting all of the information that we request, our failure to respond will be deemed a disapproval of the request. We reserve the right to re-inspect the facilities and products of any approved supplier and to reevaluate the services provided by any service provider and to revoke approval of the product, service, supplier, or service provider if any fail to meet any of our then-current criteria. If you receive a notice of revocation of approval, you must cease purchasing the formerly-approved product or service or any products or services from the formerly-approved supplier or service provider and you must dispose of your remaining inventory of the formerly-approved products and services as we direct.

### **Insurance**

You must obtain before you begin construction and/or development of a Franchised Business, and must maintain at all times the types of insurance and the minimum policy limits and maximum deductibles specified in the Franchise Agreement and in the Manuals. Currently we require the kinds of insurance specified in the Franchise Agreement and in the Manual, including without limitation, commercial general liability insurance, insurance covering bodily injury and property damage, business auto coverage and other vehicle insurance covering non-owned automobile and automobile liability coverage, workers' compensation insurance, unemployment insurance, personal property coverage, all as set forth in the Manual and in minimum amounts and with maximum deductibles as specified by Poolwerx. Before commencing operations, the Franchisee must furnish to Poolwerx proof of insurance, such as a certificate of insurance, executed by the insurance carrier, and evidence of payment for such insurance, and such proof shall also thereafter be provided to the Franchisee on a time schedule established by Poolwerx and/or upon request. However, you may be required to acquire additional insurance by the laws of the jurisdiction where you do business. The insurance policy or policies must protect you, us, and our respective, past, present, and future officers, directors, owners, managers, employees, consultants, attorneys, and agents against any loss, liability, personal injury, death, property damage or expense whatsoever arising or occurring upon or in connection with the condition, operation, use, or occupancy of the Franchise. We must be named as an additional insured under each policy that we require, if permitted. We may require additional types of coverage or increase the required minimum amount of coverage upon reasonable notice. Insurers must agree not to cancel or not renew coverage without giving Poolwerx at least 30 days written notice.

### **Computer System**

You are required to purchase the computer system that we specify, including computer hardware, software, point of purchase systems, inventory control systems, and high-speed network connections (collectively, the "**Computer System**"). The component parts of the Computer System must be purchased from approved suppliers. If we require you to use any proprietary software or to purchase any software from a designated vendor, you must execute any software license agreements that we or the licensor of the software require and any related software maintenance agreements. The Computer System is described in more detail in Item 11.

You will pay us a continuing Technology Fee that we set annually (with annual minimum and maximum payment amounts) in our sole discretion. See Item 6. The Technology Fee is designed to cover some, but not all, then current aggregated system-wide technology and innovation fees and costs for you and other franchisees, but you may be required to pay certain other types of technology-related fees and costs to us, our affiliates or our third party vendors separate from the Technology Fee. Our existing franchisees may pay different amounts as a technology fee based on their franchise agreement. In certain instances, we may use a combination of Marketing Fees and Technology

Fees on technology-related advertising and marketing advancements. The Technology Fee may be increased or decreased by us in our sole discretion on an annual, calendar year basis to account for the pro rata aggregated system-wide technology and innovation costs anticipated by us for the upcoming calendar year.

In addition, through our collection of the Technology Fee, we may invest in new software that will enhance our operations (e.g., Point-of-Sale, Field Service Mgmt., Order Management, eCommerce, etc.) that will progressively roll out over the next 5 years.

### **Professional Services**

We may require you to engage an approved accountant to provide financial services for your Franchise. We also may require you to engage an attorney to review your lease or purchase agreement for the site of the Retail Location that we have accepted and to supply us with reasonable documentation in connection with such review, including a lease abstract and confirmation that the terms in the agreement reflect the terms in any letter of intent between you and the third-party seller or lessor.

### **Revenue from Purchases**

We have entered into supplier agreements with several suppliers pursuant to which we or our affiliates will receive rebates on sales made to franchisees ranging from 0% to 15% of the supplier's customary retail prices. In some instances, the rebate may be based upon the costs of items purchased, with such rebates ranging from \$30 to \$100 of the supplier's customary retail prices for such products. In some cases, the rebates will be paid into the Marketing Fund, not to Poolwerx or its affiliates. During fiscal year 2022, we collected and retained rebates and allowances totaling \$633,626 from vendors based on franchisee purchases which is 16% of our total revenue of \$3,943,998<sub>2</sub> (we do not count as revenue monies taken in when we act as the purchasing agent on a "pass through" cost basis). This information was obtained from our 2022 fiscal year audited financial statements.

Except as provided above, we and our affiliates currently do not derive any other revenue or other material consideration from any of your required purchases or leases of equipment, products, and supplies but, as noted in Item 5, we do sometimes act as the purchasing agent on a "pass through" cost basis for certain initial equipment, computer systems, signage, supplies and other items. We and our affiliates reserve the right to receive additional rebates in the future from current or new suppliers and/or charge a fee or markup for our purchasing agent services. We currently use vendor rebates to market the Poolwerx network, provide training to franchisees and to subsidize the cost of the Poolwerx annual franchisee convention, but we reserve the right to retain any rebates or other payments we receive from suppliers or you and use them as we deem appropriate at our sole discretion.

### **Cooperatives and Purchase Arrangements**

We are a party to a purchasing cooperative, Carecraft and Heritage, with whom we work with to provide improved buying power for our Franchisees. In addition, we may, but are not obligated to, negotiate purchase arrangements with suppliers for the benefit of franchisees and/or to promote a consistent range of goods and services available across the system. As of the issuance date of this disclosure document we and our affiliates have negotiated supply agreements with Fluidra; Solenis, LLC; Oreq Corporation; Endless Pools; Vivid Ink, Inc.; All-Safe Pool & Fence Covers; AquaCal Autopilot, Inc.; Hasa, Inc.; and J&J Electronics, LLC.

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## ITEM 9 FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Disclosure Document Item</b>
a.	Site selection and acquisition/lease	20	Item 11
b.	Pre-opening purchases/leases	16	Items 6,7, 8 and 11
c.	Site development and other pre- opening requirements	6.5; 6.12	Items 7, 8 and 11
d.	Initial and ongoing training	6.7; 15	Items 6, 7 and 11
e.	Opening	3.1; 6.1; 12.1	Items 6 and 11
f.	Fees	12; 15.4; 18.11; 18.12	Items 5, 6, 7 and 11
g.	Compliance with standards and policies/Manual	6.2; 7; 8; 9.5; 11; 14	Items 7, 8, 11, 13, 14, 15 and 16
h.	Trademarks and proprietary information	6.14; 24; 25; 26	Items 13, 14 and 17
i.	Restrictions on products/services offered	4.3; 9	Items 8 and 16
j.	Warranty and customer service requirements	6.10; 9.2; 42-43	Items 8 and 16
k.	Territorial development and sales quotas	4.2; 7	Items 1, 5 and 12
l.	Ongoing product/service purchases	9	Items 8 and 16
m.	Maintenance, appearance and remodeling requirements	4; 6.17	Items 7, 8 and 11
n.	Insurance	17.3; 27	Items 7 and 8
o.	Advertising	18	Items 6, 7, 8 and 11
p.	Indemnification	38; 46	Item 6

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Disclosure Document Item</b>
q.	Owner’s participation/ management/staffing	6.3; 6.6; 28	Items 11 and 15
r.	Records and reports	6.11; 21; 22	Items 6 and 17
s.	Inspections and audits	10; 20.14; 22.2-22.5	Items 6 and 11
t.	Transfer	29.5; 33	Items 6 and 17
u.	Renewal	3.2-3.4	Item 17
v.	Post-termination obligations	31.4; 36.2-36.4	Item 17
w.	Non-competition covenants	31	Item 17
x.	Dispute resolution	40-41; 48.10	Item 17

#### ITEM 10 FINANCING

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligations.

#### ITEM 11 FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

**Except as listed below, we are not required to provide you with any assistance. Our Pre-Opening Obligations**

**Designate Areas.** We will designate your Marketing Area in which you may operate your Franchised business (Franchise Agreement - clause 2.3).

**Site Selection Assistance.** We will provide you with site selection guidelines, counseling, and assistance that we consider necessary and appropriate. It is solely your responsibility to locate and select a suitable site for the Retail Location. Before entering into any lease or purchase agreement for the Retail Location, you must submit a submittal package describing details about the proposed Retail Location’s site to us within 90 days after the Franchise Agreement’s effective date (or any later date on which we have granted you the right to construct a Retail Location) and provide any other information that we reasonably require. We will review your submittal package relating to your proposed site and determine whether to accept your proposed site. We will conduct such on-site evaluation as we consider necessary and appropriate as part of our evaluation of your submittal package. If we determine that on-site evaluation is necessary and appropriate (on our own initiative), we will provide such evaluations (to last not more than 2 days unless we agree otherwise) at our own expense. In addition to certain demographic characteristics, we also consider the following factors in accepting a Site: rent, other Tenants in the building and frontage. If we accept the proposed site and you obtain it, we will insert a description of the specific location on Schedule 1, Item 8 to the Franchise Agreement. We will assist you in contacting key vendors to obtain their approvals prior to the signing of your lease but provide no guarantee that vendors will service a site either before or after your lease is signed. If we or one of the key vendors rejects your proposed site, you may propose another site; however. If you will be operating a Retail Franchise, then, your Retail Location must be open for business by the commencement date of the Franchise Agreement (or any later date on which we have granted you the right to construct a Retail Location). If you fail to meet this deadline for any reason, including your failure to propose a site that is acceptable to us, and we do not agree to extend the deadline, we will have the right to terminate your Franchise Agreement. Our acceptance of a proposed site is not a warranty or representation of any kind as to the potential success or profitability of your Retail Location. (Franchise Agreement – clauses 20.2, 20.3 and 20.4).

**Approval of Site Lease.** Before you make a binding commitment to purchase, lease, or sublease a Location, we must approve in writing the proposed lease or purchase agreement or any letter of intent between you and the third-party seller or lessor. If you lease the Location, unless we waive the requirement in writing, you must arrange for the execution of the Lease Addendum in the form that is attached as **Exhibit H** to this Disclosure Document. (Franchise Agreement – clauses 20.5 and 20.6).

**Plans.** We will make available to you at no charge a set of prototype plans and specifications (not for construction) for the Retail Location and for the exterior and interior design and layout. We will review your final plans, which we must approve prior to permitting and construction. (Franchise Agreement - clause 20.10)

**Initial Training.** We will provide initial training in the System and our policies and procedures to the principal owner of the Franchise, your Manager of a Retail Location (the “**Manager**”), and any other employees that we designate. See “Training”, below in this Item. (Franchise Agreement - clauses 5.3; 15.1).

**Manuals.** We will furnish you with one copy of, or electronic access to, our Manuals, on loan for as long as the Franchise Agreement or a successor franchise agreement remains in effect. We reserve the right to furnish all or part of the Manuals to you in electronic form and to establish terms of use for access to any restricted portion of our website. (Franchise Agreement - clause 14).

**Approve Opening.** We will approve your Mobile Unit and Retail Locations opening, provided that you have met all of our requirements for opening, including, but not limited to, providing us, in the case of a Retail Location, with a Certificate of Occupancy when required and building the Retail Location in compliance with the plans that we approved, and equipping your Mobile Unit as we may require. (Franchise Agreement - clauses 3.1; 6.1; 6.2; 6.7; 12.1; 15; 16; 20).

**Opening Assistance.** We may provide you, at the Retail Location premises, such initial on-site assistance as we deem reasonably necessary for you to commence the operation of the Poolwerx business. (Franchise Agreement - clause 5.2(f)).

We estimate that the typical length of time between signing a Franchise Agreement or our approval of a Retail Location site and you opening the Retail Location is approximately 12 months, and the typical length of time between signing a Franchise Agreement and opening your first Mobile Unit is immediately upon completion of initial training unless we determine that an extended opening date is necessary. Factors affecting these lengths of time include, among others: ability to select a site and negotiate a satisfactory lease; hiring of the requisite employees; successful completion of initial training; local ordinances or community requirements; delivery of fixtures, equipment, and signs; the availability of inventory; acquisition of required vehicles; issuance of all necessary licenses, permits and approvals; and procuring required insurance. If Schedule 2 of your Franchise Agreement contains Development Conditions, you must open a Retail Location(s) no later than the date set out in that Schedule or the date set out in the Special Conditions set out in item 20 of Schedule 1. You must commence operation of your Franchise on the Commencement Date as set out in item 5 of Schedule 1 of your Franchise Agreement. (clause 3.1).

### **Our Ongoing Assistance**

During the operation of your Franchise:

**Additional Training.** We may periodically conduct advanced training programs for you, your Managers, and/or your employees at our office or another location that we designate. We may provide additional training in person, via recorded media, via teleconference, via the Internet, via webinar, or by any other means, as we determine. (Franchise Agreement – clause 15).

**Advertising.** We may from time to time formulate, develop, produce, and conduct, at our sole discretion, advertising or promotional programs in such form and media as we determine to be most effective through expenditures from the Marketing Fund. We may make available to you without charge approved advertising materials to be used in connection with the opening of your Franchise. (Franchise Agreement – clause 18.11(b)).



**Review Advertising.** We will review any advertising or promotional programs or materials that you develop. (Franchise Agreement – clause 18.3),

**Marketing Fund Management.** We will manage the Marketing Fund (Franchise Agreement – clause 5.3(d)). See below in Item 11 for more information.

**Requested Consulting Services.** We may provide to you additional consulting services with respect to the operation of the Franchise upon your reasonable request and subject to the availability of our personnel at a mutually convenient time. We will make available to you information about new developments, techniques, and improvements in the areas of merchandising, advertising, management, operations, and Retail Location and Mobile Unit design. We may provide such additional consulting services through the distribution of printed or filmed material, an Intranet or other electronic forum, meetings or seminars, teleconferences, webinars, or in person. If such services are rendered in person other than at our offices, you must pay us a fee and our expenses. (Franchise Agreement – clauses 5.2 and 5.3).

**Manuals Updates.** We may amend, modify, or supplement the Manuals at any time. You must comply with revised standards and procedures within days after we transmit the updates. (Franchise Agreement – clause 14.3).

**Inspections.** We may inspect the operation, premises and inventory of the Retail Location or Mobile Unit and advise you of the results of each such inspection. (Franchise Agreement – clause 20.14).

### **Advertising General**

You must submit to us in writing for our prior approval all sales promotion materials and advertising that have not been prepared by or previously approved by us. If our written approval is not received within 15 days from the date we received the material, the material is deemed disapproved. You must conduct all advertising in a dignified manner and to conform to the standards and requirements we specify in the Manuals. We will have the final decision on all creative development of advertising and promotional messages. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

We may from time to time formulate, develop, produce, and conduct, at our sole discretion, advertising or promotional programs in such form and media as we determine to be most effective. We may make available to you without charge or for you to purchase at a reasonable cost approved advertising and promotional materials, including signs, posters, collaterals, etc. that we have prepared. We have not conducted media advertising for Franchised Business. If we conduct media advertising, we may use direct mail, print, radio, Internet, or television, which may be local, regional, or national in scope. We may produce the marketing materials in-house or employ a local, regional, or national advertising agency. We are not obligated to conduct any advertising or marketing programs within your market.

### **Marketing Fund**

Your Marketing Fee will be contributed to the Poolwerx Marketing Fund (the “**Marketing Fund**”). We will use your Marketing Fees and any earnings on the Marketing Fund account for any costs associated with developing and/or implementing advertising (media and production), branding, marketing, public relations and/or promotional programs and materials, and any other activities we believe would benefit Franchised Business generally, including advertising campaigns in various media; creation and maintenance of a website and other technology-related advertising and marketing advancements, such as customer relationship management tools; direct mail advertising; market research, including, without limitation, secret shoppers and customer satisfaction surveys; branding studies; employing advertising and/or public relations agencies; purchasing promotional items; conducting and administering promotions, contests, giveaways, public relations events, and community involvement activities; and providing promotional and other marketing materials and services to our franchisees. We have the right to direct all marketing programs, with the final decision over creative concepts, materials, and media used in the programs and their placement. We do not guarantee that you will benefit from the Marketing Fund in proportion to your contributions to the Marketing Fund. In certain instances, we may use a combination of Marketing Fees and Technology Fees on technology-related advertising and marketing advancements.

We will not use the Marketing Fund for anything whose sole purpose is the marketing of franchises; however, the Poolwerx website, public relations activities, community involvement activities, and other activities supported by the Marketing Fund may contain information about franchising opportunities.

We will not use any contributions to the Marketing Fund to defray our general operating expenses, except for reasonable administrative costs and overhead we incur in activities reasonably related to the administration of the Marketing Fund or the management of Marketing Fund-supported programs (including the pro-rata amount of salaries of our personnel who devote time to Marketing Fund activities and retainers and fees for outside agencies). We may use monies in the Marketing Fund to pay for an independent audit of the Marketing Fund, if we elect to have one completed.

In no event will we be deemed a fiduciary with respect to any Marketing Fees we receive or administer. We will prepare an unaudited statement of contributions and expenditures for the Marketing Fund and make it available within 60 days after the close of our fiscal year to franchisees who make a written request for a copy. (Franchise Agreement – clause 5.3(d); 18.11).

All franchisees and affiliate-owned operations will contribute to the Marketing Fund a uniform percentage of their Gross Revenues. A lower percentage may be payable under the then current Poolwerx incentive-based fee structure program described in Item 6, Note 1, and as specified in the Operations Manual from time to time.

During our fiscal year ending December 31, 2022, approximately 46% of the funds expended by us were spent on the development and production of materials, approximately 7% on media placement, 45% on fund administration, which includes the management fee paid to us and legal and accounting fees, and approximately 2% on other costs, which includes focus groups, sponsorships, promotional items and other miscellaneous expenses. Any sums in the Marketing Fund at the end of any year shall be applied toward the following years' expenditures.

### **Local Marketing**

You must use your best efforts to promote the use of the Marks in your Marketing Area. You must spend annually at least 1% of your Gross Revenues on local advertising and promotional activities. You must also pay us a Regional Area Marketing Fee of \$1500 per year, payable quarterly, for each Marketing Area granted to you. Your local spending obligation and Regional Area Marketing Fees are in addition to your Marketing Fee. Your Regional Area Marketing Fee is subject to adjustment, as provided in Item 11(c) of Schedule 1 of the Franchise Agreement. We may also from time to time implement local area marketing initiatives that may include calling inactive clients, door knocking activities and distribution of local marketing materials, and you will be required to comply with these requirements.

### **Grand Opening Advertising.**

You must spend a minimum sum of \$8,000 on grand opening advertising and promotions beginning the two weeks prior to starting your Mobile Unit and an additional \$15,000 prior to starting your Retail Location consistent with a plan that you must submit to us. You must provide us with supporting documentation evidencing these expenditures upon our request. We have the right to modify your grand opening plan, in our sole discretion. No amount paid by you for your grand opening will be credited toward any of your other advertising obligations.

### **Websites**

You are not authorized to have a website for your Franchise or to have a webpage related to your Franchise in any third-party website, including, without limitation, social networking sites. We will provide basic information about your Franchise on our website.

### **Promotional Programs**

You must participate in all promotional programs that we offer to franchisees. You must follow our guidelines concerning the acceptance and reimbursement of gift certificates, gift cards, coupons, and other promotional programs as we set forth from time to time in the Manuals or otherwise in writing. You may not allow use of gift certificates, gift cards, or coupons unless approved or offered by us.

## **Advertising Cooperatives**

We currently do not have any advertising cooperatives and have no plans to form such cooperatives in the immediate future. However, you must join and actively participate in any organizations or associations of franchisees or advertising cooperatives that we establish or that are established at our direction for the purpose of promoting, coordinating, and purchasing advertising in local, regional, or national areas where there are multiple Franchises.

## **Advertising Councils**

We currently have no advertising council composed of franchisees to advise us on our advertising policies. We may decide to implement an advertising council in the future.

## **Computer System and other Technology**

You must purchase and use the Computer System and other technology that we specify from time to time in the Manuals. The Computer System typically includes multiple point-of-sale terminals networked with a back-office personal computer that is connected to the Internet via a high-speed Internet connection. Technology would include water testing software and other software that may be specified for use in your business which assists you in managing your business. We currently require you to use NetSuite Software, and you will be required to have an iPad, iPad swivel stand, Bluetooth keyboard, Bluetooth scanner, Bluetooth receipt printer for each station that uses NetSuite Software in the retail environment. Additional personal computer or laptop would be necessary for back of house or service-oriented work. We estimate that the Computer System will cost between \$2,000 and \$7,000.

The Computer System will be used for daily functions such as tracking purchase orders and receipts, and client information, updating inventory, generating sales reports and analysis relating to the Franchise, and providing other services relating to the operation of the Franchised Business. Neither we nor our affiliates act as vendors or suppliers of any hardware or software components.

You must maintain the Computer System at your expense and must purchase any hardware or software maintenance or technical support programs that we require. You must replace, upgrade, or update the Computer System or the technology as we may require from time to time. We estimate the annual costs incurred by you for optional or required maintenance for your Computer Systems and any related updating, upgrading or support contracts to range from \$250 to \$2,000. We will establish reasonable deadlines for implementation of any changes to our Computer System or technology requirements.

You, at all times, must give us unrestricted and independent electronic access (including users IDs and passwords, if necessary) to the Computer System for the purposes of obtaining the information relating to Gross Revenues of the Franchise, auditing and collecting Franchise Fees and Marketing Fees, inventory levels, aged inventory, and cost of goods sold. You must permit us to download and transfer data via a high-speed Internet connection or such other connection that we specify on a real-time basis. There are no contractual limitations on our right to access data stored in the Computer System.

You must dedicate your computer system for use only in the operation of your Franchise and use the Computer System in accordance with our policies and operational procedures. Your employees must complete any and all training programs we reasonably require for the proper operation and use of the Computer System. You may not use any other cash registers or computer systems in your Franchised Business.

We may require you to use proprietary software or to purchase certain software from a designated vendor. If we make any such requirements, you must execute and be responsible for the fees associated with any software license agreements or any related software maintenance agreements that we or the licensor of the software require. As noted above, you currently must use NetSuite software.

You will be required to ensure that your data is stored on a nominated centrally hosted environment which will be provided by an approved supplier. We currently cover the cost for the supplier via your payment of the Technology Fee, but we reserve the right to require you to pay our then current vendor directly for such data storage directly in the future.

**Manuals**

The Table of Contents of the Manuals is attached as **Exhibit D** to this Disclosure Document.

**Training**

You or your Manager must obtain our management certification by personally attending and satisfactorily completing our Initial training program before you open your Franchised Business.

We will provide initial training at our offices, currently in Farmers Branch, Texas, or at any other location that we designate, including at other franchises in the United States or at your Retail Location or Mobile Unit and/or through a variety of means using virtual technology We will provide instructors, facilities, and materials for the initial training program at a fee of \$2,000, provided that all of your personnel are trained during the same training session. We reserve the right to charge a reasonable fee for training persons who are repeating the course or replacing a person who did not pass and for subsequent Managers or employees who attend the course. You are responsible for any travel and living expenses, wages, and other expenses incurred by you and your trainees. The initial training program will be provided as soon as practical after you sign your Franchise Agreement, but we do not maintain a specific deadline for you to complete initial training after signing your franchise agreement or before you open your business, but you will not receive approval to open until you have completed training and you do have an opening deadline in your franchise agreement. See Item 8.

We may periodically conduct advanced training programs for you, your Managers, and/or your employees at our office, through virtual means or at another location that we designate. We may charge you for mandatory and optional training programs that we provide for you or your employees. We may provide additional training in person, via recorded media, via teleconference, via the Internet, via webinar, or by any other means, as we determine. Our training program is described in the following chart:

**TRAINING PROGRAM**

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Instructor</b>	<b>Location</b>
Technical	33	80	Wayne Kamper Wayne has been in the pool industry for over three decades. He started out cleaning pools and later co- founded a pool company called Pool Doctors out of Fort Worth, Texas. After selling his half of the business, he worked in various roles for several different companies in Florida and Texas such as Repair Technician, Service Manager, and Pool Designer. In 2003 he became Service Manager at Dolphin Pool Supply, which later become Poolwerx Forest Lane.	At Poolwerx’s headquarters or such other place within the United States as Poolwerx may designate

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Instructor</b>	<b>Location</b>
Information Technology (IT)	3	0	<p>Stephen Moore:</p> <p>Mr. Moore has been involved in the Training and Development sector for the last 15 years, assisting in the Professional Development of Business and Employees, as well as providing Qualifications in Business, Management and Logistics to enrolled Students.</p> <p>He holds Diplomas in both Business and Leadership &amp; Management, as well as Cert IV in Training and Education. These credentials are applied in the Training and Development of Franchise Partners in both using and understanding our ERP System and Business Processes, as well as providing the knowledge and skills required for the application of Best Practice in their own business along with the Franchise Model.</p>	At Poolwerx's headquarters or such other place within the United States as Poolwerx may designate
Supply	12	0	<p>Sidner Nyaboga</p> <p>Sidner is a supply chain specialist with the pool Industry. Sidner has experience in contract negotiation and sourcing products to effectively operate a Poolwerx® branded Franchised Business.</p>	At Poolwerx's headquarters or such other place within the United States as Poolwerx may designate

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Instructor</b>	<b>Location</b>
Retail and Sales	10	16	<p>Arshae Julian</p> <p>Arshae brings over six years of experience in the retail industry, training, and development management, as well as a BS degree in merchandising. Arshae has working in all aspects of retail up to Assistant Manager. Arcae most recently relocated to the Dallas, TX area, taking over the Retail and onboarding role at Poolwerx.</p>	At Poolwerx’s headquarters or such other place within the United States as Poolwerx may designate
Marketing	7	0	<p>Miranda Pressnell</p> <p>Miranda comes to the Poolwerx business with experience in the restaurant, entertainment and media industries. She has spent years honing her craft and is adept at using digital strategy, branding, media, and unique, creative campaigns to boost the bottom line. Starting in Poolwerx as a Digital Marketing Manager in 2020, supporting national campaigns and Franchise Business through digital media, Miranda briefly departed us before returning to become the Marketing Manager in 2022.</p>	At Poolwerx’s headquarters or such other place within the United States as Poolwerx may designate
Franchise	3.5	0	<p>Charmain Overduin</p> <p>Charmain was previously a successful franchisee with Poolwerx’s affiliate, Poolwerx Corporation, for 6 years. She and her husband, Blake, sold that franchise in 2010. She then joined the corporate office team as the Retail Executive, a position she held</p>	At Poolwerx’s headquarters or such other place within the United States as Poolwerx may designate

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Instructor	Location
			for 5 years. She has furthered her corporate career by joining the Learning and Development team along with the Human Resources team in the USA.	
Business	13	0	<p>Blake Overduin</p> <p>Blake has been our Vice President of Corporate Stores and Commercial since December 2019. Prior to that he was our Vice President Franchise Operations since May 2018. Prior to that, he was our Franchise Operations Manager from January 2018 to April 2018. Prior to that he was our Company Operations Manager from January 2017 to January 2018. Mr. Overduin was National Sales Manager for Express Franchise from January 2016 to December 2016 and National Operations Manager for Local Appliance Rentals from February 2015 to January 2016. He was also International Sales Manager with Poolsystems from January 2014 to February 2015 and a Boost Juice franchisee from January 2013 to September 2016.</p>	At Poolwerx's headquarters or such other place within the United States as Poolwerx may designate
Human Resources	8	0	<p>Charmain Overduin</p> <p>See above bio.</p>	At Poolwerx's headquarters or such other place within the United States as Poolwerx may designate
<b>Total</b>	<b>89.5</b>	<b>96</b>		

We hold training classes every three months. We use manuals, PowerPoint presentations, quizzes, instructional videos and practical training classes in our training programs.

We will determine, in our discretion, what constitutes successful completion of the program. We may waive a portion of the initial training program or alter the training schedule if we determine that you or your Manager has sufficient prior experience or training. If you, or your Manager are unable to successfully complete initial training for any reason, we may terminate your Franchise Agreement.

We may periodically conduct advanced training programs that we may require you, your Manager, and/or your employees to attend at our office or another location that we designate. We may provide additional training in person, via recorded media, via teleconference, via the Internet, via webinar, or by any other means, as we determine. During all training, you are responsible for any travel and living expenses, wages, and other expenses incurred by your trainees.

## ITEM 12 TERRITORY

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. However, Poolwerx will not grant marketing rights to any other person or Entity with respect to your Marketing Area. Poolwerx continually assesses the number of pools within each region and classifies the region as a Marketing Area based on known pool population and regional factors.

With respect to your Retail Location, you must locate this in an acceptable site within your Marketing Area. The site will be added to the Franchise Agreement once we accept it and you secure it and a mutually acceptable date for opening the Retail Location is agreed to between you and Poolwerx.

Subject to clause 2.3(c) of the Franchise Agreement, we agree that we will not, nor permit any affiliate to, open a Retail Location using the POOLWERX Mark, within the area specified in Schedule 3 to Exhibit A of your Franchise Agreement. Otherwise, we and our affiliates have the right to conduct any business activities, under any name, in any geographic area, and at any location, regardless of the proximity to or effect on your Marketing Area. We have the right to: (i) establish or license franchises and/or company-owned stores anywhere selling similar products and providing similar services under the Marks or under names, symbols, and marks other than the Marks; (ii) sell, or license others to sell, products and services through alternative distribution channels, including a website and other means of e-commerce, using the Marks; (iii) establish or license stores under the Marks, at any location; (iv) acquire existing stores and convert them to the POOLWERX name and/or operate them under another name, either directly or through licensees; and (v) be acquired by or merge with other companies. We will not compensate you for our activities in your Marketing Area.

We do not have any plans to operate or franchise a business using the System under different Marks, but as noted in Items 1 and 20 our affiliates have previously purchased and converted several branded pool businesses to Poolwerx businesses and in certain instances continued to operate certain of those pool businesses under their original names and trademarks for a period of time, including Cactus Valley Pool Supply, Poolrite, SC Pool & Spa Works, Crystal Tech/Vivopools and Dolphin Pool Supply and Services.

You do not have the right to open additional Franchises nor do you have any rights of first refusal on any other location. You do not have the right to use the Marks or the System at any location other than the Location or in any wholesale, e-commerce, or other channel of distribution besides the retail operation of the Retail Location at the Location, and except for Mobile Units operating within the Marketing Area.

## ITEM 13 TRADEMARKS

Poolwerx grants you the right to operate a business specializing in the pool maintenance services, pool cleaning, installation and remodel services and retail pool supplies and services under the mark POOLWERX (the "Principal Mark"), and other trademarks, service marks, associated designs, artwork and logos. Poolwerx may require you to use the marks in conjunction with other words or symbols or in an abbreviated form.



All of the marks are owned by Poolwerx Holdings Pty Ltd ACN 094 349 247 (“**Poolwerx Holdings**”) and licensed to Poolwerx. Poolwerx Holdings purchased the Principal Mark from Poolwerx, Inc., a Canadian corporation, on February 17, 2015. Poolwerx, Inc. is not an affiliate of Poolwerx, or any parent or affiliate of Poolwerx.

Pursuant to the License Agreement, dated as of 2 March 2015 (the “**Trademark License Agreement**”), Poolwerx Holdings authorized Poolwerx to use the Principal Mark and other related marks in connection with franchises granted by Poolwerx. The Trademark License Agreement between Poolwerx Holding and Poolwerx is perpetual in duration and may be terminated unilaterally by either party only upon a material breach of the Trademark License Agreement. Upon termination of the License Agreement, Poolwerx must immediately discontinue the use of the Marks and assign to Poolwerx all Poolwerx franchise agreements licensing the use of the Marks, and Poolwerx has agreed to assume all obligations under such agreements arising from and after their assignment.

The Principal Mark, POOLWERX, was registered on the Principal Register of the United States Patent and Trademark Office (the “**USPTO**”), under Registration No. 3,499,137 on September 9, 2008. All required affidavits for the Principal Mark have been filed. There are no currently effective determinations of the USPTO, the Trademark Trial and Appeal Board, the Trademark Administrator of any state, or any court; nor is there any pending infringement, opposition or cancellation proceedings, or material litigation, involving the Principal Mark. We are not aware of any prior rights or infringing uses that could materially affect the franchisee’s use of the Marks. Except for the Trademark License Agreement, there are no currently effective agreements that significantly limit our rights to use or license the use of the Marks listed above in a manner material to the Franchise.

You may also use certain other marks owned by or licensed to Poolwerx in the operation of your Franchise. You must use the Marks only in strict accordance with the Franchise Agreement and Manual, advertise only under Marks that are designated by Poolwerx and use the Marks without prefix or suffix. You cannot use any Mark or any derivation of any Mark as part of your corporate or other entity name or with modifying words, designs or symbols. Upon receipt of notice from Poolwerx, you must discontinue, alter or substitute any of the Marks as Poolwerx directs.

You must promptly notify Poolwerx if any other person or Entity attempts to use any of the Marks or any colorable imitation of any of the Marks. You must immediately notify Poolwerx of any infringement of or challenge to your use of any of the Marks. Poolwerx will have the right to take any action that it deems appropriate, but the Franchise Agreement does not require Poolwerx to take any action to protect your right to use any of the Marks. Poolwerx will have the right to control any administrative proceeding or litigation related to the Marks. The Franchise Agreement does not require Poolwerx or any of its affiliates to participate in your defense and/or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving any of the Marks, including without limitation any claim of infringement or unfair competition, or if the proceeding is resolved unfavorably to you.

If Poolwerx decides that you should modify or discontinue using any of the Marks, or use one or more additional or substitute service marks or trademarks, you must comply with Poolwerx’s directions, and neither Poolwerx nor any of its affiliates will have any obligation to reimburse you for the cost of complying with Poolwerx’s directions.

#### **ITEM 14 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

Poolwerx owns no rights in, or licenses to, any patents or patent applications.

Except as provided below, Poolwerx owns no rights in, or licenses to, any copyrights. Poolwerx has not registered any copyrights with the United States Copyright Office. However, Poolwerx claims copyrights with respect to advertising materials and the Manual, as well as other materials Poolwerx may periodically develop. There are no determinations of the Copyright Office or any court regarding any of Poolwerx’s copyrights. There are no agreements limiting the use of any copyrights by Poolwerx.

Any copyrights used by you in the Franchise belong solely to Poolwerx or its affiliates. You agree to notify Poolwerx in writing of any suspected infringement of Poolwerx’s or its affiliates’ copyrights. Poolwerx and its affiliates have exclusive rights to bring an action for infringement and retain any amounts recovered with respect

to such action, and to control any infringement proceeding whether brought by or against Poolwerx or you. Poolwerx has no obligation to defend or otherwise protect you against any claims involving any copyright, including without limitation any copyright infringement claim, or to indemnify you for any losses you may incur as a result of Poolwerx's copyrights infringing the rights of any other copyright owner. If so requested by Poolwerx, you will discontinue the use of the subject matter covered by any copyright used in connection with the Franchise.

During the term of your Franchise Agreement, Poolwerx or its affiliates may disclose in confidence to you, either orally or in writing, certain trade secrets, know-how and other confidential information (collectively, "**Proprietary Information**") relating to the management, operation or promotion of your Franchise. You may not, nor may you permit any person or Entity to, use or disclose any Proprietary Information (including any portion of the Manuals) to any other person, except to the extent necessary for your employees to perform their functions in the operation of your Franchise. You must take reasonable precautions necessary to protect Proprietary Information from unauthorized use or disclosure, including conducting orientation and training programs for your employees to inform them of your obligation to protect Proprietary Information and their related responsibilities and obligations. If Poolwerx or its affiliates so request, you must obtain from your officers, directors, equity owners and Managers and assistant Managers confidentiality agreements in a form satisfactory to Poolwerx or its affiliates. You will be responsible for any unauthorized disclosure of Proprietary Information by any person to whom you have disclosed Proprietary Information.

You agree to notify Poolwerx in writing of any suspected unauthorized use of this Proprietary Information. Poolwerx and its affiliates have exclusive rights to bring an action for protect the Proprietary Information and retain any amounts recovered with respect to such action, and to control any proceeding whether brought by or against Poolwerx or you. Poolwerx has no obligation to defend or otherwise protect you against any claims involving any Proprietary Information or to indemnify you for any losses you may incur as a result of any loss you sustain as a result of any action brought by a third party concerning your use of the Proprietary Information.

#### **ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS**

At all times that your Franchised Business is open for business, it must be under the personal, on-premises supervision of either you, or your Manager. You or your Manager must successfully complete our training program and any other training programs that we may require. You may not permit your Franchised Business to be operated, managed, directed, or controlled by any other person or any Poolwerx vehicle to be operated by any employee untrained in operating a Poolwerx vehicle, without our prior written consent.

Your principal equity owner must have authority over all business decisions related to your Franchise, and he or she must have the power to bind you in all dealings with us. You must provide us with written notice of any change in your principal equity owners and Manager and may not make such changes without our prior written approval.

Your Manager must sign a confidentiality agreement.

Each individual with direct or indirect ownership interest in your Entity, and if so, requested by Poolwerx, each of the spouses must sign the Payment and Performance Guarantee (the "**Guarantee**") attached to the Franchise Agreement, assuming and agreeing to discharge all obligations of the franchisee under the Franchise Agreement and agreeing to comply with the proprietary information (clauses 24, 25, and 26), indemnification (clauses 38 and 46), covenant not to compete (clause 31), and assignment (clauses 32 and 33), provisions of the Franchise Agreement.

#### **ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You may offer for sale in the Franchise only the products and services that we have approved in writing. In addition, you must offer the specific brand and/or product "mix" that we require in the Manuals. We may change these specifications periodically, and we may designate specific products or services as optional or mandatory. You must offer all items that we designate as mandatory. We may permit franchisees not to sell certain products or services, or may permit certain franchisees to offer products or services not generally available to franchisees, in order to

meet certain local market needs. You may sell products only in the varieties, forms, and packages that we have approved.

All brands may not be available at all Franchise locations; brand availability may vary from location to location depending upon specific vendor requirements which may include market or geographic restrictions, restrictions on the types of locations at which a specified vendor will sell its products, and restrictions related to a Franchise's proximity to other Franchises that carry a vendor's products.

We have the right to require you to offer for sale in a Retail Location specified pool supplies with any trademark that we select. You must sell such private label goods only through the Franchise at retail directly to the ultimate consumer, and you must not permit such goods to be sold to or by any other person or Entity.

You are only permitted to sell products to consumers at retail from your Retail Location. We impose no restriction on the retail customers that you may serve at your Retail Location, or through a Mobile Unit but you may not sell our products through any wholesale, e-commerce, or other channel of distribution, nor may you sell them to our other franchisees. You may not establish an independent website.

**ITEM 17 RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION THE FRANCHISE RELATIONSHIP**

**The table below lists certain important provisions of the Franchise Agreement. You should read these provisions in the form of Franchise Agreement attached to this Disclosure Document as Exhibit A.**

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
a.	Length of the franchise term	3.1; Schedule 1, Item 17	10 years commencing on the Commencement Date as defined in Item 5 of Schedule 1 to the Franchise Agreement.
b.	Renewal or extension of the term	3.2-3.4; 3.6; Schedule 1, Items 17-19	If you meet the conditions, you may enter into a Renewal Term for a period of 10 years, and an Optional Third Term for a period of ten years.
c.	Requirements for franchisee to renew or extend	3.3-3.4	You have satisfied the applicable Transition Event Conditions as defined in the Franchise Agreement (including payment of the renewal fee); you are compliant with the provisions of the Franchise Agreement; you have installed and are using the required software in the business; you have established, to our satisfaction, that you maintain your occupancy rights in the premises; you have established, to our satisfaction, that you are not in breach or likely to be in breach of your occupancy rights in the premises. When renewing, you may be asked to sign a contract with materially different terms and conditions than your original contract
d.	Termination by franchisee	None	Subject to applicable state law, none.

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
e.	Termination by franchisor without cause	None	Subject to applicable state law, none.
f.	Termination by franchisor with cause	35	We can terminate only if you default (see (g) below).
g.	“Cause” defined - curable defaults	35.1	You fail or neglect to pay any monies owed to us or our affiliates within ten days after receiving written notice of your default or 30 days after the payment due date, whichever is shorter, or you have previously been given at least two notices of nonpayment within the last 12 months and you have subsequently failed to pay any money when due; a suit to foreclose any lien or mortgage is instituted against you or any of your assets and is not dismissed within 30 days; you breach or fail to comply with any law, regulation, or ordinance which results in a threat to the public’s health or safety and fails to cure the non-compliance within 24 hours following receipt of notice thereof from us or applicable public officials, whichever occurs first; or you breach or fail to comply with any other covenant, agreement, standard, procedure, practice, or rule prescribed by us, whether contained in the Franchise Agreement, in the Manual, or otherwise in writing, and fail to cure such breach or failure to our satisfaction within 30 days (or such longer period as applicable law may require) after we provide you with written notice of the default.
h.	“Cause” defined - non-curable defaults	35.1	You are more than 60 days past due on your obligations to suppliers, trade creditors or lenders in an amount exceeding \$2,000, unless you have given us prior notice that the failure to pay is the result of a bona fide dispute with the supplier, trade creditor, or lender that you are diligently trying to resolve in good faith; you or any guarantor make any material misrepresentations or omissions in connection with your application to us for the Franchise, the Franchise Agreement, or any related documents, or you submit to us any report or statement that you know or should know to be false or misleading; you underreport Gross Revenues (as defined in the Franchise Agreement) by more than two percent two times or more in any two-year period or by five percent or more for any period of one month or greater; you fail to permit, or try to hinder, an examination or audit of your books and records, the business, or the premises as required by the Franchise Agreement; you fail to timely file any periodic report required in the Franchise Agreement or the Manual three or more times in a 12-month period, whether or not you subsequently cure the default; you fail to submit information regarding the proposed site or you fail to obtain our acceptance for a site within the

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
			<p>time period specified in the Franchise Agreement; the persons we require to complete the Initial Training Program fail to do so to our satisfaction by the Commencement Date, as defined in the Franchise Agreement, or other further training as specified by us; you fail to deliver to us the completely executed lease for the premises within ten days after its execution; you fail to open any Retail Location or Mobile Unit for business by the Commencement Date or such other date required by the Franchise Agreement; you fail to refurbish the Retail Location by the dates set out in the Franchise Agreement or Manuals; you fail to maintain possession of the Site and fail to secure our approval and enter into a lease for a new accepted premises within 90 days after the expiration or termination of the lease for the initial premises; you voluntarily suspend operation of the business without the prior written consent from us for five or more consecutive business days on which you were required to operate, unless we determine, in our sole and absolute discretion, that the failure was beyond your control; you misuse any of the trademarks or any other identifying characteristic of ours or use the Marks other than in the operation or advertising of the business; you disclose or divulge the contents of the Manuals or any trade secrets or proprietary information contrary to the provisions of the Franchise Agreement; you become insolvent or make an assignment for the benefit of your creditors; execution is levied against you or your assets; you, any guarantor, or any of your officers or directors are convicted of or plead nolo contendere to a felony, a crime involving moral turpitude or consumer fraud, or any other crime or offense that we believe is likely to have, an adverse effect on us, the Marks and any associated goodwill, or the System, or you, any guarantor, or any of your officers or directors or any owner has engaged in or engages in activities, in Poolwerx’s reasonable opinion, that has, or will have an adverse effect on us, the Marks and any associated goodwill, or the System; any transfer occurs that does not comply with the Franchise Agreement; you or any owner violates the noncompetition covenants clauses; you default under any other franchise agreement or other agreement between you and us or our affiliates, provided that the default would permit us or our affiliate to terminate that agreement; you do not install and use the software as required by the Franchise Agreement; or you are in default three or more times within any 18-month period, whether or not the defaults are similar and whether or not they are cured.</p>

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
i.	Franchisee's obligations on termination/non-renewal	36.2	Immediately stop using and displaying in any manner the Poolwerx trade name, any of the Marks, any part of Poolwerx's Trade Dress, or anything which imitates or is deceptively similar to these; immediately stop using the Confidential Information and Intellectual Property, as defined in the Franchise Agreement; if you are to continue to use a Poolwerx vehicle after the expiration or termination of the Franchise, immediately alter the vehicle and remove or change any signs, fixtures, fittings, colors and layout as requested by us to ensure that the appearance of the vehicle cannot be confused with the then prevailing image of a Franchise; immediately return to us all copies of the Manual and all forms, stationery, business cards, advertising material and other printed matter and signs used in the Poolwerx business which bear the trade name or any of the Marks; immediately deliver to us the original and all copies of databases and all lists of suppliers to the Poolwerx business held by you; immediately deliver to us all Client Service History Cards, as defined in the Franchise Agreement, all databases in current and updated form (including financial and accounting system databases, water testing databases and client relationship databases) together with other business information and records pertaining to the Poolwerx business; do everything necessary to cancel or to transfer to us or our nominee all registrations relating to your use of our Intellectual Property, including the trade names, the Marks and any of your business or corporate names; transfer all telephone, facsimile and other communications numbers used in the Franchise to us or our nominee; transfer any email address and domain name(s) used in the Franchise to us or our nominee; immediately satisfy any other requirements specified in the Manual to ensure cessation of the Franchise, delivery by you of all Intellectual Property rights associated with the Franchise and compliance with the your obligations in the Franchise Agreement; and do everything necessary, including signing any transfer agreement or instrument of transfer, to transfer the occupancy rights in the Location to us or our affiliate.
j.	Assignment of contract by franchisor	32.1	No restriction on our right to assign.
k.	"Transfer" by franchisee- defined	33.2(a)	Includes transfer, assignment, sale, or disposition of: (i) the Franchised Business; (ii) any of its Approved Equipment or other assets used in the Franchised Business; or (iii) any rights to market in the Marketing Area, or to service or sell Poolwerx Products or Poolwerx Service to any clients. Notwithstanding

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
			the foregoing, the sale of pool routes is expressly prohibited unless otherwise authorized by us.
l.	Franchisor approval of transfer by franchisee	33.3	You must not transfer, assign, sell or otherwise dispose of your approved equipment or other assets used in the Franchise or any rights to service or sell Poolwerx products to any clients or market in the Franchisee's Marketing Area without our express written consent, which may be granted or withheld in our absolute discretion.
m.	Conditions for franchisor approval of transfer	33.3(a)-(b)	You must establish that the proposed transferee (i) has the financial resources necessary to conduct the Franchise, (ii) is a reputable and responsible person with the experience necessary to operate the business successfully, and (iii) otherwise meets the criteria for selection of Poolwerx franchisees; you must pay to us the Transfer Fee as described in the Franchise Agreement; you agree that we are entitled to withhold an amount from the purchase consideration from the buyer to you, for a period of time determined by us (but not exceeding three months from the date of settlement of the transaction), an amount we reasonably determine in our absolute discretion; you, both when seeking consent to the transfer and when the transfer is to occur, are not in default under the Franchise Agreement or any related agreement; at our option, the transferee executes (i) a franchise agreement in its then-current form, or a transfer agreement of your rights and obligations under the Franchise Agreement to the transferee in a form we require, and (ii) the transferee executes any other documents customarily used by us for our franchisees; if the transferee is an Entity, the directors and shareholders or equity manager and equity owners satisfy the conditions for transfer, and those directors and shareholders and equity manager or equity owners designated by us give a guarantee and indemnity in favor of us in a form as required by us; the transferee's proposed manager is approved by us and successfully completes the Initial Training Program; and you (i) give to us all details of the proposed transfer including a copy of the contract for the sale of the Franchised Business and any other agreements between you and the transferee; (ii) sell to the transferee all of your essential assets used in the Franchise, (iii) establish to our satisfaction that the proposed transfer will not have a significantly adverse effect on the Poolwerx System or the network; and (iv) satisfactorily complete the Transition Event Conditions, as defined in the Franchise Agreement.

	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
n.	Franchisor's right of first refusal to acquire franchisee's business	33.4	We can match any offer for your Poolwerx business during the period 30 days after you give us written notice of a proposed transfer or sale of the Franchise, and any documents or other information we request.
o.	Franchisor's option to purchase franchisee's business	36.6	Within 20 business days after the Franchise Agreement terminates or expires, we can purchase any or all of your assets used in the Franchise for the fair market value of the assets, less any amounts then owing to us. We also may assume your lease or sublease or equipment and vehicle leases.
p.	Death or disability of franchisee	33.8	Your estate's executor or representative must transfer your interest to a third party approved by us within 60 business days after the date of appointment.
q.	Non-competition covenants during the term of the franchise	31.2, 31.4	Subject to applicable state law, you and your affiliates cannot engage in any Competitive Business (as defined in the Franchise Agreement) anywhere in the world.
r.	Non-competition covenants after the franchise is terminated or expires	31.3, 31.4	Subject to applicable state law, you and your affiliates cannot engage in any Competitive Business within thirty (30) miles of the perimeter of (i) the Marketing Area or Loan Area; or (ii) any other Franchised Business or its Marketing Area or Loan Area.
s.	Modification of the agreement	48.7	An amendment or variation to the Franchise Agreement is not effective unless it is in writing and signed by the parties.
t.	Integrations/merger clause	48.6	Except for any agreements or representations contained in this Disclosure Document, the Franchise Agreement and the agreements contained in any exhibits thereof, are the entire agreement and understanding between you and us on everything connected to the Franchise, and they supersede any prior agreements. Only the terms of the Franchise Agreement are binding (subject to state law).
u.	Dispute resolution by arbitration or mediation	40-41	Subject to applicable state law, both parties agree to use the Poolwerx Internal Dispute Resolution Process as described in the Manual to resolve any dispute between the parties prior to taking any other action under the Franchise Agreement or at law. You must, reimburse us the costs or any part of the costs associated with a failure by you to comply with the Poolwerx Internal Dispute Resolution Process. A party claiming that a dispute has arisen must notify the other party in writing of the nature of the dispute, what outcome the party wants, and what action the party thinks will settle the dispute. Either party may refer the matter to a mediator, and if the parties cannot agree on a mediator, then either party may ask the American Arbitration Association to appoint a mediator. The parties must attend



	<b>Provision</b>	<b>Section in Franchise Agreement or Other Agreement</b>	<b>Summary</b>
			mediation and try to resolve the dispute. Except as set forth in the Franchise Agreement, any controversy, claim or dispute arising out of or relating to the Franchise, the Franchise Agreement or its breach, shall be submitted to binding arbitration before and in accordance with the commercial rules of arbitration of the American Arbitration Association. The arbitration shall be conducted at our principal office by one arbitrator. Notwithstanding any contrary provision of the Franchise Agreement relating to which state laws govern, all issues relating to arbitrability or the enforcement of the agreement to arbitrate shall be governed by the Federal Arbitration Act (9 U.S.C. §1 et seq.) and the federal common law of arbitration. Certain disputes, such as those involving the Marks or the Intellectual Property are not subject to arbitration. Only the terms of the franchise agreement and other related written agreements are binding (subject to applicable state law.) Any representations or promises outside of the disclosure document and franchise agreement may not be enforceable.
v.	Choice of forum	48.10(b)	Subject to applicable state law, and except for matters to be arbitrated, the parties submit to the exclusive jurisdiction of the courts of the state where we have our principal office (currently Texas) on the date any proceeding is commenced.
w.	Choice of law	48.10(a)	Subject to applicable state law, the law of the state where we have our principal office on the execution date of the Franchise Agreement governs (currently Texas), without regard to that state's choice-of-law rules.

#### ITEM 18 PUBLIC FIGURES

We do not use any public figure to promote our franchises but may do so in the future.

#### ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

As of the last fiscal year ended December 31, 2022, we had 20 franchisees operating for 12 full months during the fiscal year ended 2022 in 27 franchised Marketing Areas, with the primary concentration of franchisees and Marketing Areas in Arizona, California, Florida, South Carolina, Tennessee and Texas.

Of these 20 franchisees, 9 franchisees in this analysis had one open Marketing Area, 6 franchisees had 2 open Marketing Areas, 1 franchisee had 3 open Marketing Areas, 2 franchisees had 4 open Marketing Areas, 1 franchisee had 8 open Marketing Areas, and 1 franchisee had nine open Marketing Areas.

The following table presents average and median Gross Revenue information for the 2022 fiscal year for the 20 franchisees who were open and operating for the full 2022 fiscal year. The Gross Revenue information is first presented by franchisee (Row 1) and then by franchisees with the same number of open Marketing Areas (i.e., 1 open Marketing Area, 2 open Marketing Areas, etc... up to our franchisee that had 9 open Marketing Areas) (Rows 2 to 7).

The information in the table is derived from our franchisee’s Gross Revenues reports and is unaudited and unverified. You should conduct an independent investigation of the costs and expenses you will incur in operating your Franchise. Current franchisees or former franchisees listed in Exhibit E of this Disclosure Document may be one source of information.

<b>Franchisee’s Number of Market Areas</b>	<b>Average Gross Revenue per Franchisee</b>	<b>Median Gross Revenue per Franchisee</b>	<b>Total Number of Franchisees In Analysis</b>	<b>Number of Franchisees in Category Meeting or Exceeding the Average Amount</b>	<b>Number of Franchisees in Category Meeting or Exceeding the Median Amount</b>
<b>All Franchisees</b>	<b>\$2,154,423</b>	<b>\$1,767,986</b>	<b>20</b>	<b>7</b>	<b>10</b>
<b>1</b>	<b>\$1,394,752</b>	<b>\$760,368</b>	<b>9</b>	<b>3</b>	<b>5</b>
<b>2</b>	<b>\$1,570,409</b>	<b>\$1,870,930</b>	<b>6</b>	<b>4</b>	<b>3</b>
<b>3</b>	<b>\$3,707,027</b>	<b>\$3,707,027</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>4</b>	<b>\$1,569,903</b>	<b>\$1,569,903</b>	<b>2</b>	<b>1</b>	<b>1</b>
<b>8</b>	<b>\$6,743,966</b>	<b>\$6,743,966</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>9</b>	<b>\$7,524,054</b>	<b>\$7,524,054</b>	<b>1</b>	<b>1</b>	<b>1</b>

\*This row contains information for all our Franchisees in the analysis regardless of the number of Marketing Areas operated by the Franchisee.

**Some outlets have earned this amount. Your individual results may differ. There is no assurance that you’ll earn as much.**

Other than as set forth above in this Item 19, we do not make any representations about a franchisee’s future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Andrew Kidd, Chief Executive Officer - USA, located at 4801 Spring Valley Road, Suite 103A, Farmers Branch TX 75244, telephone no. (972) 971-7702 or franchise@poolwerx.com, the Federal Trade Commission, and the appropriate state regulatory agencies.

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**ITEM 20 OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1: System-wide Franchised Outlets\* Summary - For years 2020 to 2022**

<b>Franchised Outlets Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2020	68	61	-7
	2021	61	59	-2
	2022	59	62	+3
Company-Owned**/**	2020	1	2	+1
	2021	2	2	0
	2022	2	1	-1
<b>Total number of Outlets</b>	<b>2020</b>	<b>69</b>	<b>63</b>	<b>-6</b>
	<b>2021</b>	<b>63</b>	<b>61</b>	<b>-2</b>
	<b>2022</b>	<b>61</b>	<b>63</b>	<b>+2</b>

\*Franchised Outlets means the number of Marketing Areas granted under the Franchise Agreements.

\*\*All affiliate-owned Marketing Areas are owned and operated by our affiliates Dolphin Pool Supply and Service Inc, Poolwerx Development, LLC and Poolwerx Operations, LLC.

\*\*\*Certain affiliate-owned Marketing Areas originally operated under names such as Cactus Valley Pool Supply, Poolrite, SC Pool & Spa Works, Crystal Tech/Vivopools and Dolphin Pool Supply and Services, but have all been re-branded to Poolwerx businesses as of the date of this Disclosure Document.

**Table No. 2: Transfers of Franchisees to New Owners - For years 2020 to 2022**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Arizona	2020	0
	2021	0
	2022	1
Texas	2020	0
	2021	0
	2022	1
<b>Total</b>	<b>2020</b>	<b>0</b>
	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>2</b>

**Table No. 3: Status of Franchised Outlets - For years 2020 to 2022\***

State	Year	Outlets at Start of Year	Outlets Granted	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
Arizona	2020	22	0	3	0	1	0	18
	2021	18	0	0	0	1	0	17
	2022	17	1	0	0	0	0	18
California	2020	12	0	4	0	0	0	8
	2021	8	0	2	0	0	0	6
	2022	6	0	0	4	0	0	2
Florida	2020	15	0	5	0	0	0	10
	2021	10	0	0	0	0	0	10
	2022	10	0	6	0	0	0	4
Georgia	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Nevada	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
Oklahoma	2020	4	0	0	0	0	0	4
	2021	4	0	0	0	0	0	4
	2022	4	0	0	0	0	0	4
South Carolina	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	4	0	0	0	0	5

State	Year	Outlets at Start of Year	Outlets Granted	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
Tennessee	2020	0	3	0	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	1	0	0	0	0	4
Texas	2020	14	4	1	0	0	0	17
	2021	17	3	1	0	0	2	17
	2022	17	6	0	0	0	0	23
<b>Totals</b>	<b>2020</b>	<b>68</b>	<b>7</b>	<b>13</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>61</b>
	<b>2021</b>	<b>61</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>59</b>
	<b>2022</b>	<b>59</b>	<b>13</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>62</b>

**Table No. 4: Status of Affiliate-Owned Franchised Outlets - For years 2020 to 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Arizona	2020	0	0	1	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	1	0
Florida	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
Texas	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
<b>Totals</b>	<b>2020</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>
	<b>2021</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
	<b>2022</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>

\*All affiliate-owned Marketing Areas are owned and operated by our affiliates Dolphin Pool Supply and Service Inc, Poolwerx Development, LLC and Poolwerx Operations, LLC.

\*\*Certain affiliate-owned Marketing Areas originally operated under names such as Cactus Valley Pool Supply, Poolrite, SC Pool & Spa Works, Crystal Tech/Vivopools and Dolphin Pool Supply and Services but have all been re-branded to Poolwerx businesses as of the date of this Disclosure Document.

**Table No. 5: Projected Openings as of December 31, 2022 - For following 12-month period (1)**

<b>State</b>	<b>Franchise Agreements Signed But Outlets not developed</b>	<b>Projected New Franchised Outlets in the Next Fiscal Year</b>	<b>Projected New Affiliate-Owned Outlets in the Next Fiscal Year</b>
Arizona	0	2	0
California	0	4	0
Florida	0	2	0
Georgia	0	2	0
Nevada	0	1	0
North Carolina	0	2	0
South Carolina	0	2	0
Tennessee	0	2	0
Texas	0	10	1
Utah	0	2	0
<b>Total</b>	<b>0</b>	<b>29</b>	<b>1</b>

**Current and Former Franchisees**

Set forth on **Exhibit E** are (i) the names of all current franchisees and the address and telephone number of each of their Franchises, and (ii) the names, city and state, and the current business telephone number, or, if unknown, the last known home telephone number of every franchisee who had a Franchise terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under any Franchise Agreement during the most recently completed fiscal year or who has not communicated with Poolwerx within 10 weeks of this Disclosure Document’s issuance date.

If you buy this Franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**Confidentiality Agreements**

In some instances, current and former franchisees sign provisions restricting their ability to speak only about their experience with the Poolwerx franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

**Trademark-Specific Franchisee Organizations**

As of the date of this Disclosure Document, there are no trademark-specific franchisee organizations associated with Poolwerx’s franchise system.

**ITEM 21 FINANCIAL STATEMENTS**

Attached as **Exhibit B** to this Disclosure Document are our audited financial statements for the fiscal years ended December 31, 2022, December 31, 2021 and December 31, 2020.

Our fiscal year ends on December 31.

**ITEM 22 CONTRACTS**

The following agreements are attached as exhibits to this Disclosure Document:

Franchise Agreement/Ancillary Documents	Exhibit A
General Release	Exhibit F
Nondisclosure and Noncompetition Agreement for Franchisee’s Employees and Contractors	Exhibit F
Lease Addendum	Exhibit H

**ITEM 23 RECEIPT**

Attached as the last two pages of this Disclosure Statement are copies of the Receipt which you will be required to sign. One signed copy of the Receipt must be returned to Poolwerx, as provided on the Receipt.

**EXHIBIT A**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**  
**FRANCHISE AGREEMENT AND STATE - REQUIRED ADDENDA**





**Franchise Agreement**  
**Poolwerx [insert]**

**Poolwerx Franchise Management LLC (Poolwerx)**

and

**[insert] (FEIN [insert])**  
**(Franchisee)**

and

**[insert]**  
**(Guarantor)**

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## Franchise Agreement

<b>Date</b>	This Agreement is dated on the date specified in Item 1 of Schedule 1
<b>Parties</b>	
	Poolwerx Franchise Management LLC, a Delaware, U.S.A. limited liability company <b>(Poolwerx)</b>
	The person or persons specified in Item 2 of Schedule 1 <b>(Franchisee)</b>
	The person or persons specified in Item 3 of Schedule 1 <b>(Guarantor)</b>

### Background

- A.** Poolwerx and its affiliated entities have developed a system for the provision of Poolwerx Services and sale of Poolwerx Products to commercial and domestic pool, spa and water feature owners which is delivered through both Retail Locations and mobile service units using the Intellectual Property.
- B.** Poolwerx has the rights to use, and to grant others the rights to use, the Intellectual Property for the purpose of operating a Franchised Business.
- C.** The Franchisee and the Guarantor have requested that Poolwerx grant to the Franchisee the right to establish and operate a Franchised Business on the terms and conditions set out in this Agreement.
- D.** In consideration of Poolwerx complying with such request, the Guarantor has agreed to give a guarantee and indemnity to Poolwerx for the performance of the Franchisee's obligations under this Agreement.
- E.** Poolwerx has agreed to grant the Franchisee a Franchise for the Term, and on the terms and conditions set out in this Agreement.

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The parties agree, in consideration of, among other things, the mutual promises contained in this Agreement, as follows:

## **1. Definitions and Interpretation**

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### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, words and phrases defined below will have the following meanings:

<b>Accreditations</b>	means all qualifications, accreditations, certifications, licenses, approvals and permissions required by Law or otherwise as directed by Poolwerx to operate the Franchised Business and perform the Poolwerx Services.
<b>Addendum</b>	means an addendum to this Agreement.
<b>Additional Service Fee</b>	means the amount determined in accordance with Item 16 of Schedule 1.
<b>Affiliate</b>	means an Entity controlling, controlled by or under common control with Poolwerx or the Franchisee, as applicable.
<b>Agreement</b>	means this document, including all Schedules and Addendums.
<b>Approved Equipment</b>	means equipment specified in the Operations Manual as being required for the operation of the Franchised Business, and for the avoidance of doubt includes any Vehicle.
<b>Approved PiP</b>	is a “Partner in Profit” approved by Poolwerx for the supply of Poolwerx Products, Approved Products, Approved Equipment or Approved Services.
<b>Approved Products</b>	means those products specified by Poolwerx which a Franchisee is permitted to purchase from an Approved PiP for consumption in the Franchised Business.
<b>Approved Service</b>	means those services which a Franchisee is permitted to purchase from an Approved PiP.
<b>Assessment Period</b>	means, as applicable, each month, quarter or year, or such other time period specified by Poolwerx in writing from time to time.
<b>Build out</b>	means the carrying out of all works to, and the installation of all Approved Equipment at, the

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	Premises in accordance with the Operations Manual and otherwise as required by clause 20.10.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
<b>Business Hours</b>	means the hours specified in the Operations Manual, or as otherwise specified in writing by Poolwerx from time to time.
<b>Business Plan</b>	means a business plan developed by the Franchisee in accordance with clause 6.12.
<b>Client</b>	means a customer or client of the Franchised Business, or of the Poolwerx Network, and includes Commercial Clients where the context requires.
<b>Client Data Base</b>	means the Client data base collected by Poolwerx including the Clients' details and records collected in accordance with clause 23.
<b>Client Information</b>	means details, including lists, of Clients collected by the Franchisee.
<b>Client Loyalty Program</b>	means any programs established and operated by Poolwerx which are designed to promote the Image across the Network.
<b>Client Service History Card</b>	means the form as prescribed by Poolwerx on which Client details are to be recorded by the Franchisee.
<b>Commencement Date</b>	means the date specified in Item 5 of Schedule 1.
<b>Commercial Clients</b>	means clients that (i) own operate or manage; or (ii) provide insurance coverage in respect of pools or spas or water features as part of their commercial business, and include real estate management companies, insurance companies, institutions, and clients engaged in the hospitality business.
<b>Confidential Information</b>	means (i) the System and the Operations Manual; (ii) the Transaction Records and the Client Data Base; (iii) all business and financial information relating to either Poolwerx or any its Affiliates; (iv) all processes, procedures, marketing strategies, information concerning Clients, know how,

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systems, computer programs, models, data bases, and any modifications to such things, and all other information which, by its nature places or potentially places the Network, Poolwerx and any Affiliate of Poolwerx at an advantage over its present or future business competitors; (v) any information which is marked “confidential;” and (vi) any information that, under relevant law, would be considered a secret or confidential information of Poolwerx and/or any of its Affiliates.

Confidential Information does not include: (i) any information which at the time of first disclosure by Poolwerx to the Franchisee is already in the public domain; (ii) any information which after disclosure by Poolwerx to the Franchisee, becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement; or (iii) any information following the earlier of three (3) years after the expiration or termination of this Agreement, except where such information which constitutes a trade secret under applicable law.

**Convention**

means the annual meeting of all Franchised Business, convened and organized by Poolwerx.

**Convention Fee**

means the amount specified in Item 11(e) of Schedule 1.

**Copyright Act**

means 17 U.S.C. §101 et seq.

**Cost**

means any cost, charge, expense, payment or other expenditure of any nature and where appropriate includes fees and disbursements payable to contractors, consultants, brokers, appraisers, accountants, advisers and lawyers.

**CPI**

means the Consumer Price Index for all consumers in the United States as compiled by the Bureau of Labor Statistics.

**CPI Increase**

means an increase, equivalent to the CPI Percentage, in the annual amount payable by the Franchisee in respect of the Franchise Fee and Marketing Fee as each relates to a percentage of Gross Revenue, the Convention Fee, Regional Area Marketing Fee, Renewal Fee, Transfer Fee, and all other fixed amounts payable on an annual basis.

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<b>CPI Percentage</b>	means the percentage increase (if any) in the CPI in effect as of December 31 of the immediately preceding calendar year.
<b>Default Event</b>	means any event specified in clause 35.1.
<b>Development Conditions</b>	means those conditions set out in Schedule 2.
<b>Disclosure Document</b>	means the disclosure document prepared by Poolwerx in accordance with the Federal Trade Commission's Franchise Rule, C.F.R. §436.1, et seq. or any comparable document required by applicable state law.
<b>Dispose or Disposal</b>	includes, in relation to a share or an equity interest ( <b>Relevant Interest</b> ), entering into a transaction in relation to the Relevant Interest (or any interest in the Relevant Interest), which results in a person other than the registered holder of the Relevant Interest: (i) acquiring any legal or equitable interest in the Relevant Interest, including an equitable interest arising from a declaration of trust, an agreement for sale and purchase or an option agreement or an agreement creating a charge or other Security Interest in the Relevant Interest; (ii) acquiring any right to receive directly or indirectly any dividends payable in respect of the Relevant Interest; (iii) acquiring any rights of pre-emption, first refusal or like control over the disposal of the Relevant Interest; (iv) acquiring any rights of control over the exercise of any voting rights or rights to appoint directors attaching to the Relevant Interest; or (v) otherwise acquiring legal or equitable rights against the registered holder of the share or the unit which have the effect of placing the person in the same position as if the person had acquired a legal or equitable interest in the Relevant interest itself.
<b>Entity</b>	means a corporation or limited liability company.
<b>Financial Year</b>	means a year commencing on January 1 and finishing on December 31 of that same year.
<b>Franchise</b>	means the rights under this Agreement to operated a Franchised Business.
<b>Franchised Business</b>	means the operation of a Poolwerx business including a Mobile Unit and a Retail Location.



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<b>Franchise Fee</b>	means the amount determined in accordance with Item 11(a) of Schedule 1.
<b>Franchisee</b>	means the person or persons described as the Franchisee Item 2 of Schedule 1.
<b>Franchisee's Improvements</b>	means any works, marks, designs, ideas, know-how or trade secrets: (i) developed or used by the Franchisee which are derived from or incorporate the Trademarks or Intellectual Property; or (ii) which are otherwise developed or used by the Franchisee during the operation of the Franchised Business, in respect of which the Franchisee obtains any intellectual property rights.
<b>Gross Revenue</b>	means: (i) the aggregate of prices charged or chargeable by the Franchisee and all other income and remuneration received or receivable by the Franchisee in the conduct of the Franchised Business and includes the proceeds of the Franchisee's business interruption insurance policy, direct supplier rebates and any promotional fees, commissions paid from referral sourced sales leads arrangements or other income received, but excludes: (ii) the gross amount of sales taxes included in the prices charged or chargeable and any sales credits such as the sale price of any products returned by Clients where cash or allowances have been refunded or made to the Client; and (iii) rebates negotiated by Poolwerx and paid directly to the Franchisee by Approved PiPs.
<b>Guarantor</b>	Means the person or persons described as the Guarantor in Item 3 of Schedule 1.
<b>Host</b>	means a service provider, being an Approved PiP, as specified by Poolwerx who will centrally store and host on behalf of all franchisees in the Network the storage of information relevant to each Franchised Business including Client Information and information used in each Franchised Business.
<b>Image</b>	means the specific image created or prescribed by Poolwerx for the operation of a Franchised Business including names, Trademarks, uniform product and services ranges, specified design and color schemes for business premises, signs, layouts, fixtures, equipment,

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	uniforms and identification badges as modified by Poolwerx from time to time.
<b>Incentive Based Fee Structure</b>	means the then current incentive based fee structure relating to Franchise Fees and Marketing Fees payable by Franchisees which rewards Franchisees upon achieving sales and business development milestones, as and when applicable.
<b>Initial Franchise Fee</b>	means the amount specified in Item 10 of Schedule 1.
<b>Initial Term (or Term)</b>	means the period set out in Item 17 of Schedule 1.
<b>Initial Training Program</b>	means the initial training program conducted by Poolwerx for the operation of a Franchised Business as specified in the Operations Manual.
<b>Insurance Policies</b>	means the insurance policies specified in clause 27.2.
<b>Intellectual Property</b>	means: all copyright, trademark rights, patent rights, design rights or any other intellectual property which is (i) part of the Trademarks, including the System, Image or Operations Manual; or (ii) created during the development of the Trademarks, System, Image or (iii) the Operations Manual, including Software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations, menus, recipes or drawings; and (iv) any advertising and promotional materials provided to the Franchisees.
<b>Interest Rate</b>	means the lower of (i) the prime rate published periodically in the Wall Street Journal plus four (4) percentage points; and (ii) the maximum rate applicable under relevant law.
<b>Interested Party</b>	means any of the following persons designated by Poolwerx: (i) any person with a direct or indirect legal or beneficial interest in the Franchisee, including an interest in any Entity directly or indirectly controlling the Franchisee, or in the Franchisee's assets and any person who is an officer of any its Affiliates; and (ii) a spouse or domestic partner of any person specified above.

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<b>Intranet</b>	means the intranet system controlled by Poolwerx and made available to Franchised Business for electronic exchange of data and information throughout the Network.
<b>Jurisdiction</b>	Means the jurisdiction specified in Item 9 of Schedule 1.
<b>Law</b>	includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise.
<b>Legal Costs</b>	means all fees, Costs and disbursements actually paid or payable by Poolwerx to its external or in-house legal representatives (whether or not assessed under a retainer or Costs agreement in place between Poolwerx and its legal representatives) and other expenses incurred by Poolwerx in connection with this Agreement.
<b>Licensed Product</b>	means the products, whether or not incorporating or bearing the Trademarks, specified as licensed products in the Operation Manual or otherwise in writing by Poolwerx.
<b>Loan Area</b>	means an area outside the exclusive Marketing Area granted to a Franchisee as specified in Schedule 3.
<b>Loan Confirmation and Acceptance Terms</b>	means the document to be executed between Poolwerx and the Franchisee in the event Poolwerx grants the Franchisee the right to operate in a Loan Area.
<b>Local Area Marketing</b>	means the marketing to be conducted by the Franchisee in the Marketing Area.
<b>Local Area Marketing Obligation</b>	means the amount required to be expended by the Franchisee in Local Area Marketing, being not less than the amount specified in Item 11(d) of Schedule 1.
<b>Management Fee</b>	means the fee as determined by Poolwerx having regard to the Costs incurred by Poolwerx, and all other circumstances and facts related to management of the Franchised Business, including the level of administration, and the operational and other staffing resources.

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<b>Manager</b>	means the person specified in Item 4 of Schedule 1, or such other person with equivalent training, skill, Accreditations, experience and good reputation as may be approved by Poolwerx in writing.
<b>Marketing Area</b>	means the area(s) specified in Schedule 3, and such other marketing area(s) that are granted to the Franchisee by Poolwerx from time to time under this Agreement.
<b>Marketing Fee</b>	means the amount determined in accordance with Item 11(b) of Schedule 1.
<b>Minimum Performance Criteria</b>	means the criteria specified in the Business Plan, including: (i) any key performance indicators specified in the Business Plan, the Operations Manual or otherwise in writing from time to time; and (ii) matters relating to Gross Revenue, the development of the Franchised Business, and increasing market share in relation to competitor businesses offering the same or similar services to the Poolwerx Services, or selling the same or similar products to the Poolwerx Products, within the Franchisee's Marketing Area.
<b>Mobile Unit</b>	means a Vehicle operated by a Franchisee.
<b>Multi-Retail Location Franchise</b>	means a Franchised Business with more than one (1) Retail Location and one (1) or more Mobile Units.
<b>Mystery Shopper</b>	means a person remaining anonymous to the Franchisee who acts under the guise of a Client to determine whether the Franchisee is complying with the System, Standards and Image in the conduct of the Franchised Business.
<b>Network</b>	means the network of Franchised Business.
<b>Network Name</b>	means "Poolwerx."
<b>Occupancy Right</b>	means any right to occupy the Premises, including as lessee, sublessee, licensee or as the holder of some other interest in the Premises conferring an enforceable right to use or occupy them.
<b>Ongoing Training</b>	means training required in the context, manner and form as specified in the Operations Manual.

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<b>Opening Promotional Amount</b>	means the amount specified in Item 13 of Schedule 1.
<b>Operations Manual</b>	means all Standards contained in any operations manual or manuals, whether in hard copy or electronic form, issued by Poolwerx from time to time, and includes: (i) any manual, audio visual presentation or other relevant material which is published, posted on the Intranet, or issued by Poolwerx relating to the System, Standards, Image, Marks Franchised Business or the conduct of the Franchised Business; and (ii) any technical manual procedures and the policy manual.
<b>Operational Third Term</b>	means the period set out in Item 19 of Schedule 1.
<b>Poolwerx</b>	means the company described above as Poolwerx.
<b>Poolwerx Internal Dispute Resolution Process</b>	means the dispute resolution process described in the Operations Manual that aims to assist in the early identification and resolution of disputes between Poolwerx and Franchised Business.
<b>Poolwerx Products</b>	means the range, types and brands of products that are specified as approved in the Operations Manual, or otherwise approved by Poolwerx in accordance with this Agreement, for supply in a Franchised Business to Clients, and includes the Licensed Products and Approved Products.
<b>Poolwerx Services</b>	means the services that are specified as approved in the Operations Manual, or otherwise approved by Poolwerx in accordance with this Agreement, to be provided to Clients in the operation of a Franchised Business and includes the Approved Services.
<b>Poolwerx Terms of Trade</b>	means the terms of trade upon which the Franchisee must purchase or acquire products, services, materials and equipment from Poolwerx, as specified in the Operations Manual or otherwise in writing by Poolwerx.
<b>Premises</b>	means the premises specified in Item 8 of Schedule 1; or together with any other premises approved by Poolwerx as the premises from which the Franchised Business may be conducted.
<b>Premises Upgrade</b>	means the work that needs to be done to the Premises to: (i) fully incorporate the then current Image and specifications contained in the Operations Manual; or (ii) comply with any Laws and the requirements of any authority.

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<b>Principal Office</b>	means the place considered by Poolwerx or the Franchised Business, as the case may be, as its chief executive offices in the United States.
<b>Privacy Laws</b>	means all Laws relating to the safekeeping of Client Information and other personal information required to be kept confidential.
<b>Refurbishment Plan</b>	means the staged works as detailed in Schedule 4 to be completed either prior to commencement of the Franchised Business or prior to the dates noted in Schedule 4.
<b>Regional Area Marketing</b>	means marketing initiatives in the combined marketing areas of the Franchisee and other identified franchisees who are geographically proximate to each other.
<b>Regional Area Marketing Fee</b>	means the amount specified in Item 11(c) of Schedule 1.
<b>Regional Area Marketing Obligation</b>	means the obligation to expend the Regional Area Marketing Fee, together with the regional area marketing fees of other identified franchisees who are geographically proximate to each other, on Regional Area Marketing.
<b>Related Agreement</b>	means any agreement between the Franchisee and Poolwerx or an Affiliate of Poolwerx in connection with the Franchised Business, including: (i) any agreement conferring an Occupancy Right on Poolwerx or the Franchisee; (ii) any agreement in connection with the supply of goods or services to the Franchisee or an Affiliate of the Franchisee; or (iii) any loan agreement, Security Agreement, or other document or agreement which reserves or creates any Security Interest to secure the obligations of the Franchisee or any Guarantor under this Agreement or any other agreement mentioned in this Agreement.
<b>Renewal Fee</b>	means the amount determined in accordance with Item 15 of Schedule 1.
<b>Renewal Term</b>	means the period set out in Item 18 of Schedule 1.
<b>Restraint Area</b>	means (i) thirty (30) miles of the perimeter of the Marketing Area or Loan Area; or (ii) within thirty (30) miles of the perimeter of any other Franchised Business or its Marketing Area or Loan Area.
<b>Restraint Period</b>	means three (3) years.

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<b>Retail Location</b>	means a fixed location approved by Poolwerx from with a Franchised Business offers for sale Poolwerx Products and Poolwerx Services.
<b>Retail Location Franchise</b>	means a Franchised Business consisting of a Retail Location and one or more Mobile Units.
<b>Schedule</b>	means any schedule to this Agreement.
<b>Security Agreement</b>	has the meaning given to it in the applicable Uniform Commercial Code of the United States.
<b>Security Interest</b>	means any interest in, or right over, property which secures the payment of a debt or other monetary obligation or the compliance with any other obligation.
<b>Software</b>	means any software specified by Poolwerx to be used by the Franchisee in the Franchised Business, including: (i) the business management system and technology platform; (ii) accounting, payroll, training and point-of-sale software; (iii) marketing and client relationship software; (iv) photometers, and water testing software and technology; (v) GPS and other location management systems; (vi) information and enterprise management software; (vii) the software required for the provision of information and the preparation and production of any reports required under this Agreement; and (viii) where the context permits, downloadable mobile applications.
<b>Special Conditions</b>	means the Special Conditions (if any) specified in Item 20 of Schedule 1.
<b>Standards</b>	means the policies, procedures, guidelines, directives and standards that must be adhered to in the operation of a Franchised Business.
<b>System</b>	means any one or more of the business formats, systems, methods, procedures, policies, operations, standards and controls relating to the operation of Franchised Business, as specified in the Operations Manual or otherwise in writing by Poolwerx.
<b>Technology Fee</b>	means the fee specified in Item 12 of Schedule 1.

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<b>Trademarks</b>	means all trademarks, service marks, logos, business names, assumed names and trade names owned or controlled under license by Poolwerx, which Poolwerx authorizes for use in the Franchised Business, including those set out in Schedule 5 which are registered or are capable of being registered by Poolwerx or an Affiliate of Poolwerx or over which Poolwerx or an Affiliate of Poolwerx claims common law protection.
<b>Trade Name</b>	means the name specified in Item 6 of Schedule 1.
<b>Transaction Records</b>	means complete details, provided by the Franchisee, in the form specified in the Operations Manual of all transactions between the Franchisee and: (i) Clients; (ii) Approved PiPs and other suppliers; (iii) the Internal Revenue Service of the United States or any other federal, state or local taxing authority; (iv) any other Federal or State or Territory government agency, authority or organization; and (v) "Poolwerx".
<b>Transfer</b>	Means a transfer of the Franchise or the Franchise Business, and includes: (i) an event under which the Franchisee sells, or agrees to sell, or otherwise disposes of the whole or part of the Franchised Business or any of the Franchisee's rights under this Agreement, including in the manner contemplated by clause 33.2; and )ii) any Disposal contemplated by clause 29.5.
<b>Transfer Fee</b>	means the amount determined in accordance with Item 14 of Schedule 1.
<b>Vehicle</b>	means a vehicle complying with the specifications of clause 17.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires, the following rules of interpretation will apply:

1. a reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes an Entity, trust, association, partnership or sole proprietorship;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns, and those claiming through or under them, respectively;



- 
- (v) a statute, regulation, code or other law or a provision of any of them includes:
    - (A) any amendment or replacement of it; and
    - (B) another regulation or other statutory instrument made under it, as amended or replaced; and
  - (vi) dollar means United States dollars unless otherwise stated;
  - 2. “including” and similar expressions are not words of limitation;
  - 3. amounts are exclusive of sales or use taxes unless otherwise stated;
  - 4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
  - 5. headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation;
  - 6. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
  - 7. where a party has the right to exercise a discretion, such discretion may be exercised in that party’s sole and absolute discretion, notwithstanding that the party exercising such discretion may consult with the other party prior to the exercise of such discretion; and
  - 8. if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

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## **2. Grant of Franchise and Purpose of this Agreement**

### **2.1 Grant**

- 1. Poolwerx grants to the Franchisee, and the Franchisee accepts, the right to operate a Franchised Business and a license to use the Intellectual Property:
  - (i) at the Premises; and
  - (ii) for the Term,on the terms and conditions set out in this Agreement.
- 2. The Franchisee agrees to operate the Franchise for the entire Term, unless it ends sooner in accordance with this Agreement.

### **2.2 Grant of Franchise**

Subject to clause 2.3, the Franchisee acknowledges and accepts that the Franchise granted pursuant to this Agreement is not an exclusive franchise and Poolwerx may grant other Franchised Business without restriction in the United States.

### **2.3 Franchisee’s Exclusive Marketing Area**

- 1. Subject to clauses 2.3(b), 2.3(c) and 18, the Franchisee will:

- 
- (i) have the exclusive right to market in the Marketing Area, which includes the right to conduct any form of authorized marketing or promotion to Clients in the Marketing Area; and
    - (ii) not undertake any form of marketing to solicit business outside of the Marketing Area without the prior written consent of Poolwerx.
  2. Poolwerx agrees not to establish, or grant any other person the right to establish, a Franchised Business at a fixed location within the Marketing Area except:
    - (i) where the Franchised Business is an existing business acquired by Poolwerx and converted to a Franchised Business, in which case Poolwerx will be entitled to do so without restriction;
    - (ii) where the Franchisee does not open a Retail Location within the Marketing Area if reasonably requested to do so by Poolwerx within 6 months of such request;
    - (iii) if the Business Plan provides for the opening of a Retail Location, but the Franchisee fails to open a Retail Location in accordance with the agreed Business Plan; or
    - (iv) if the Agreement contains Development Conditions, and the Franchisee has not complied with those Development Conditions.
  3. Notwithstanding anything contained in this clause 2, where the Franchisee does not have the required skill and expertise to provide Poolwerx Services to Commercial Clients, Poolwerx may grant another Franchisee the right to market to such Commercial Clients located within the Marketing Area.

#### **2.4 Loan Area**

If Poolwerx permits the Franchisee to operate the Franchised Business in a Loan Area, then:

1. the provisions of Schedule 6 of this Agreement will apply to the Franchisee's operation in the Loan Area;
2. the Franchisee, the Guarantor and Poolwerx must, before commencing to operate in a Loan Area, sign Loan Area Confirmation and Acceptance Terms prepared by Poolwerx in respect of that Loan Area, such terms will supersede the terms contained in Schedule 6 to the extent of any inconsistency; and
3. the right of the Franchisee to service Clients in the Loan Area does not convey:
  - (i) any right for the Franchisee to sell, assign, transfer, renew or extend that right;
  - (ii) any right to seek any form of compensation or claim for goodwill or other payment of any kind or nature for the end of that right or in respect of any Clients serviced by the Franchisee in that Loan Area that may be taken over either by Poolwerx or by another franchisee;
  - (iii) any right to market or promote the Franchisee's Franchised Business in the Loan Area; or

- 
- (iv) any form of exclusive territory to the Franchisee in any Loan Area within which it is currently operating, has operated or may in the future operate its Franchised Business.

## **2.5 Purpose**

1. The purpose of this Agreement is to:
  - (i) grant to the Franchisee the right to operate the Franchised Business using the Intellectual Property for the Term; and
  - (ii) specify the terms and conditions that must be complied with by the Franchisee in the operation of the Franchised Business, including the Franchisee's payment obligations and rights to use the Intellectual Property.
2. In order to achieve the purpose set out in clause 2.5(a), the Franchisee must:
  - (i) strictly comply with the terms of this Agreement; and
  - (ii) act in a way that enhances the goodwill associated with the Network and the Intellectual Property.

## **3. Term**

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### **3.1 Commencement and Continuation**

The Franchise commences on the Commencement Date and continues for the Term, unless it ends sooner in accordance with this Agreement.

### **3.2 Franchisee's Right to Extensions**

Subject to clauses 3.3 and 3.4, the Franchisee may:

1. at the end of the Initial Term, request an extension of the Franchise for the Renewal Term; and
2. at the end of the Renewal Term, request an extension of the Franchise for the Optional Third Term,

by giving Poolwerx written notice not more than 9 months and not less than 6 months before the end of the Initial Term or the Renewal Term, as the case may be.

### **3.3 Conditions of Extension**

The grant of the Renewal Term or Optional Third Term is subject to, and conditional upon:

1. satisfaction of the applicable Transition Event Conditions;
2. the Franchisee executing and delivering to Poolwerx a then current Poolwerx franchise agreement, which the Franchisee acknowledges and accepts may differ from this Agreement as to material and non-material terms and conditions, at least 14 days prior to the commencement date of the Renewal Term or Optional Third Term;
3. satisfaction of the following conditions precedent:
  - (i) the Franchisee being compliant with the provisions of this Agreement;
  - (ii) the Franchisee installing and using the Software in the Business;

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- (iii) the Franchisee establishing, to the satisfaction of Poolwerx, that it maintains its Occupancy Rights in respect of the Premises; and
  - (iv) the Franchisee establishing, to the satisfaction of Poolwerx, that it is not in breach or likely to be in breach of its Occupancy Rights in respect of the Premises; and
4. where the Franchisee operates a Mobile Unit, the Franchisee must complete develop a Retail Location before the grant of the Renewal Term of the Optional Third Term, as the case may be.

### **3.4 Discretion of Poolwerx to Grant Optional Third Term**

1. Notwithstanding the conditions in clause 3.3, any grant of a Franchise for the Optional Third Term is at the discretion of Poolwerx.
2. The Franchisee acknowledges and accepts that:
  - (i) Poolwerx may, from time to time, publish policies outlining considerations it may take into account in determining whether to grant an Optional Third Term to a Franchisee; and
  - (ii) such policies shall not create binding obligations on Poolwerx.

### **3.5 Alignment of Term with Occupancy Rights**

Where one or more third parties have granted Occupancy Rights by way of lease of the Premises to the Franchisee, then Poolwerx may, at its discretion, agree to align the Term with the duration of the longest of those leases, such that the Term will expire at the end of that longest lease, subject to any extension granted under clause 3.2 or holding over under clause 3.6.

### **3.6 Holding Over**

If Poolwerx permits the Franchise to continue after the Franchise would otherwise end pursuant to this Agreement, then, but without prejudice to any other right or remedy of Poolwerx:

1. the Franchisee must continue to operate the Franchised Business on a monthly license basis;
2. the Franchise continues on the same terms and conditions so far as applicable to a monthly license as are contained in this Agreement;
3. the Franchise Fee shall be increased by a sum equal to 1% of Gross Revenue; and
4. the monthly license may be terminated by either party giving to the other 30 days written notice, which can be sent to the other party any day after the expiration of the Franchise Agreement.

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## **4. Developing the Franchised Business**

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### **4.1 Franchisee Required to Develop the Franchised Business**

The Franchisee and the Guarantor agree and acknowledge that:

1. Poolwerx requires franchisees to grow and develop their Franchised Business and Marketing Areas in accordance with the Business Plan;
2. the Franchisee is required to develop relevant skills and expertise, secure Accreditations, and maintain a level of performance (as set out in the Operations Manual);
3. the Franchisee must open a Retail Location Franchise or Multi-Retail Location Franchise in accordance with the requirements (if any) set out in Schedule 2.

### **4.2 Franchisee Only to Provide Franchise Products and Poolwerx Services**

1. The Franchisee will:
  - (i) only provide those Poolwerx Products and Poolwerx Services associated with the System; and
  - (ii) conduct the Franchised Business in accordance with the requirements Operations Manual and Business Plan.

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## **5. Poolwerx Obligations**

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### **5.1 System**

Poolwerx will permit the Franchisee to use the Intellectual Property in the operation of the Franchised Business for the Term, and on the terms and conditions of this Agreement.

### **5.2 Areas in Which Poolwerx May Provide Assistance to the Franchisee**

Poolwerx may provide advice and assistance to the Franchisee, including in relation to:

1. acquisition and management of inventory;
2. new developments in products and equipment;
3. technical assistance in relation to Poolwerx Products, Poolwerx Services and Approved Equipment;
4. conducting and improving relationships with employees;
5. maintaining and developing relationships with Approved PiPs, and other suppliers;
6. the opening and promotion of the Franchised Business;
7. business development, local area marketing techniques, sales techniques and developing and maintaining effective Client relations;
8. the effective and efficient provision of Poolwerx Services to Clients;
9. the implementation of, and compliance with, the System in the conduct of the Franchised Business, including general operating procedures;

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10. training of the Manager and the Franchisee's other employees;
  11. the design and Build out of the Premises in accordance with clause 20;
  12. bookkeeping, accounting and consulting services relating to the day-to-day operation and management of the Franchised Business; and
  13. merchandising, marketing, advertising, research data and advice developed by Poolwerx from time to time.

### **5.3 Poolwerx General Obligations**

Poolwerx must:

1. prior to the Commencement Date, provide the Initial Training Program to the Franchisee in accordance with clause 15.1(a)(i);
2. provide any other training in accordance with clause 15.1(a)(iv);
3. specify a list of Approved Products, Approved Services and Approved PiPs;
4. establish and administer the Marketing Fund in accordance with clause 18.11(a); and
5. loan the Operations Manual to the Franchisee, in either digital or paper form, such form to be at the election of Poolwerx.

### **5.4 Subcontractors**

Poolwerx may subcontract any or all of its obligations under this Agreement.

## **6. Franchisee's Business and Other Obligations**

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### **6.1 Obligations**

1. The Franchisee and the Guarantor represent that the Franchisee is an Entity that has been duly formed prior to the Date of Agreement.
2. The Franchisee must, on or before the Commencement Date:
  - (i) open a post office box;
  - (ii) sign and deliver to Poolwerx a credit card authorization form permitting and authorizing Poolwerx to charge the designated credit card of the Franchisee under the terms of this Agreement, or such other authorization as Poolwerx shall require such that Poolwerx is able to receive amounts payable under the terms of this Agreement; and
  - (iii) register the Trade Name with the applicable public officials and execute a power of attorney in favor of Poolwerx or its designee that will enable Poolwerx or its designated agent to effect a cancellation or transfer of the Trade Name upon the expiration or termination of this Agreement.
3. The Franchisee must immediately at its own Cost do all things that Poolwerx may reasonably require to assist in the cancellation or transfer of the Trade Name upon the expiration or termination of this Agreement.

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## 6.2 Obligations in Conducting the Business

The Franchisee must:

1. conduct the Franchised Business with all due care and skill and otherwise strictly in accordance with the System and the Operations Manual;
2. ensure that each aspect of the Franchised Business complies with the System;
3. service the Commercial Clients in accordance with clause 11;
4. service Clients in accordance with clause 8;
5. market the Franchised Business and participate in group activities in accordance with clause 18;
6. comply with all Laws and the requirements of any authority in the conduct of the Franchised Business;
7. give and ensure that its employees give prompt, courteous and efficient service to all Clients and in its dealings with Clients, suppliers and the public, and adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct;
8. promote the mutual business interests of Poolwerx and the Franchisee;
9. subject to any applicable Laws and the Occupancy Right for the Premises, open and operate the Franchised Business during the Business Hours, and in that regard the Franchisee acknowledges that:
  - (i) such hours are the minimum required; and
  - (ii) it may regularly be required to provide the Poolwerx Services early in the morning, late at night or overnight, and that seasonal changes may result in earlier start times or later finishing times to meet seasonal Client demands;
10. use only stationery that complies with Poolwerx specifications as set out in the Operations Manual;
11. accurately complete and return to Poolwerx all sales, expenses, marketing and other questionnaires or forms supplied by Poolwerx to the Franchisee, or as directed by Poolwerx, or otherwise required to satisfy Poolwerx in relation to the Franchisee meeting its key performance indicators as specified in the Business Plan or Operations Manual from time to time;
12. comply with the directions of Poolwerx to join and maintain membership in industry associations;
13. if the Manager wishes to take leave from the Business for a period of longer than 5 Business Days, provide at least 14 days' notice to Poolwerx prior to the commencement of such leave;
14. where the Manager takes leave, ensure that:
  - (i) an employee approved in accordance with clause 6.6(b) is directly supervising the business; or

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- (ii) if required by Poolwerx, it appoints another Franchised Business or individual acceptable to Poolwerx to undertake its obligations during the leave period,

notwithstanding the absence of the Manager during the leave period, the Franchisee will remain liable to Poolwerx for compliance with this Agreement and any breach by the appointed individual or appointed Franchised Business will be considered a breach by the Franchisee;

- 15. minimize the taking of leave during the months of March to October during which Client demand is usually higher, unless such leave is required for urgent personal reasons;
- 16. if the Franchisee damages any property or equipment owned or controlled by a Client, pay Poolwerx or the Client for the repair or replacement of such property or equipment immediately upon request. The parties agree that no action, or inaction, on the part of Poolwerx in the context of this clause 6.2(p), nor the inclusion of it in this Agreement, will constitute or be construed as an admission or undertaking of liability by Poolwerx for any damage caused by the Franchisee to any property or equipment owned or controlled by a Client;
- 17. maintain the Insurance Policies; and
- 18. comply with all directions of Poolwerx in relation to the matters listed in this clause 6.2.

### **6.3 Franchisee's Employees**

Where the Franchisee, has, or is required to have employees, the Franchisee must:

- 1. employ a sufficient number of suitably qualified employees with relevant, current and valid Accreditations to properly and efficiently carry on the Franchised Business;
- 2. at its own expense:
  - (i) train those employees in the operation of the Franchised Business to a standard approved by Poolwerx; and
  - (ii) ensure that each of those employees attends and completes, to a standard approved by Poolwerx, any training provided or required by Poolwerx;
- 3. ensure that each person working in the Franchised Business wears a name badge and the uniform specified by Poolwerx in the Operations Manual; and
- 4. not allow any of its employees to perform Poolwerx Services for which they are not fully trained or qualified.

### **6.4 Subcontractors**

- 1. The Franchisee must not subcontract the whole or any part of the Franchised Business or its obligations under this Agreement without the prior written consent of Poolwerx.
- 2. If Poolwerx consents to the Franchisee's engagement of a subcontractor, the Franchisee:
  - (i) remains liable for the performance of the obligation subcontracted;



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- (ii) must ensure that the subcontractor adheres to the Standards;
  - (iii) must ensure that each of the subcontractors at all times holds current and valid Accreditations and, if Poolwerx so requires, is satisfactorily bonded;
  - (iv) must, if requested by Poolwerx, provide a copy of any subcontracts to Poolwerx, and where necessary, procure the consent of the relevant subcontractor to such provision; and
  - (v) must, as required by Poolwerx, comply with the provisions of this Agreement that relate to the Franchisee's employees in respect of the subcontractor.

#### **6.5 Leases and Rental Hire Purchase Agreement or other Commercial Agreements**

The Franchisee must:

1. inform Poolwerx of every lease, rental, purchase or finance agreement and any other private or commercial agreement which the Franchisee proposes to enter into as part of or in the course of the Franchised Business, or which may impact upon the Franchisee's ability to profitably operate the Business (**Subsidiary Agreement**);
2. if requested by Poolwerx, provide to Poolwerx:
  - (i) drafts of any Subsidiary Agreement;
  - (ii) a copy of the final executed Subsidiary Agreement; and
  - (iii) where necessary, procure the consent of the relevant counterparty to such provision; and
3. perform and observe the terms, conditions and covenants of any Subsidiary Agreement.

#### **6.6 Supervision of the Business**

The Franchised Business must always be under direct supervision of either:

1. the Manager; or
2. an employee of the Franchisee who has completed the Initial Training Program and has been approved by Poolwerx in writing.

#### **6.7 Meetings**

1. In addition to the Convention, Poolwerx may convene meetings and educational forums for Franchised Business whenever Poolwerx considers it is necessary or appropriate, the purpose of which is to exchange ideas and communicate on the operation and development of the System and the Network.
2. Poolwerx must give the Franchisee notice of not less than:
  - (i) 20 Business Days' regarding the convening of the Convention; and
  - (ii) 10 Business Days' regarding the convening of any other meetings or educational forums.

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3. The Franchisee or the Manager must, at the Franchisee's Cost, attend meetings, educational forums and the Convention.
  4. The location, agenda, duration, and all procedures and formats of each meeting, educational forum and Convention will be determined by Poolwerx.
  5. If the Franchisee fails to attend any meeting, education forum or the Convention, it must, at the Franchisee's cost, ensure that the Manager attends a special meeting held by Poolwerx, where such meeting is required by Poolwerx.
  6. Notwithstanding the provisions of clause 6.7(e), if the Franchisee fails to attend a Convention, and has not obtained the approval of Poolwerx to be excused from the Convention, such failure will be deemed to be a breach of this Agreement and a failure to meet a Transition Event Condition.

## **6.8 Telephone and Communications Systems**

1. The Franchisee must:
  - (i) at its Cost, only use in the Franchised Business, telephone (including land lines and mobile telephones), internet, Intranet and other communications systems specified by Poolwerx (**Communication Systems**);
  - (ii) pay on time all charges payable:
    - (A) to any third party provider of the Communications Services; or
    - (B) to Poolwerx, where billing in respect of the Communications Systems is managed and billed by Poolwerx;
  - (iii) change, substitute or discontinue the use of any communications number when requested by Poolwerx; and
  - (iv) during Business Hours:
    - (A) turn and keep on all computers that form part of the Franchised Business;
    - (B) establish an internet connection;
    - (C) open and use the Software;
    - (D) open and respond to all electronic mail, messages or other communications received from Poolwerx or its Affiliates;
    - (E) access any Intranet sites and check for messages, notifications or other communications from Poolwerx or its Affiliates; and
    - (F) act or respond promptly to such messages, notifications and communications as per Poolwerx designated communications protocol as set out in the Operations Manual.

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2. The Franchisee agrees that all communications numbers, telephone numbers (including land line and mobile telephone) and email addresses used by it in connection with the Communications Systems are, at all times, the property of Poolwerx.
  3. The Franchisee agrees that, whenever required by Poolwerx, it will immediately execute a transfer to Poolwerx (or its nominee) of any communications number, telephone number or email address in respect of the Franchised Business that is held or controlled by the Franchisee.
  4. The Franchisee agrees that if it is required by Poolwerx to participate in a centralized facility to receive, process and allocate Client inquiries, it will enter into any necessary agreements to facilitate the operation of such facility.
  5. For the purposes of quality control, training and coaching, and to the extent permitted by applicable Law, the Franchisee consents to Poolwerx (and any third parties designated by Poolwerx) recording telephone calls between:
    - (i) the Franchisee, the Manager, or the Franchisee's employees or subcontractors; and
    - (ii) Clients.
  6. The Franchisee will ensure that the Manager and its employees and subcontractors consent to Poolwerx (and any third parties designated by Poolwerx) recording telephone calls for the purposes of clause 6.8(e).

## **6.9 Computer Systems and Other Technology**

1. The Franchisee must, at its Cost:
  - (i) use install and use the technology, computer hardware and Software specified by Poolwerx;
  - (ii) acquire and maintain all necessary licenses to use the Software;
  - (iii) pay on time and in full the continuing Technology Fee;
  - (iv) train its employees, in the manner specified by Poolwerx, in the use of technology, computer hardware and Software;
  - (v) change or upgrade any technology, computer hardware or Software used in the Franchised Business, as specified by Poolwerx; and
  - (vi) ensure that all technology, computer hardware and Software is secure from unauthorized access or use.
2. The Franchisee must:
  - (i) at all times, ensure that the Franchisee's computer hardware and Software is connected to the computer systems of Poolwerx through the internet via devices and communications protocols which have sufficient capacity;

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- (ii) at all times, provide Poolwerx with access to the Franchisee's computer hardware and Software, and to all data wherever located or stored;
  - (iii) only use the Software for the operation of the Franchised Business and the performance of its obligations under this Agreement; and
  - (iv) not reverse engineer or decompile any of the Software.

## **6.10 Warranties, Representations, Statements**

1. The Franchisee must not:
  - (i) make any representations or statements, or give any warranties:
    - (A) about the Network or the System unless authorized by this Agreement or Poolwerx in writing; or
    - (B) in connection with the supply of any products or services in the conduct of the Franchised Business, unless expressly authorized by Poolwerx and the supplier or manufacturer of the product;
  - (ii) speak with the media or any media representative concerning the Franchised Business, the Network, the Systems, any Franchised Business, Poolwerx, a Client or any matter related to this Agreement, without the prior written consent of Poolwerx, which will be granted or withheld at the discretion of Poolwerx;
  - (iii) make any statements or actions in contravention of clause 25.4(a)(iii); or
  - (iv) be misleading or deceptive in any way in its dealings with any person in the conduct of the Franchised Business.
2. Except as set forth in this clause 6.10, POOLWERX EXPRESSLY DISCLAIMS ANY WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY GOODS FOR THEIR INTENDED USE.

## **6.11 Information and Disclosure Obligations**

The Franchisee must:

1. fully disclose to Poolwerx all information concerning the Franchised Business as required by Poolwerx;
2. give to Poolwerx all information which the Franchisee receives which may be of use or benefit to Poolwerx in developing and maintaining the Network or System; and
3. refer to Poolwerx all inquiries relating to the Network which the Franchisee receives from any person supplying or considering the supply of products or services which might compete with Poolwerx Products or Poolwerx Services.

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## **6.12 Business Plans**

1. The Franchisee must develop a Business Plan and provide a draft to Poolwerx not less than 90 days prior to the commencement of each Financial Year.
2. Poolwerx will engage with the Franchisee to discuss and approve the draft Business Plan which will include Minimum Performance Criteria.

## **6.13 Consent to Registration and Use of Trade Name**

1. Poolwerx consents to the Franchisee operating the Franchised Business under the Trade Name approved by Poolwerx during the Term.
2. The Franchisee acknowledges and agrees that its right to operate the Franchised Business under the Trade Name, or such other name approved by Poolwerx, ends on the expiration or earlier termination of this Agreement.

## **6.14 Prohibited Actions in Relation to the Trade Name**

The Franchisee must not:

1. use the words included in the Trade Name in respect of any business other than the Franchised Business;
2. transfer or assign any part or all of the legal or beneficial ownership of the Trade Name to any person other than Poolwerx without first obtaining the prior written consent of Poolwerx; or
3. include in its Entity name any or all of the words of the Trade Name.

## **6.15 Power of attorney**

1. The Franchisee irrevocably and unconditionally appoints Poolwerx and each officer of Poolwerx, severally, as the Franchisee's attorney-in-fact to deal with the Trade Name in order to achieve the purposes set out in this Agreement.
2. The Franchisee agrees to:
  - (i) ratify and confirm whatever Poolwerx, its directors, officers, assigns or designated persons do in the exercise or purported exercise of the powers granted by this Agreement or the power of attorney; and
  - (ii) indemnify and keep Poolwerx, its directors, officers, assigns and designated persons indemnified against all Claims arising from the exercise or purported exercise of the powers granted by this Agreement or the power of attorney.
3. If Poolwerx transfers the benefit of this Agreement to another entity in accordance with the terms of this Agreement, then the Franchisee agrees that it must immediately sign a new power of attorney in favor of the transferee and its directors, officers, assigns or designated persons in the form provided by Poolwerx.
- 4.

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## **6.16 Communications**

The Franchisee acknowledges and agrees that:

1. Communications within the Network, including via the Poolwerx Intranet, advisory councils, meetings, newsletters or other activities must be conducted in accordance with the designated communications protocol described in the Operations Manual; and
2. that such communications protocols may change from time to time.

## **6.17 Refurbishment Plan**

The Franchisee will ensure that it is compliant on all matters referred to in the Refurbishment Plan on the dates specified in the Refurbishment Plan.

## **7. Minimum Performance Criteria**

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### **7.1 Achieve Minimum Performance Criteria**

1. The Franchisee must achieve the Minimum Performance Criteria during each Assessment Period.
2. The Minimum Performance Criteria will be reviewed in accordance with the review mechanism specified by Poolwerx in the Operations Manual or otherwise in writing from time to time.

### **7.2 Failure to Achieve Minimum Performance Criteria**

If the Franchisee fails to achieve the Minimum Performance Criteria for any month during any Assessment Period, the Franchisee and Manager must:

1. at the request of Poolwerx; and
2. at the Franchisee's Cost, attend a meeting with Poolwerx to discuss the performance of the Franchised Business.

### **7.3 Remedial Action**

If Poolwerx considers that the Franchisee has failed to achieve the Minimum Performance Criteria for reasons Poolwerx considers were within the Franchisee's control, Poolwerx may require the Franchisee, at its Cost, to immediately:

1. take corrective action;
2. ensure that the Franchisee, Manager, and each of the Franchisee's employees, undertake additional training; or
3. implement marketing, promotional or other activities.

### **7.4 Further Failure by Franchisee**

If the Franchisee has failed to meet the Minimum Performance Criteria for reasons Poolwerx considers were within the Franchisee's control, and the Franchisee has not subsequently:

1. attended a meeting with Poolwerx in accordance with clause 7.2;
2. complied with clause 7.3 to the satisfaction of Poolwerx, at its discretion; or
3. met the Minimum Performance Criteria for any month during an Assessment Period after:
  - (i) attending a meeting with Poolwerx in accordance with clause 7.2; or

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- (ii) the Franchisee has complied with any requirements of Poolwerx in accordance with clause 7.3,

Poolwerx may, without limitation to its rights under clause 35, issue written notice to the Franchisee to sell the Franchised Business (**Sale Notice**).

### **7.5 Compulsory Sale of the Business**

Upon receipt of a Sale Notice, the Franchisee must:

1. within 10 Business Days of such receipt, meet with Poolwerx to discuss the sale of the Franchised Business and the timeframe within which it is to be completed; and
2. subject to clause 33.4, take all necessary action to effect an expeditious sale of the Franchised Business to a third party that is not an Affiliate of the Franchisee.

### **7.6 Poolwerx to Undertake Sale of the Franchised Business**

1. If:
  - (i) the Franchisee fails to meet with Poolwerx in accordance with clause 7.5(a);
  - (ii) within 14 Business Days following receipt of a Sale Notice by the Franchisee, the parties have not reached agreement in accordance with clause 7.5(a); or
  - (iii) the Franchisee fails to sell the Franchised Business within any time frame agreed to by the parties in accordance with clause 7.5(a),

the Franchisee and the Guarantors grant to Poolwerx, on its behalf, the unconditional and irrevocable right and power to sell the Franchised Business to a third party that is not an Affiliate of the Franchisee.

2. If Poolwerx exercises its rights pursuant to clause 7.6(a), Poolwerx will:
  - (i) issue the Franchisee with a compulsory sale notice (**Compulsory Sale Notice**); and
  - (ii) set a reasonable market price for the sale of the Franchised Business, as determined by Poolwerx, at its discretion, and where Poolwerx seeks the assistance of an independent appraiser in valuing the Franchised Business, the Costs of such appraiser will be recovered from the sale proceeds of the Franchised Business.
3. Upon receipt of the Compulsory Sale Notice, the Franchisee must provide all information (including profit and loss statements, balance sheets and Client Lists) as requested by Poolwerx within 3 Business Days of each request.
4. When a buyer, acceptable to Poolwerx, at its discretion, is identified:
  - (i) Poolwerx will notify the Franchisee; and
  - (ii) the Franchisee must enter into a binding agreement for the sale of the Franchised Business, in a form prescribed by Poolwerx within 10 Business Days of such notification.

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5. If the Franchisee fails or refuses to enter into a binding agreement in accordance with clause 7.6(d):
    - (i) such failure will be deemed an Event of Default for the purposes of clause 35.1; and
    - (ii) the Franchisee irrevocably and unconditionally appoints Poolwerx and each officer of Poolwerx, severally, as the Franchisee's attorney in fact to effect the sale of the Franchised Business.
  6. The Franchisee confirms and acknowledges that in the event of a sale of the Franchised Business under this clause 7.6, Poolwerx may deduct from the sales proceeds:
    - (i) all sums owed to Poolwerx and any Approved PiPs or other suppliers;
    - (ii) all Costs and Legal Costs incurred by Poolwerx relating to the sale of the Franchised Business; and
    - (iii) the Transfer Fee.
  7. Notwithstanding that the Franchised Business is for sale under this clause 7, the Franchisee must continue to operate the Franchised Business in accordance with the requirements of this Agreement, including as set out in clause 6.2.

## **8. Client Service**

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### **8.1 Best Efforts**

The Franchisee acknowledges and agrees:

1. that a significant amount of time is required to:
  - (i) develop the Franchised Business; and
  - (ii) carry out all obligations of the Franchisee under this Agreement;
2. that a 7-day per week commitment may be required by the Franchisee to meet Client demands; and
3. to use its best efforts to deliver the Poolwerx Products and Poolwerx Services in the manner and at the time requested by:
  - (i) the Clients; or
  - (ii) Poolwerx, for the benefit of the Clients.

### **8.2 Satisfy Client Complaints**

1. The Franchisee must, at the Franchisee's Cost, inform Poolwerx in writing of, and promptly act to redress, all Client complaints.
2. Poolwerx may attempt to redress a Client complaint if:
  - (i) the Client specifically requests that the complaint not be handled by the Franchisee; or
  - (ii) the Franchisee fails to redress the complaint within 24 hours after notice thereof.



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3. If Poolwerx acts to redress a Client complaint pursuant to clause 8.2(b), the Franchisee must pay the Additional Service Fee together with the Costs incurred by Poolwerx in attempting to redress the complaint.

### **8.3 Poolwerx May Contact Clients**

The Franchisee acknowledges that Poolwerx may from time to time contact and have discussions with Clients or potential Clients in order to determine Client satisfaction.

### **8.4 Failure to Service a Client**

1. If the Franchisee fails to:
  - (i) appear at the Client's premises on the dates and times required by Poolwerx or the Client; or
  - (ii) perform the tasks to the satisfaction of Poolwerx or the Client, then Poolwerx may, in addition to exercising any other rights it has at Law or under this Agreement, do any one or more of the following:
    - (iii) require the Franchisee to undertake remedial action;
    - (iv) send an employee or contractor of Poolwerx to perform the tasks that the Franchisee was requested to perform; or
    - (v) send another Franchised Business to perform the tasks that the Franchisee was requested to perform.
2. Where Poolwerx makes arrangements in accordance with clauses 8.4(a)(iv) or (v), the Franchisee must pay to Poolwerx the Additional Service Fee together with the Costs incurred by Poolwerx in making the alternative arrangements.

### **8.5 Mystery Shopper**

Poolwerx may, at its discretion, engage a Mystery Shopper, or any other process, to evaluate and report to Poolwerx on the operation of the Franchised Business and its experience in dealing with the Franchisee.

### **8.6 Not a penalty**

Poolwerx and the Franchisee agree and acknowledge that any payments made by the Franchisee to Poolwerx under clauses 8.2(c) or 8.4(b) are:

1. a reasonable estimate of the Costs that Poolwerx will incur; and
2. not a penalty.

## **9. Supply of Poolwerx Products and Poolwerx Services**

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### **9.1 Franchisee's Obligations**

The Franchisee must:

1. offer for sale and supply in the Franchised Business the complete range of Poolwerx Products and Poolwerx Services;
2. not offer or supply any services other than the Poolwerx Services; and
3. not offer, sell, supply or use any products that are not Poolwerx Products.

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## **9.2 Maintaining Quantity of Poolwerx Products and Providing Poolwerx Services**

The Franchisee must maintain:

1. a sufficient quantity of Poolwerx Products; and
2. a sufficient number of employees holding relevant

Accreditations, to:

3. meet Client demand for Poolwerx Products and Poolwerx Services;
4. perform the Poolwerx Services promptly; and
5. comply with all requirements in the Operations Manual.

## **9.3 End User Sales Only**

1. The Franchisee must not sell any Poolwerx Products or Approved Products to a person in circumstances where the Franchisee knows, or should reasonably be aware, that the person, either directly or indirectly, intends to resell or resupply the Poolwerx Products or Approved Products.
2. The right of the Franchisee to sell or supply Poolwerx Products or Approved Products is limited to end user sales only and not for wholesale or resupply.

## **9.4 Withdrawal of Poolwerx Products and Poolwerx Services**

1. Poolwerx may at any time by written notice require the Franchisee to withdraw from sale in the Franchised Business any Poolwerx Service or Poolwerx Product or any other service or product (**Withdrawal Notice**), which, in the opinion of Poolwerx:
  - (i) does not conform with the standards, quality controls and specifications;
  - (ii) does not conform with the range of services or products to be supplied or used in a Franchised Business; or
  - (iii) is, or may be, a health or safety risk.
2. The Franchisee must immediately comply with any Withdrawal Notice.

## **9.5 System and Standards**

1. The Franchisee must perform all Poolwerx Services and supply all Poolwerx Products in accordance with the Standards and the System.
2. If Poolwerx determines, at its discretion, that the Franchisee has not complied with clause 9.5(a), Poolwerx may:
  - (i) require the Franchisee to either re-perform or complete the Poolwerx Service, or resupply the Poolwerx Products;
  - (ii) instruct another Franchised Business to perform or complete the Poolwerx Service or re-supply the Poolwerx Product; or
  - (iii) perform or complete the Poolwerx Service or resupply the Poolwerx Products.
3. The Franchisee is liable for all Costs associated with any decision of Poolwerx under clause 9.5(b).

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## **9.6 Prices of Poolwerx Services and Poolwerx Products**

Poolwerx may:

1. recommend the prices of Poolwerx Services and Poolwerx Products; and
2. set the minimum or maximum price at which a Poolwerx Service or Poolwerx Product may be supplied or sold.

## **9.7 Rebates and Financial Incentives**

The Franchisee acknowledges and agrees that Poolwerx may:

1. receive, and retain for its own benefit, rebates or other financial incentives from the manufacturers and suppliers of Approved Products, Poolwerx Products or Approved Services; and
2. at its discretion, pay any rebates or financial incentives received from the manufacturers or suppliers into the Marketing Fund, use for Educational Seminars or for any other similar or dissimilar activities.

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## **10. Purchase of Approved Equipment, Approved Products and Approved Services**

### **10.1 Purchase of Approved Equipment, Approved Products and Approved Services**

1. Poolwerx will provide lists of:
  - (i) Approved Equipment, Approved Products and Approved Services; and
  - (ii) contact details of Approved PiPs, suppliers of Approved Products and suppliers of Approved Services.
2. Poolwerx may at any time by written notice to the Franchisee:
  - (i) add or remove any product or service from the lists of Approved Products and Approved Services; or
  - (ii) add or remove any supplier from the list of Approved PiPs.
3. Subject to clause 10.2, the Franchisee must only obtain the Approved Equipment, Approved Products and Approved Services from an Approved PiP.

### **10.2 Proposed Suppliers**

1. Where the Franchisee wishes to deal with a supplier that is not an Approved PiP (**Proposed Supplier**), the Franchisee must immediately notify Poolwerx in writing.
2. In assessing the Proposed Supplier, Poolwerx may require that the Franchisee:
  - (i) give to Poolwerx written notice of:
    - (A) the nature and quantity of the products, equipment, vehicles or services to be offered by the Proposed Supplier;
    - (B) the name and address of the Proposed Supplier; and
    - (C) the price that will be charged by the Proposed Supplier, including any unit prices;

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- (ii) satisfy Poolwerx that the products, equipment, vehicles or services meet the quality standards set out in clause 10.3, and in addition, that any vehicles meet the requirements of clause 10.4(b);
  - (iii) provide, as relevant:
    - (A) a sample of the product, equipment or vehicle that the Proposed Supplier is to provide; or
    - (B) evidence of examples of previous work produced by the Proposed Supplier; and
  - (iv) provide a written statement from the Proposed Supplier setting out:
    - (A) the period that the price for the products, equipment, vehicles or services will be fixed;
    - (B) the terms and conditions of supply, including details of warranties provided;
    - (C) in relation to services, that the Proposed Supplier will be able to do the work in a timely and professional manner;
    - (D) in relation to products, equipment and vehicles, that the Proposed Supplier is able to maintain a continuity of supply; and
    - (E) an undertaking to provide cooperation, training, rebates, services and incentives required from suppliers to the Network.
3. If the Franchisee requests the approval of Poolwerx under clause 10.2(a), Poolwerx must advise the Franchisee of its decision in writing.
  4. Poolwerx may, at its discretion, approve and consent to the purchase of any products, equipment, vehicles or services from a Proposed Supplier.
  5. Subject to clauses 9.4 and 10.1(b)(i), any products, equipment, vehicles or services approved by Poolwerx in accordance with clause 10.2(d) become Approved Equipment, Approved Products or Approved Services.
  6. Subject to clause 10.1(b)(ii), any Proposed Supplier approved by Poolwerx in accordance with clause 10.2(d) becomes an Approved PiP.

### **10.3 Quality Control**

Any products, equipment, vehicles or services to be obtained by the Franchisee from a Proposed Supplier must:

1. be at least equal in quality to the product, equipment, vehicle or service it substitutes;
2. be suitable for the purpose for which it is intended;
3. be consistent with, and not prejudicial to, the Image or the Standards;
4. have equal or better product warranties for the benefit of the Client; and
5. not create a different look or feel to the result produced by the products, equipment, vehicles or services provided by existing Approved PiPs.

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#### **10.4 Vehicles**

Without limiting clause 10.3, the Franchisee acknowledges and accepts that:

1. Vehicles are an important part of the Franchised Business and are relevant to areas such as Client perception, marketing, promotions and corporate image; and
2. any request relating to Vehicles, including brands, size, signage, features and accessories, must satisfy Poolwerx as to consistency in look and feel with other Vehicles in the Network.

#### **10.5 Approved Distribution Channel**

If Poolwerx appoints a distribution channel partner to warehouse or distribute Approved Products, the Franchisee must only use the approved distribution channel partner in the Franchised Business.

#### **10.6 Acknowledgment by Franchisee**

The Franchisee acknowledges that the provisions of this clause 10 are reasonable and are necessary to maintain strict quality control in respect of the supply of all products and services in the Network.

#### **10.7 Payment for Approved Products and Approved Services**

1. The Franchisee must pay for all products or services purchased in respect of the Franchised Business by the due date for payment and in the manner specified by Poolwerx or the supplier.
2. Where the Franchisee does not make payment in accordance with clause 10.7(a), the Franchisee authorizes Poolwerx to:
  - (i) charge the credit card referred to in clause 6.1(b)(ii) for some or all of any amount owing, or rely on any other payment authorisation given to Poolwerx to obtain such sum; and
  - (ii) remit such sum directly to the relevant supplier in satisfaction of the Franchisee's debt.

#### **10.8 Details of Suppliers and Supply**

If requested by Poolwerx, the Franchisee must provide Poolwerx with an accurate list of names, addresses and contact details of all suppliers to the Franchisee together with a list of items, qualities and specifications of items purchased from each.

#### **10.9 Default by Franchisee**

If the Franchisee is in default of its obligations under this Agreement or any Related Agreement, and that default entitles Poolwerx to terminate this Agreement, Poolwerx may:

1. refuse to supply;
2. supply only on cash-on-delivery terms;
3. direct a supplier or Approved PiP to refuse to supply; or
4. direct a supplier or Approved PiP to supply only on cash-on-delivery terms,

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any products or services supplied to the Franchisee, and if this occurs, nothing in this Agreement entitles the Franchisee to obtain substitute products or services from another supplier.

## **11. Commercial Clients**

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### **11.1 Obligations in Relation to Commercial Clients**

The Franchisee agrees:

1. to service Commercial Clients on request by Poolwerx or its Affiliates;
2. that Poolwerx or its Affiliates own all Commercial Client lists and all goodwill in Commercial Clients;
3. that when dealing with the Commercial Clients, the Franchisee must:
  - (i) strictly abide by the terms of this Agreement, the Operations Manual and any other conditions notified in writing to the Franchisee relating to the Commercial Clients; and
  - (ii) not discriminate between the level of service provided to any other Client and that provided to Commercial Clients; and
4. that the price that the Franchisee will charge for product sales or work performed by the Franchisee in relation to Commercial Clients work will not exceed the price that Poolwerx is entitled to charge to the relevant Commercial Clients for such work or products.

### **11.2 Action Upon Notification of Commercial Client's Requirements**

1. Where Poolwerx:
  - (i) notifies the Franchisee of the requirements of a Commercial Client; and
  - (ii) allocates the servicing of those requirements to the Franchisee, the Franchisee must:
    - (iii) attend the Commercial Client's premises and commence performing the tasks required by the Commercial Client upon the date specified by Poolwerx; and
    - (iv) continue to perform those tasks until the Commercial Client, Poolwerx and its Affiliates are satisfied that the job is satisfactorily completed.
2. The Franchisee acknowledges and agrees that:
  - (i) to ensure that the Network has coverage, notwithstanding any potential financial detriment and inconvenience to the Franchisee, that upon receipt of a request from Poolwerx, the Franchisee must attend the premises of any Commercial Client outside of the Marketing Area, provided such Commercial Client is within the geographical area covered by the Regional Area Marketing Fee;
  - (ii) if Poolwerx has secured a national, regional, state or territory wide contract with a Commercial Client, it will charge that Commercial

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- Client according to a uniform pricing scheme as determined by Poolwerx; and
- (iii) Poolwerx may, at its discretion, immediately re-allocate the servicing of a Commercial Client, including in circumstances where:
- (A) the relevant Commercial Client requests re-allocation to another Franchised Business;
  - (B) Poolwerx considers that the Franchisee, its employees or subcontractors lack the requisite Accreditations, training or technical ability to service the Commercial Client to the standard required by Poolwerx; or
  - (C) it is for the overall benefit of the Network.

### **11.3 Centralized Billing and Payment to Franchisee**

The Franchisee agrees and acknowledges that:

1. while the Poolwerx Services and Poolwerx Products are provided by the Franchisee to the Commercial Clients, that the Commercial Clients may, according to the terms of their agreement with Poolwerx, remit payment to Poolwerx; and
2. following receipt of any such payments, Poolwerx will remit the amount owing to the Franchisee, in accordance with the then current payment protocols, less any sums owed by the Franchisee to Poolwerx under this Agreement or any Related Agreement.

### **11.4 Competing with Other Franchisees**

Where a Commercial Client requires Poolwerx Services or Poolwerx Products in more than one location, the Franchisee will not offer lower prices to the Commercial Client than other Franchised Business providing Poolwerx Products or Poolwerx Services to that Commercial Client.

## **12. Franchisee's Payments and Finance Related Obligations**

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### **12.1 Initial Franchise Fee**

If this Agreement is entered into for the grant of a new Franchise, then the Franchisee must pay Poolwerx the Initial Franchise Fee on or before the Commencement Date, unless otherwise specified.

### **12.2 Renewal Fee**

If this Agreement is entered into in respect of a renewal of the Franchise, then the Franchisee must pay the Renewal Fee, on or before any such renewal, unless otherwise specified.

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### **12.3 Franchise Fee**

The Franchisee must pay the Franchise Fee to Poolwerx, in arrears, on the 15<sup>th</sup> day of each month of the Term, or as otherwise specified in the Operations Manual or by Poolwerx in writing from time to time.

### **12.4 Technology Fee**

The Franchisee must pay the Technology Fee to Poolwerx, in arrears (subject to the then current minimum and maximum annual amounts), on the 15th day of each month of the Term, or as otherwise specified in the Operations Manual or by Poolwerx in writing from time to time.

### **12.5 Marketing Fees**

The Franchisee must:

1. pay the Marketing Fee to Poolwerx, in arrears, on the 15th day of each month of the Term, or as otherwise specified in the Operations Manual or by Poolwerx in writing from time to time;
2. expend the Local Area Marketing Obligation in accordance with clause 18.10(b)(i); and
3. expend the Regional Area Marketing Obligation in accordance with clause 18.10(b)(ii).

### **12.6 Convention Fee**

1. The Franchisee must pay the Convention Fee to Poolwerx in 6 equal installments throughout the Financial Year, or as otherwise specified in the Operations Manual or by Poolwerx in writing from time to time.
2. If a Franchisee transfers, sells or assigns the Franchised Business to another person, the unspent portion of the Convention Fee thereto paid will be transferred to the buyer or assignee of the Franchised Business as a contribution towards their Convention Fee.
3. If:
  - (i) the Franchisee or Manager fails to attend the Convention in accordance with Clause 6.7(c); or
  - (ii) Poolwerx terminates this Agreement following a breach by the Franchisee of the terms of this Agreement,the Franchisee will be deemed to have waived any rights to reimbursement or return of the Convention Fee.

### **12.7 Fees for Additional Assistance**

Where Poolwerx provides assistance to the Franchisee beyond those services and activities normally provided by Poolwerx to a Franchisee, as described in the Operations Manual, Poolwerx may charge the Franchisee the Additional Service Fee.



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## **12.8 Method of Payment**

1. The Franchisee must:
  - (i) pay all amounts payable to Poolwerx by the Franchisee under this Agreement or any Related Agreement:
    - (A) in compliance with the Poolwerx Terms of Trade; and
    - (B) into a bank account designated by Poolwerx; and
  - (ii) prior to commencing operation of the Franchised Business, provide the authorization as specified in accordance with clause 6.1(b)(ii).
2. Poolwerx may, by notice in writing to the Franchisee, specify a different method for payment of moneys from the method specified in clause 12.8(a), and the Franchisee must begin using the new method for payment within 14 days after receipt of such notice.

## **12.9 Interest**

1. If the Franchisee fails to pay any amount to Poolwerx in accordance with this Agreement, the Franchisee must pay interest on that amount at the then current Interest Rate, from the time the amount should have been paid, until it is paid in full.
2. Interest:
  - (i) accrues daily;
  - (ii) may be capitalized by Poolwerx; and
  - (iii) is payable immediately on demand.

## **12.10 Costs and expenses**

The Franchisee must pay, or reimburse Poolwerx on demand for, all Costs and Legal Costs in connection with, or incidental to:

1. the negotiation, preparation and execution of any amendment, modification or variation of this Agreement and all Related Agreements;
2. any default by the Franchisee in observing or performing any of its obligations under this Agreement or any Related Agreement;
3. any termination of this Agreement or any Related Agreement; and
4. the contemplated, attempted or actual enforcement, or preservation or exercise of any right by Poolwerx under this Agreement or any Related Agreement, including the obtaining by Poolwerx of any advice or information as to its rights under this Agreement or any Related Agreement.

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### **12.11 Franchisee Must Not Withhold Payment**

1. The Franchisee must not, for any reason, withhold payment of any amount due to Poolwerx, even if:
  - (i) the Franchisee alleges that Poolwerx has not performed or is not performing an obligation imposed upon it under this Agreement or a Related Agreement; or
  - (ii) the Franchisee disputes the amount due.
2. Poolwerx may accept any part payment without prejudice to its right to recover the balance due or pursue any other remedy available to it at Law or under this Agreement.

### **12.12 Application of Payments**

Poolwerx may, at its discretion, apply any payments made by the Franchisee against any past due indebtedness of the Franchisee.

### **12.13 Set Off**

1. Poolwerx may set off any unpaid debts of the Franchisee to Poolwerx or its Affiliate, against any amounts it owes the Franchisee.
2. The Franchisee must not set off any amount that Poolwerx or any of its Affiliates owes or may owe, against any amounts it owes to Poolwerx.

### **12.14 Franchise Fee and Independent Contractor Arrangement**

1. The Franchise Fee specified in this Agreement is determined by the parties on the basis that the relationship between Poolwerx and the Franchisee is that of independent contractor and not employer and employee.
2. If, notwithstanding clause 12.14(a), it is determined that Poolwerx is required to:
  - (i) pay any Costs associated with the Franchisee, including:
    - (A) workers' compensation insurance premiums;
    - (B) any sick, annual, or long service leave entitlements, or other employee entitlements; or
    - (C) fringe benefits tax, superannuation or other statutory charges;
  - (ii) deduct and remit any income tax installment deductions;
  - (iii) remit payroll tax in respect of any statutory liability to make payroll tax payments in relation to its relationship with the Franchisee;
  - (iv) maintain registrations and certificates under the applicable workplace health and safety and workers' compensation Laws in respect of its relationship with the Franchisee; or
  - (v) pay any fine, penalty or other charge as a result of:
    - (A) any failure by Poolwerx to do any one or more of the things specified in clauses 12.14(b)(i) to (iv); or

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- (B) any non-compliance by Poolwerx with its statutory obligations, as determined by a relevant authority,

then:

- (vi) the amount of the Franchise Fee is increased, both retrospectively and prospectively, by an amount equal to any such liabilities incurred by Poolwerx plus all Costs incurred by Poolwerx in respect of such liabilities (**Additional Fee**); and
- (vii) the Additional Fee is payable by the Franchisee to Poolwerx immediately upon written demand.

### **12.15 Dishonored Checks, Direct Debit or EFT Payments**

1. If any payment required to be made by the Franchisee under this Agreement is made by check, direct debit arrangement or electronic funds transfer, and such payment is dishonored, then the Franchisee must pay to Poolwerx on demand:
  - (i) the dishonor fee specified in the Operations Manual; and
  - (ii) any Costs incurred by Poolwerx,by way of reimbursement of the administrative Costs and outlays associated with handling the dishonored payment.
2. Poolwerx is entitled to charge the credit card specified in clause 6.1(b)(ii) for any Costs payable by the Franchisee in connection with clause 12.15(a), or rely on any other payment authorisation given to Poolwerx to obtain such sum.

## **13. Invoicing, Debtors and Remitting Payments**

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### **13.1 Invoicing Commercial Clients**

In respect of work performed by the Franchisee for Commercial Clients, Poolwerx may, at its election:

1. invoice Commercial Clients directly;
2. invoice Commercial Clients via an Affiliate of Poolwerx; or
3. require the Franchisee to invoice Commercial Clients in the name of Poolwerx or an Affiliate of Poolwerx.

### **13.2 Direct invoicing of Commercial Clients**

1. Where Poolwerx, at its discretion, elects to invoice Commercial Clients directly, the Franchisee irrevocably appoints Poolwerx to:
  - (i) invoice such Commercial Clients in respect of all products sales from, and services performed by, the Franchisee in respect of such Commercial Client; and
  - (ii) at the Franchisee's Cost, collect all debts in relation to such invoices.
2. Where a Commercial Client has had product sales from, or services performed by:

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- (i) more than one Franchised Business; or
  - (ii) Poolwerx and one or more Franchised Business,

Poolwerx may, at its discretion, provide the Commercial Client with a single consolidated invoice for all amounts owing by such Commercial Client (**Consolidated Invoices**).

3. All Costs associated with collecting any debts in relation to Consolidated Invoices will be shared proportionately by Poolwerx and all Franchised Business based on the value (if any) of products supplied to, or services performed for, the relevant Commercial Client by Poolwerx and each Franchised Business.
4. If:
  - (i) a part payment is received in respect of a Consolidated Invoice; and
  - (ii) the Commercial Client has not indicated in writing which part of the Consolidated Invoice the part payment relates to, Poolwerx may, at its discretion, allocate such part payment to any part of the Consolidated Invoice as it sees fit.
5. Subject to clauses 13.2(c) and (d), Poolwerx will remit any amounts owing to the Franchisee in respect of monies collected by it under this clause 13.2 Commercial Clients in accordance with its then current payment protocols.
6. The Franchisee:
  - (i) will not; and
  - (ii) agrees and acknowledges that Poolwerx is under no obligation to, disclose any of the arrangements of this clause 13.2 to any Commercial Clients.

## **14. Operations Manual**

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### **14.1 Supply of Operations Manual**

Poolwerx must make available to the Franchisee, in such format as Poolwerx considers appropriate, the Operations Manual containing the confidential and mandatory specifications and Standards prescribed from time to time by Poolwerx for the operation of a Franchised Business, and the maintenance of the System and Image.

### **14.2 Franchisee Must Comply with Operations Manual**

1. The Franchisee must operate the Franchised Business strictly in accordance with the provisions of the Operations Manual, which must be treated as part of this Agreement.
2. If the Operations Manual is inconsistent with the terms of this Agreement, the terms of this Agreement prevail to the extent of the inconsistency.

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### **14.3 Changes to Operations Manual**

1. Poolwerx may add to, delete or otherwise modify the Systems and Standards, instructions and any other information set out in the Operations Manual by giving written notice to the Franchisee of the change, or making such change available via the Intranet.
2. A change under clause 14.3(a) takes effect and forms part of the Operations Manual ten (10) Business Days after the earlier of it being:
  - (i) sent to the Franchisee; or
  - (ii) made available on the Intranet.
3. The Franchisee must, at its Cost:
  - (i) adopt in the conduct of the Franchised Business all changes to the Operations Manual; and
  - (ii) be at all times compliant with the terms of the Operations Manual.

### **14.4 Franchisee Must Keep Operations Manual Secure**

The Operations Manual is provided to the Franchisee by way of loan only, and the Franchisee must:

1. keep the Operations Manual in a safe and secure place;
2. return to Poolwerx on demand all superseded, replaced or outdated copies of the Operations Manual;
3. ensure that online access to the Operations Manual is restricted to the Manager and the Guarantors; and
4. not make any copies of the Operations Manual.

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## **15. Training, Meetings, Educational Forums and Conventions**

### **15.1 Poolwerx to Provide Training**

1. Poolwerx, an approved contractor, or an Approved PiP on behalf of Poolwerx, will provide:
  - (i) the Initial Training Program so long as it receives payment of the then-current Initial Training Fee;
  - (ii) the Ongoing Training;
  - (iii) training based accreditation; and
  - (iv) other training as determined by Poolwerx at its discretion,in accordance with the terms of this Agreement and the Operations Manual.
2. Poolwerx will lend its standard training material to the Franchisee and update such material or lend supplementary training materials from time to time.

### **15.2 Franchisee Accreditations**

The Franchisee agrees to ensure, in accordance with the requirements of the Operations Manual, that:

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1. the Franchisee, the Manager and all employees of the Franchisee obtain and maintain all necessary Accreditations; and
  2. the Franchised Business only provides products and services for which the Franchisee holds the requisite Accreditations.

### **15.3 Meetings, Educational Forums and Conventions**

1. Poolwerx may convene meetings, training, educational forums or conventions (**Educational Seminar**) at such intervals as specified in the Operations Manual, or as otherwise required by Poolwerx from time to time:
  - (i) for all Franchised Business;
  - (ii) for groups of Franchised Business;
  - (iii) for the Franchisee (only); or
  - (iv) for the Manager and employees of Franchised Business, as designated by Poolwerx.
2. The location, agenda, duration, and all procedures and formats of each Educational Seminar will be as determined by Poolwerx.
3. The Franchisee, the Manager and such of the Franchisee's employees as Poolwerx considers necessary must attend all Educational Seminars.
4. Poolwerx must provide the notice period specified in clause 6.7(b) in respect of any Educational Seminar.

### **15.4 Fees and Costs**

The Franchisee must:

1. pay to Poolwerx, in advance or as directed by Poolwerx, the fees prescribed by Poolwerx for providing any training supplementary to the Initial Training Program;
2. pay to Poolwerx, in advance, the fees prescribed by Poolwerx for providing any Educational Seminars;
3. pay to Poolwerx, or as directed by Poolwerx, the Costs of all training undertaken in accordance with the Operations Manual or as otherwise required by Poolwerx at its discretion;
4. pay to Poolwerx, in advance or as directed by Poolwerx, all Costs of the Franchisee, the Manager or any of the Franchisee's employees attending the Convention or any Educational Seminar, including travel, accommodation, meal and incidental expenses; and
5. maintain, at the Franchisee's Cost, any license, ticket or Accreditation obtained as a result of any Educational Seminar attended pursuant to this clause 15.

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### **15.5 Franchisee's Failure to Attend**

If the Franchisee fails to attend and actively participate in the Convention or any Educational Seminar:

1. without providing reasonable justification in writing to Poolwerx prior to the Educational Seminar or Convention; or
2. on a regular or ongoing basis, such failure will be considered an Event of Default under clause 35, notwithstanding that such failure cannot be remedied.

### **15.6 Training Material**

The Franchisee will keep all training material provided to the Franchisee confidential and in a secure place.

## **16. Approved Equipment**

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### **16.1 Purchase or Lease of Approved Equipment Specified in Operations Manual**

The Franchisee must:

1. purchase or lease each item of the Approved Equipment listed in the Operations Manual prior to the Commencement Date;
2. purchase or lease any item of Approved Equipment subsequently added to the Operations Manual or otherwise notified in writing by Poolwerx to the Franchisee, within 30 days of the earlier of such addition or receipt of such written notice; and
3. pay or reimburse Poolwerx for the Cost of any Approved Equipment supplied by Poolwerx as part of the Build Out in accordance with any terms agreed with Poolwerx.

### **16.2 Purchase or Lease of Equipment not Specified in Operations Manual**

If the Franchisee wishes to purchase or lease a piece of equipment for use in the Franchised Business, and that piece of equipment is not specified in the Operations Manual, the Franchisee must:

1. provide Poolwerx with the details of that piece of equipment and the means by which the Franchisee intends to acquire it; and
2. only purchase or lease such equipment if it has received the written consent of Poolwerx.

### **16.3 Approved Equipment Must be New**

Each item of Approved Equipment must be new unless Poolwerx consents in writing to the purchase of a second-hand item.

### **16.4 Maintenance of the Approved Equipment**

The Franchisee must:

1. maintain in good order and repair each item of Approved Equipment as specified in the Operations Manual; and
2. ensure that the Franchisee adequately trains each employee in the use and maintenance of each item of Approved Equipment.

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## **16.5 Replacement of the Approved Equipment**

The Franchisee must replace each item of Approved Equipment, with a similar item when:

1. required in writing by Poolwerx;
2. it becomes inoperable or obsolete; or
3. it is prudent for the proper operation of the Franchised Business.

## **17. Vehicle**

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### **17.1 Purchase of Vehicles**

The Franchisee must purchase or lease at least one Vehicle for use in the conduct of the Franchised Business.

### **17.2 Specifications of Vehicle**

Any Vehicles used in the Franchised Business must:

1. be of a make and model as specified in the Operations Manual;
2. at all times, be not more than five (5) years old unless authorized in writing by Poolwerx;
3. bear the Trademarks and otherwise be decorated and fitted out as specified in the Operations Manual;
4. bear only approved contact details, including the Poolwerx central telephone number and website details;
5. not display any unapproved stickers, logos or messages that are visible when viewing the Vehicle from the outside;
6. be appropriately equipped to transport the Approved Equipment and to otherwise facilitate the provision or sale of the Poolwerx Products and the Poolwerx Services;
7. if the Vehicle is a truck with an open flatbed, have the flatbed covered with a lockable canopy; and
8. conform to any other specifications set out in the Operations Manual.

### **17.3 Franchisee's Duties in Relation to the Vehicle**

The Franchisee must:

1. prior to the Commencement Date, obtain Comprehensive and Commercial Automobile Liability Insurance, Uninsured/Underinsured Motorist Coverage and No-Fault Protection, Property Damage and such other Vehicle-related insurance in such amounts and with such maximum deductibles and minimum coverage as Poolwerx may from time to time specify in the Operations Manual;
2. prior to the Commencement Date, decorate and equip each Vehicle;
3. if requested by Poolwerx, install and maintain a specified GPS tracking device in the Vehicle and allow Poolwerx to monitor, inspect, use and retain the historical and live data recorded on that device;



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4. redecorate and re-equip the Vehicles used in the Franchised Business upon the request of Poolwerx to ensure that the Vehicles comply with the specifications contained in the Operations Manual;
  5. not alter the manner in which a Vehicle is decorated or equipped without the prior written consent of Poolwerx;
  6. redecorate the Vehicles if Poolwerx modifies or changes the Trademarks in accordance with clause 24.7;
  7. at any time, upon request by Poolwerx, deliver the Vehicle to an address specified by Poolwerx for inspection and approval by Poolwerx or its authorized representative of the decoration, equipping and state of cleanliness and repair of the Vehicle;
  8. ensure that:
    9. any Vehicle used in the Franchised Business undergoes safety inspections on such regular basis as required of commercially registered vehicles within the State in which the Franchised Business is located;
      - (ii) such safety inspections are conducted by qualified mechanics; and
      - (iii) any safety defects identified during the safety inspections are rectified within the applicable legal timeframes within the State in which the Franchised Business is located and, if no timeframes are prescribed, within 14 days after such safety inspection;
    - (i) at the request of Poolwerx, provide evidence to it that the required safety inspections and repairs have been carried out; and
    - (j) otherwise maintain the Vehicles used in the Franchised Business in accordance with any fleet maintenance program specified by Poolwerx or as specified in the Operations Manual.

#### **17.4 Replacement of Vehicle**

1. The Franchisee must replace a Vehicle with another vehicle that complies with clause 17.2 within 5 years of the date of the Vehicle's manufacture.
2. Prior to disposing of any Vehicle or ceasing to use a Vehicle in the Franchised Business, the Franchisee must, at the Franchisee's cost, remove all Poolwerx signage, Trademarks, Image, logos, artwork, trade dress and other features, such that the Vehicle is returned to its base color and cannot be identified as ever having been associated with the Poolwerx Network.

#### **17.5 Approved PiPs**

Subject to clause 10.2, the Franchisee must obtain sign writing, Vehicle decoration (or re-decoration), Vehicle equipping (or re-equipping) services and Vehicle maintenance services only from an Approved PiP.

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## **18. Marketing**

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### **18.1 Marketing by Poolwerx**

Poolwerx may, at its discretion, conduct any marketing or promotional activity in relation to the Franchised Business and the Network.

### **18.2 Marketing by Franchisee**

The Franchisee must, unfailingly and with all due diligence, continuously:

1. market and promote the Franchised Business:
  - (i) strictly in accordance with the standards and procedures; and
  - (ii) using telephone, website, domain name, email and other digital marketing tools and other communication numbers or identifiers, as set out in the Operations Manual or as prescribed by Poolwerx;
2. participate and cooperate fully with Poolwerx and other Franchised Business in all marketing, promotional and market research activities, events and initiatives in the:
  - (i) Marketing Area; and
  - (ii) the area covered by the Regional Area Marketing Fee; and
3. participate in all other marketing, market research, sales and promotional programs required by Poolwerx, and promptly pay the Costs of these programs upon demand from Poolwerx.

### **18.3 Approval of Poolwerx to Marketing or Promotional Activity**

The Franchisee must obtain the written approval of Poolwerx prior to undertaking any marketing or promotional activity under clause 18.2.

### **18.4 Prohibited Marketing, Sales and Other Prohibited Activity**

1. The Franchisee is prohibited from creating, maintaining or participating in any website or social networking media, digital marketing platform or technology without the prior written approval of Poolwerx.
2. The Franchisee and the Guarantors are prohibited from:
  - (i) creating or maintaining any e-commerce site or selling any Approved Products or offering Poolwerx Services through such sites; and
  - (ii) posting, or allowing or causing to be posted on any website or social media platform, derogatory comments, images or statements (including blogs) that are derogatory or critical of Poolwerx or any of its Affiliates, officers, employees or directors, Approved PiPs, any Franchised Business or any Clients.

### **18.5 Misleading or deceptive**

The Franchisee must ensure that all marketing and promotional activities:

1. are not in any way misleading or deceptive; and

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2. conform to the highest standards of ethical marketing, and the policies prescribed by Poolwerx and applicable Law.

### **18.6 Franchisee Marketing Reports**

The Franchisee must, whenever requested by Poolwerx, provide regular reports to Poolwerx in the manner and form as described in the Operations Manual specifying:

1. the marketing and promotion undertaken by the Franchisee;
2. the outcomes of such marketing and promotion; and
3. providing proof that such marketing and promotion has taken place, including but not limited to supplying invoices as evidence of the incurrence of marketing expenditure.

### **18.7 Marketing Area**

1. The Franchisee is entitled to market and promote the Franchised Business in the Marketing Area in accordance with the terms of clause 2.3 and this clause 18.
2. Should a Franchised Business conduct marketing in breach of its franchise agreement, Poolwerx will use reasonable efforts to seek to enforce the terms of the franchise agreement of such Franchised Business.
3. The Franchisee agrees that it cannot sell or transfer the Marketing Area in whole or in part without first obtaining the express written consent of Poolwerx in accordance with clause 33.
4. Notwithstanding clause 18.7(b), the Franchisee acknowledges and agrees that:
  - (i) Poolwerx will have no liability to the Franchisee to take legal action or to pay compensation arising out of the conduct of other Franchised Business;
  - (ii) clause 2.3 and clause 18.7(b) will not apply to any area that:
    - (A) is not, or becomes no longer, specifically within the boundaries of the Marketing Area;
    - (B) is subject to an arrangement with a Franchised Business as at the Commencement Date;
    - (C) is additional area allocated to the Franchisee on a non-exclusive basis; or
    - (D) is in an unallocated area.
5. The Franchisee:
  - (i) acknowledges that from time to time demographics, postal codes, telephone and digital areas, local media circulation, roads and other physical and non-physical boundaries change; and
  - (ii) agrees that Poolwerx will:
    - (A) be entitled, at any renewal of this Agreement, to change the Marketing Area to take into account such changes to

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ensure the efficient and effective servicing of Clients, or operation of the Poolwerx System or Network; and

- (B) promptly notify the Franchisee of any change to the Marketing Area, and that change will be effective 20 Business Days from the date Poolwerx provides notice to the Franchisee.
6. Poolwerx may, where requested by the Franchisee, consent to change the Marketing Area, and any such change will be effective on and from the date agreed by the parties in writing.
  7. The Franchisee may market and promote the Franchised Business outside the Marketing Area provided that:
    - (i) there is no Franchised Business operating in that area;
    - (ii) the Franchisee obtains the prior written consent of Poolwerx;
    - (iii) the Franchisee executes such documentation as is reasonably required by Poolwerx; and
    - (iv) the Franchisee provides to Poolwerx such reports, details or Client lists in respect of the Clients outside the Marketing Area as Poolwerx may require from time to time.

#### **18.8 Reservation of the Rights of Poolwerx**

Without limiting any other rights that Poolwerx may have under this Agreement, the Franchisee agrees that Poolwerx may either itself or through:

1. its Affiliates or via any contractors; or
  2. Franchised Business, licensees or other third parties,
- provide Poolwerx Products and Poolwerx Services to Clients inside the Marketing Area:
3. in accordance with clause 8.4;
  4. where a Client located within the Franchisee's Marketing Area requests re-allocation to Poolwerx or another Franchised Business;
  5. where Poolwerx considers that the Franchisee, its employees or subcontractors lack the necessary Accreditations, requisite training, technical ability or service skills to service a particular Client within the Franchisee's Marketing Area; or
  6. where Poolwerx considers that the Franchisee, its employees or subcontractors have impaired or prejudicially affected, or are likely to, impair or prejudicially affect, the reputation of Poolwerx, the System or the Image.

#### **18.9 Photography Release**

If, as part of any promotional activity authorized by Poolwerx, the Franchisee or the Guarantor is photographed, the Franchisee and the Guarantor:

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1. consent to the use of the photograph and the Franchisee's or the Guarantor's names in promotional activities of the Network or the Franchised Business;
  2. acknowledge that such consent extends to any use of the photograph after the expiration or earlier termination of this Agreement; and
  3. acknowledge that no royalty or fee for the continued use of such photograph will be paid or payable to the Franchisee or the Guarantor.

#### **18.10 Franchisee Marketing Contributions**

1. The Franchisee must, upon entry into this Agreement, and as directed by Poolwerx:
  - (i) expend not less than the Opening Promotional Amount; or
  - (ii) pay to Poolwerx the Opening Promotional Amount, which amount Poolwerx may, at its discretion be:
    - (A) paid into the Marketing Fund; or
    - (B) used to reimburse the Franchisee for expenses incurred by the Franchisee in conducting marketing and promotion activities within the first 3 months of the Term.
2. The Franchisee must expend:
  - (i) the Local Area Marketing Obligation across its Marketing Areas each Financial Year in accordance with the Business Plan approved by Poolwerx, or as otherwise specified in the Operations Manual or by Poolwerx in writing from time to time; and
  - (ii) the Regional Area Marketing Obligation, unless otherwise directed by Poolwerx or specified in the Operations Manual.

#### **18.11 Use of Marketing Fund**

1. Poolwerx must:
  - (i) establish and operate a marketing fund to be known as the "Marketing Fund";
  - (ii) administer the Marketing Fund in accordance with this clause 18.11; and
  - (iii) account through the Marketing Fund for the Marketing Fees and any marketing fees paid by other Franchised Business.
2. Poolwerx may, at its discretion, use the Marketing Fund to pay the costs of, or associated with, any marketing, advertising, promotions, brand building, commercial business development, retail growth strategies (including the look and feel of displays), merchandising or and public relations, including:
  - (i) developing and conducting, national, international, regional or local advertising, marketing or promotional activities;
  - (ii) Client database acquisition, development and management, brand building, business networking, strategic alliances, public and media appearances, or attending or conducting training for franchisees or Poolwerx employees on such matters;

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- (iii) conducting formal and informal research, including research in relation to products, services or Clients;
  - (iv) sourcing the production of marketing materials and other point-of-sale materials;
  - (v) developing and conducting public relations activities, commercial business development or other programs;
  - (vi) Client or supplier relations, Mystery Shopper or other Client service programs or Client Loyalty Programs;
  - (vii) digital marketing activities, including the development of a website and other technology-related advertising and marketing advancements, such as customer relationship management tools;
  - (viii) engaging advertising agencies, research agencies, public relations agencies or marketing consultants;
  - (ix) engaging commercial development staff to actively promote Poolwerx to existing or potential Clients for the benefit of franchisees;
  - (x) conducting or subsidizing sales, marketing or Client service training to franchisees, including the Costs of Poolwerx staff or contractors working with the Franchisee in the Franchisee's Business, with a view to increasing the sales of the Franchisee;
  - (xi) coordinating the activities set out in this clause 18.11;
  - (xii) administering the Marketing Fund, including overhead and administrative Costs, the Cost of materials, the Cost of salaries and the other Costs for employees administering the Marketing Fund;
  - (xiii) printing and stationery Costs in relation to any activities contemplated by this clause 18.11(a);
  - (xiv) Costs associated with the engagement of any consultants providing relevant services or other activities in relation to the marketing, development or promotion of the Network or Image;
  - (xv) payment of audit, accounting, legal and other fees in respect of audits of the records of the Marketing Fund; and
  - (xvi) any associated salary, other chargeable expenses, travel and accommodation and other allocated expenses (including, without limitation, insurance, communications, office space and overhead Costs) in relation to any activities contemplated by this clause 18.11(a).

## **18.12 Franchisee's Acknowledgments**

The Franchisee acknowledges and agrees that:

1. Poolwerx may not expend the total contributions to the Marketing Fund in the Financial Year in which those contributions are received;
2. Poolwerx may accumulate a reserve in the Marketing Fund if Poolwerx thinks this is appropriate;

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3. at the end of the Franchise, the Franchisee is not entitled to any of the money held in the Marketing Fund, or to a refund of any money contributed to the Marketing Fund;
  4. Poolwerx may contribute, loan to, or withdraw money from, the Marketing Fund, including where Poolwerx seeks reimbursement for previous expenditure or the money in the Marketing Fund is not at the time required for immediate expenditure from the Marketing Fund for the purposes of the Marketing Fund;
  5. Poolwerx reserves the right to charge interest in respect of sums it has loaned to the Marketing Fund, or where it has incurred expenditure, on behalf of the Marketing Fund;
  6. Poolwerx may administer the Marketing Fund in the manner it considers appropriate; and
  7. Poolwerx is not required to spend any proportion of the money in the Marketing Fund in any particular location or in respect of any particular Franchised Business.

#### **18.13 Marketing Fund Accounts**

1. Poolwerx must keep up to date and accurate accounting and financial records, and maintain a separate bank account in relation to money paid to it for the Marketing Fund.
2. Poolwerx shall, within a reasonable time following receipt of a written request from the Franchisee, furnish the Franchisee with the unaudited financial statements of the Marketing Fund relating to the most recently completed Financial Year.

#### **18.14 Marketing Fund Wind-Up**

1. Poolwerx may wind up the Marketing Fund at any time during the Term.
2. After payment of all Costs authorized by clause 18.11(b), and the Costs of winding up, Poolwerx may at its discretion:
  - (i) establish a new marketing fund to be operated by Poolwerx, and transfer all or part of the balance of the original Marketing Fund to the new marketing fund;
  - (ii) use all or part of the balance of the Marketing Fund in accordance with clause 18.11(b); or
  - (iii) distribute all or part of the balance of the Marketing Fund equitably between all Franchised Business and Poolwerx having regard to the amounts contributed by each Franchised Business and Poolwerx, including amounts contributed by Poolwerx in respect of company owned businesses.

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**19. Client Loyalty Program**

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- (a) Poolwerx may, at its discretion, establish and operate a Client Loyalty Program from time to time.
- (b) The Franchisee must participate fully in any Client Loyalty Program which Poolwerx establishes and implements.
- (c) The terms on which the Franchisee will participate in the Client Loyalty Program will be as set out in the Operations Manual, or as advised by Poolwerx from time to time.
- (d) The Franchisee must purchase from Poolwerx, or as directed by Poolwerx:
  - (i) any cards, application forms, and other materials; and
  - (ii) any applicable hardware, Software or Software licenses recommended by Poolwerx, as and when required by Poolwerx for use in connection with any Client Loyalty Program.
- (e) Poolwerx may, at its discretion, by written notice to the Franchisee:
  - (i) alter the terms of a Client Loyalty Program; or
  - (ii) withdraw from supply the cards, application forms and other materials for use in connection with Client Loyalty Program.
- (f) The Franchisee will no longer have the right to continue marketing to a Client introduced to the Client Loyalty Program by the Franchisee if:
  - (i) this Agreement
    - (A) ends or is otherwise terminated; or
    - (B) is amended, and the Client is no longer within the Marketing Area; or
  - (ii) the Client:
    - (A) no longer wishes to receive marketing from the Franchisee;
    - (B) is included on any “Do Not Call Register” established under any federal or state law or by any governmental authority; or
    - (C) decides another Franchised Business is more conveniently located to service or supply them.

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**20. The Premises Where a Franchise Requests to Operate a Retail Location**

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**20.1 Locating Premises**

- 1. If no premises are specified in Item 8 of Schedule 1, the Franchisee must actively seek suitable Premises for the conduct of the Franchised Business in accordance with the procedures set out in the Operations Manual.
- 2. If no premises are located by the Franchisee within 6 months after the later of:
  - (i) the date of this Agreement; or
  - (ii) this clause 20 first becoming applicable to the Franchisee,



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Poolwerx may, without prejudice to its accrued rights and remedies, terminate this Agreement by written notice to the Franchisee.

3. The Franchisee must obtain the prior written consent of Poolwerx to the location of any Premises established pursuant to this clause 20, and must not establish a retail store without the prior written consent of Poolwerx.
4. The Franchisee must:
  - (i) take all necessary steps to obtain the approval of Poolwerx for the Premises, including by providing written confirmation of the Premises on the terms contained in clauses 20.3(a)(i), (ii) and (iii); and
  - (ii) ensure that it is suitable for the then current Poolwerx Retail Location concept.
5. Where Poolwerx terminates this Agreement pursuant to clause 20.2(b);
  - (i) the Franchisee will not be entitled to any refund of the Initial Franchise Fee, any other sums paid to Poolwerx or an Affiliate of Poolwerx, or any Costs incurred by the Franchisee; and
  - (ii) all Related Agreements will also terminate.

## **20.2 Franchisee Satisfied with Premises**

1. The Franchisee confirms its approval of any Premises which are described in Item 8 of Schedule 1, and acknowledges that it has:
  - (i) made all necessary inquiries and has conducted its own due diligence in relation to the Premises;
  - (ii) absolutely and unconditionally satisfied itself as to the suitability of the Premises and the location of the Premises for the conduct of the Franchised Business; and
  - (iii) entered into this Agreement as a result of the Franchisee's own assessment of all of these matters and not in reliance upon any alleged statement, warranty, condition or representation made, or alleged to have been made, to the Franchisee by Poolwerx, or by any person on behalf of Poolwerx.
2. After the Franchisee confirms in writing its approval of the Premises, the Franchisee must reimburse Poolwerx, upon request by Poolwerx, for any Costs incurred by Poolwerx in assisting the Franchisee in seeking suitable Premises.

## **20.3 No Representation by Poolwerx**

Poolwerx makes no representation or warranty as to the suitability or otherwise of the Premises at present, or at any time in the future, for the conduct of the Franchised Business.

## **20.4 Occupancy Rights and Step-in Rights**

1. Where Poolwerx, an Affiliate of Poolwerx or the Franchisee do not hold any Occupancy Right:

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- (i) subject to clause 20.5(b), the Franchisee must obtain an Occupancy Right;
  - (ii) the Franchisee must not execute any document conferring, or which would on acceptance confer, any Occupancy Right without first obtaining written approval of Poolwerx to the terms of that document;
  - (iii) where Poolwerx requests, the Occupancy Right must include step-in-rights for Poolwerx that at a minimum give Poolwerx or its Affiliate an enforceable right to:
    - (A) require an assignment of the Occupancy Right to Poolwerx or its Affiliate at the end of the Franchise; and
    - (B) take an assignment of the Occupancy Right if the grantor of the Occupancy Right seeks to terminate the Occupancy Right or the Franchisee does not exercise any option to extend the Occupancy Right; and
  - (iv) the Franchisee will bear all Costs including but not limited to any Legal Costs incurred by the grantor of the Occupancy Right in reviewing and negotiating any document granting Poolwerx step-in rights.
2. At the request of Poolwerx, at any time during the Term, the Franchisee must sign an instrument of transfer, or an assignment of lease, to be prepared by Poolwerx, effecting the assignment of the Occupancy Right to Poolwerx or its Affiliate at the expiration or termination of the Franchise. Such instrument or deed will not be dated at the time it is signed and the Franchisee authorizes Poolwerx to insert the date into the instrument or deed which is the same as the date that the Franchise comes to an expiration or termination.

## **20.5 Franchisee Holds Occupancy Rights**

If the Franchisee is or becomes the owner of the Premises, the Franchisee must, at its Cost and whenever requested to do so by Poolwerx:

1. procure an amendment of the document conferring the Occupancy Right on terms satisfactory to Poolwerx, including procuring an agreement that the grantor of the Occupancy Right will enter into an agreement with the Franchisee and Poolwerx by which Poolwerx obtains an enforceable right to require an assignment of the Occupancy Right to Poolwerx or its Affiliate at the expiration or termination of the Franchise, and giving Poolwerx or its Affiliate the option to take an assignment of the Occupancy Right if the grantor of the Occupancy Right seeks to terminate the Occupancy Right or the Franchisee does not exercise any option; and
2. procure consent to the agreements referred to in this clause by any mortgagee or other interested party, including without limitation any head-  
lessor.

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## **20.6 Poolwerx to Grant Occupancy Rights**

1. In any circumstances where Poolwerx, or an Affiliate of Poolwerx, is the owner of the Premises, or holds or obtains an Occupancy Right, Poolwerx shall be entitled, at its discretion, to determine the structure of such Occupancy Right.
2. The Franchisee must accept from Poolwerx and Poolwerx must (or Poolwerx must procure its Affiliate to) provide either:
  - (i) a grant to the Franchisee of any Occupancy Right; or
  - (ii) an assignment of the Occupancy Right to the Franchisee,for a period and on commercial terms similar to those enjoyed by Poolwerx, and otherwise on terms and conditions determined by Poolwerx or its Affiliate at its discretion.

## **20.7 No Occupancy Rights Created by this Agreement**

The Franchisee acknowledges that no Occupancy Rights are created by this Agreement.

## **20.8 Termination of Occupancy Rights**

1. If Poolwerx or an Affiliate of Poolwerx confers an Occupancy Right on the Franchisee, then, despite any provision to the contrary contained in any document conferring such Occupancy Right:
  - (i) Poolwerx or its Affiliate may terminate that Occupancy Right at the expiration or termination of the Franchise; and
  - (ii) the Franchisee will have no claim against Poolwerx or the Affiliate for any early termination.
2. The Franchisee must, on demand from Poolwerx, reimburse Poolwerx or a third party at the direction of Poolwerx, the Costs or any part of the Costs associated with such termination by Poolwerx or its Affiliate.

## **20.9 Build Out by Franchisee**

1. The Franchisee must:
  - (i) design and construct the Build Out and redecorate the Premises in accordance with the:
    - (A) Standards;
    - (B) Plans; and
    - (C) the Refurbishment Plan;
  - (ii) comply in all respects with Poolwerx's style guides and Operations Manual requirements for Premises, including requirements as to layout, construction, decor, color schemes, signage, fixtures, furnishing and equipment;
  - (iii) obtain the prior written consent of Poolwerx to the Build Out;

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- (iv) acquire and install all Approved Equipment considered necessary by Poolwerx for the operation of the Franchised Business; and
    - (v) complete the Build Out in accordance with the timeframes specified in the Refurbishment Plan.
  2. The Franchisee must, on demand from Poolwerx, reimburse Poolwerx or a third party at the direction of Poolwerx, the Costs or any part of the Costs associated with the Franchisee's obligations under clause 20.10(a).
  3. The Franchisee must pay all incidental Costs of carrying out its obligations under clause 20.10(a), including in relation to any security deposits, telephone connections, and other out-of-pocket expenses.
  4. The Franchisee must seek and obtain the approval of Poolwerx prior to the commencement of any construction.
  5. Where Poolwerx wishes to defer final approval in reviewing any constructions, the Franchisee:
    - (i) will provide Poolwerx access to the constructions at such times as Poolwerx shall reasonably require; and
    - (ii) must address all issues raised by Poolwerx or its representatives.
  6. If Poolwerx requires the Franchisee to perform any rectification of the construction, then such rectification must be completed by the Franchisee within 20 Business Days of Poolwerx notifying the Franchisee of such need for rectification.
  7. Poolwerx will arrange for an authorized Poolwerx representative to undertake the inspection and approval process in accordance with this clause.

#### **20.10 Limitation of Liability on Build Out**

1. In undertaking any role in the Build Out, the responsibility of Poolwerx is limited to exercising reasonable care in the performance of services directly provided by Poolwerx during the Build Out.
2. The Franchisee acknowledges that:
  - (i) this Agreement does not impose any obligation on Poolwerx to perform duties of a technical nature; and
  - (ii) Poolwerx is not responsible for the acts or omissions of an Approved PiP or any other person involved in the Build Out, including any architects, consultants, contractors, tradesmen or employees, even if they are engaged by Poolwerx.
3. Nothing in this Agreement may be construed as a representation, warranty or guarantee by Poolwerx or any other person on behalf of Poolwerx that the Build Out will be completed within any time frame or within any Cost estimate supplied by Poolwerx, or of the work performed or the materials supplied by any third party in connection with the Build Out.

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## Relocation of Premises or Additional Poolwerx Retail Locations

4. The Franchisee may relocate the Franchised Business to other premises, or establish additional Poolwerx Retail Locations if all of the following conditions are satisfied:
  - (i) the Franchisee has obtained the prior written approval of Poolwerx;
  - (ii) an Occupancy Right acceptable to Poolwerx is secured in accordance with this clause 20;
  - (iii) the Premises are built out at the Franchisee's Cost to conform to the then prevailing Image and Standards, and otherwise in accordance with clause 20.10; and
  - (iv) in relation to a relocation (only):
    - (A) the new Premises are located within reasonable proximity to the original Premises;
    - (B) the Franchisee pays to Poolwerx all of the Costs of Poolwerx (including Legal Costs and time spent by its employees) in connection with the relocation;
    - (C) Poolwerx and its Affiliates are released by the owner or lessor (if any) from all of their obligations actual or contingent (if any) to the owner or lessor of the original Premises, and that any security held in respect of the Premises is released; and
    - (D) the Franchisee and the Guarantors are released from all of their obligations actual or contingent (if any) to the owner or lessor (if any) of the original Premises, and that any security held in respect of the Premises is released.
5. In respect of any relocation, if Poolwerx does not give its approval in accordance with clause 20.12(a)(i) within 30 days after the date that the Franchised Business or Retail Location ceases to operate at the original Premises, then:
  - (i) Poolwerx may terminate this Agreement by written notice to the Franchisee; and
  - (ii) Poolwerx is not required to pay any compensation to the Franchisee or any other person in respect of the termination.

### 20.11 Obligations in Connection with Premises

1. The Franchisee must:
  - (i) comply with the terms of any document conferring an Occupancy Right;
  - (ii) maintain the Premises in good and substantial repair, order and condition and otherwise in accordance with the Operations Manual;
  - (iii) ensure that the Premises are always clean and tidy;

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- (iv) ensure that the Premises comply with all Laws and the requirements of any authority;
  - (v) use the Premises for the proper conduct of the Business and for no other purpose;
  - (vi) ensure that the Premises are compliant with the Standards;
  - (vii) not make any alterations to the Premises without obtaining the prior written consent of Poolwerx; and
  - (viii) keep exterior signs on the Premises lit as may be required by Poolwerx, but subject to any requirements by Law or the landlord.
2. Except in relation to clause 20.13(a)(viii), if any obligation imposed upon the Franchisee under clause 20.13(a) is inconsistent with the terms of any document conferring an Occupancy Right, the obligations under clause 20.13(a) prevail to the extent of any inconsistency.
  3. The Franchisee must complete a Premises Upgrade in accordance with the Refurbishment Plan, except:
    - (i) where such Premises Upgrade is due during the last 12 months of the Initial Term; and
    - (ii) the Franchisee has advised Poolwerx in writing that it does not wish to renew the Franchise.
  4. If the Franchisee defaults in its obligations under clause 20.13(c), and fails to remedy that default within 30 days after notice from Poolwerx to do so, then without prejudice to any other right or remedy that Poolwerx has:
    - (i) Poolwerx, an Affiliate of Poolwerx or any third party contracted by Poolwerx, may enter the Premises and remedy the default; and
    - (ii) the Franchisee must pay the Costs incurred by Poolwerx, the Affiliate or any third party in remedying the default.

#### **20.12 Entry by Poolwerx**

1. Poolwerx (or its officers, employees and agents) may enter the Premises at any time, without any requirement to provide prior notice:
  - (i) to inspect the state of repair and condition of the Premises or any Vehicle;
  - (ii) to inspect the inventory and any other equipment used in the Franchised Business; or
  - (iii) to ensure the Franchisee is complying with its obligations under this Agreement.
2. The Franchisee must provide all assistance reasonably required by Poolwerx to enable it to conduct any inspection in accordance with clause 20.14(a).

#### **20.13 Approved PiPs**

Subject to clause 10.2, the Franchisee must obtain Build Out, decoration and redecoration services from an Approved PiP or supplier.

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## **21. Franchisee to Maintain Records**

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### **21.1 Franchisee to Maintain Records**

The Franchisee must:

1. keep full Transaction Records (and backups of such records) and maintain accurate and up-to-date business records, accounts and financial records conforming to accepted accounting practices, and as required by the Operations Manual;
2. maintain bookkeeping, accounting, inventory control, statistical records, Client records, Vehicle tracking records, Client Service History Cards, water testing history, test history data and any other records as may be reasonably required by Poolwerx, which are accurate and otherwise conform to the requirements of Poolwerx;
3. keep all records maintained in accordance with clause 21.1(a) and (b) for at least five (5) years after the date they are created; and
4. allow a Poolwerx representative to inspect any such information and provide it to Poolwerx immediately upon request.

### **21.2 Failure by Franchisee to Maintain Records**

1. If the Franchisee does not maintain or provide records in accordance with clause 21.1:
  - (i) Poolwerx may provide services and systems it considers necessary for the Franchised Business;
  - (ii) the Franchisee must provide Poolwerx with all data and documents requested by Poolwerx for such purpose; and
  - (iii) Poolwerx may prepare financial reports and statements for the Franchised Business based upon data and documents provided by the Franchisee.
2. If the Franchisee fails to provide required information or reports, the Franchisee irrevocably consents to Poolwerx estimating the Franchisee's sales and other business information using such information as Poolwerx shall consider appropriate, including any key performance indicators, Minimum Performance Criteria, amounts in the Franchisee's Business Plan or current average sales of Franchised Business in the Franchisee's region with such adjustments as Poolwerx shall consider relevant (the "**Estimates**").
3. The Franchisee:
  - (i) subject to clause 21.2(c)(ii), agrees that it will pay, and that Poolwerx shall be entitled to recover without dispute from the Franchisee, all relevant fees, marketing contributions and other amounts calculated on the basis of the Estimates; and
  - (ii) shall be entitled to dispute the Estimates if, and only if, it:
    - (A) pays to Poolwerx the amount of the relevant Estimate;

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- (B) advises Poolwerx in writing of the dispute within 20 Business Days of receipt of the relevant Estimate, providing details of the dispute and the amount the Franchisee claims to be the correct amount or amounts;
  - (C) complies in full with the reporting requirements such that the failure to comply under clause 21.1 is remedied;
  - (D) pays to Poolwerx all amounts in accordance with clause 21.2(d), together with any costs incurred by Poolwerx in addressing the breach by the Franchisee of its reporting obligations under this Agreement; and
  - (E) provides, to the absolute satisfaction of Poolwerx, a reasonable explanation as to why the information was not originally provided and any undertaking and such assurances as Poolwerx shall reasonably require to ensure that no further breach will occur.
4. The Franchisee must pay to Poolwerx, immediately upon demand, the Costs incurred by Poolwerx in:
- (i) providing the services and systems; and
  - (ii) preparing the financial reports and any Estimates, in accordance with clause 21.2(a) and (b), including a charge for its overhead and administrative expenses.

## **22. Franchisee Reporting Requirements**

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### **22.1 Franchisee Reporting Requirements**

1. Unless otherwise advised by Poolwerx in writing, the Franchisee must give to Poolwerx, in the manner and form from time to time specified by Poolwerx:
- (i) the month end sales report for the prior month, by 5:00pm (Franchisee's local time) on the 4<sup>th</sup> day of each month, irrespective of public holidays or weekends;
  - (ii) a profit and loss account for the prior month, within ten (10) Business Days after the end of each month;
  - (iii) detailed financial statements for the Franchised Business for the preceding Financial Year, by March 31 after the end of each Financial Year, including a balance sheet, a profit and loss statement, and a source and application of funds statement prepared by the Franchisee's accountant, and certified by such accountant that the contents are true and correct, and are a fair and accurate view of the Business;
  - (iv) any other information, reports, benchmarking data, sales slips, invoices, bank statements, order forms, records, calculations and indices as and when requested by Poolwerx, including accounting and financial information, point-of-sale and sales data, Client



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- records, Client Service History Cards, water testing history and test history data;
- (v) a verbal analysis of any reports, statements or other financial information provided or requested under this clause 21, as and when requested by Poolwerx; and
  - (vi) a copy of the Franchisee's tax returns filed with all applicable state and federal tax authorities, within 10 days after filing, to demonstrate to Poolwerx that the Franchisee is meeting its obligations in all required filings.
2. If the Franchisee:
- (i) fails to provide any report required under clause 22.1 within the stipulated time frame or any extension agreed by Poolwerx in writing, then Poolwerx may, at its discretion, require the Franchisee to pay on demand a fee at the rate specified in the Operations Manual by way of reimbursement of the additional administrative Costs of Poolwerx associated with such late reporting; and
  - (ii) fails to provide a copy of the Franchisee's tax return, then the Franchisee must immediately do all things required by Poolwerx to permit it to obtain the missing tax information from the applicable tax authorities.

## **22.2 Poolwerx may Appoint Auditor**

1. Poolwerx or an auditor appointed by Poolwerx may, at any time during Business Hours, audit the Franchised Business and the reports, financial statements, books, Transaction Records, bank statements and other records of the Franchised Business.
2. The Franchisee must fully cooperate with the requirements of Poolwerx or such auditor.
3. If the audit discloses that the Franchisee has:
  - (i) understated the Gross Revenue:
    - (A) by more than 2%, then the Franchisee must pay the Costs of the audit on demand; and
    - (B) then the Franchisee must pay to Poolwerx the Franchise Fees and Marketing Fees payable in respect of the understatement together with interest on that amount at the Interest Rate, calculated from the date the amount should have been paid until it has been paid in full; or
  - (ii) made overpayments, then Poolwerx will:
    - (A) pay for the cost of the audit; and
    - (B) give a credit against Franchise Fees in respect of the overpaid amount, payable over a period of 6 months.
4. The auditor's report is final and binding on the parties.

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### 22.3 Inspection

1. Poolwerx may at any time during Business Hours inspect the records of the Franchised Business, including all source data of such records, and any other information prescribed by the Operations Manual.
2. In conducting any inspection, Poolwerx may, at its Cost, remove records so that they can be examined and photocopied, provided that any records removed are promptly returned.
3. The Franchisee must permit Poolwerx or its authorized representatives to inspect, at any time during Business Hours, the records of the Franchised Business, any vehicles used in the Franchised Business and the Approved Equipment.
4. Poolwerx may, at its discretion, during any inspection conducted under clause 22.3(c):
  - (i) observe the provision by the Franchisee of Poolwerx Services to Clients;
  - (ii) test any of the Franchisee's Approved Equipment and products; and
  - (iii) remove samples of products in the quantities required to enable Poolwerx to conduct tests or analyses.
5. Poolwerx will use reasonable efforts to give the Franchisee prior notice if it wishes to exercise any of its rights under this clause 22.3.
6. The Franchisee must fully cooperate with Poolwerx during any inspection under this clause 22.3.

### 22.4 Collection Statement and Consent

1. Poolwerx may collect, store, disclose, use and otherwise deal with information obtained by it under this clause 22 or maintained under clause 21 (**Reporting Information**) for the purposes of controlling, administering and promoting the Network.
2. Reporting Information that Poolwerx collects may be disclosed to:
  - (i) current and prospective Franchised Business;
  - (ii) persons engaged by Poolwerx to assist in the recruitment of Franchised Business;
  - (iii) persons who provide administrative or other services to Poolwerx, including the professional advisers of Poolwerx;
  - (iv) current and prospective financiers and lenders to Poolwerx or the Franchisee;
  - (v) suppliers and prospective suppliers to the Franchisee or Poolwerx;
  - (vi) government departments and regulatory authorities; and
  - (vii) on a confidential basis, parties proposing to acquire an interest in Poolwerx or an Affiliate of Poolwerx.
3. To the extent permitted by applicable Laws, the Franchisee consents to the use and disclosure of the Reporting Information in the manner detailed in clause 22.4(b).

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4. To the extent that the Franchisee is entitled pursuant to applicable Laws, the Franchisee may request access to information held by Poolwerx about the Franchisee by making a written request to Poolwerx.
  5. Poolwerx will comply with any request made in accordance with clause 22.4(d), within a reasonable time following receipt of such request.

### **22.5 Franchisee to provide unaudited balance sheet**

The Franchisee shall within 10 days after a written request from Poolwerx, provide Poolwerx with:

1. an unaudited balance sheet as at the end of the last Financial Year; and
2. an income and loss statement covering the current Financial Year to the end of the month prior to the month in which the request is made,

in each case certified as being true and correct by a director of the Franchisee, the Franchisee's chief executive officer or chief financial officer, or such other representative of the Franchisee as Poolwerx may request in writing.

## **23. Client Data Base**

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### **23.1 Client Details and Records**

The Franchisee must:

1. on behalf of Poolwerx, procure from Clients all details and relevant personal information required by Poolwerx;
2. only use the Client Service History Card to:
  - (i) procure the details and relevant personal information of Clients; and
  - (ii) compile and complete the relevant Client Data Base and the business Software database;
3. when identifying non-Commercial Clients and Commercial Clients, use the correct accounting or Software codes designated by Poolwerx;
4. record details of Commercial Clients to whom proposals have been submitted in the last 12 months;
5. maintain records of past Commercial Clients recording the reason as to why they are no longer a Client of the Franchised Business; and
6. implement any marketing or similar strategies recommended by Poolwerx which are designed to procure the details and relevant personal information of Clients.

### **23.2 Provide Client Details to Poolwerx**

1. Subject to any applicable Law, the Franchisee must immediately update Client data into the current Poolwerx authorized customer relationship management software system.
2. For the purposes of clause 23.2(a), Poolwerx must provide access to the Poolwerx authorized customer relationship management software system.

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### **23.3 Client Information and Data is the Property of Poolwerx**

1. All Client Information, Client details and information (including Transaction records, accounts and financial information in respect of the Franchised Business) contained in Client Service History Card, the business Software database or the Client Database Software used by the Franchisee is, and will at all times remain, the sole property of Poolwerx, and the Franchisee hereby assigns all of its right, title and interest in any such information and data to Poolwerx or its nominee as and when created.
2. Copies or originals of such information and data must be provided to Poolwerx immediately on request.
3. Poolwerx grants the Franchisee a non-exclusive, royalty-free license for the Term to use such information and data for the sole purpose of conducting the Franchised Business. This license will automatically cease on expiration or termination of this Agreement for any reason.

### **23.4 Privacy**

1. The Franchisee must comply with all applicable Laws governing privacy of personal data and the Poolwerx privacy policy, when collecting, storing, disclosing, using or otherwise dealing with, in any manner, any information, including information from Clients, prospective Clients and its employees.
2. The Franchisee must obtain all the necessary consents from individuals providing information to the Franchisee in order to enable the Franchisee to fully comply with its obligations under this clause 23.

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## **24. Intellectual Property**

### **24.1 Use of Image**

The Franchisee must:

1. use the Trade Name, Trademarks, and allocated telephone numbers, domain names and email addresses on the Franchisee's stationery for the Franchised Business (including business cards, packaging, invoice and receipt books, stickers, promotional articles, labels, advertising and marketing literature) in the manner required by Poolwerx;
2. not display any other signs, logos or display materials without first obtaining the prior written approval of Poolwerx; and
3. not do or be involved in anything which may impair or prejudicially affect the reputation of Poolwerx, the System or the Image before or after the expiration or termination of the Franchise.

### **24.2 Use of Intellectual Property not Owned or Licensed by Poolwerx**

The Franchisee will not display in or outside the Premises or on the Vehicle any logos, trademarks or other intellectual property belonging to any other person without the express written approval of Poolwerx and the owner of that intellectual property.

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### **24.3 Use of Intellectual Property**

The Franchisee must:

1. subject to clause 24.10(c), not register or seek to register any of the Intellectual Property without the prior written consent of Poolwerx;
2. not cause any of the Intellectual Property to be prejudicially affected or contested;
3. use the Intellectual Property only in the manner prescribed by Poolwerx;
4. not make any alterations to the Intellectual Property;
5. not interfere with or inhibit the authorized use of the Intellectual Property by any other Franchised Business; and
6. advise Poolwerx immediately of any infringement, potential infringement or challenge of the rights of Poolwerx in the Intellectual Property by a third party known to the Franchisee, and subject to Poolwerx's approval, take all reasonable action to stop or prevent further infringement.

### **24.4 Prohibition of Words in Franchisee's Entity Name**

The Franchisee must not use the word "Poolwerx" or any derivative of that word or the words "Pool", "Spa", "Mobile", "Care", "Franchise", "Franchising", "Healthy", "People", "Werx", "Works", "Worx", "Worxs" or any derivative of those words in the Franchisee's Entity name.

### **The Intellectual Property of Poolwerx**

The Franchisee acknowledges that:

1. all rights in and relating to the Intellectual Property:
  - (i) are the property of Poolwerx; and
  - (ii) remain under the control of Poolwerx; and
2. the Franchisee shall not acquire any right, title or interest in any of the Intellectual Property.

### **24.5 Trademarks**

1. The Franchisee must:
  - (i) when using Trademarks clearly indicate in an appropriate location in the manner specified by Poolwerx that the Franchisee uses the Trademarks under license from Poolwerx;
  - (ii) stop using the Trademarks at the expiration or termination of the Franchise; and
  - (iii) not contest or oppose, or assist any other person to contest or oppose, any application for registration or use of the Trademarks by Poolwerx as trademarks or as business or company names.
2. The Franchisee must not:
  - (i) register itself as an Owner or registered user of any of the Trademarks; and
  - (ii) transfer the license or grant a sub-license to use the Trademarks granted to it without first obtaining the written consent of

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Poolwerx, such consent may be given or withheld or be subject to such conditions specified by Poolwerx, at its discretion.

#### **24.6 Modification of Names and Trademarks**

1. If Poolwerx or its Affiliate notifies the Franchisee that it wishes to:
  - (i) modify or discontinue the use of any of the Trademarks, the Trade Name or the Network Name, or use additional or substitute marks; or
  - (ii) modify the System's colors, trade dress, decor, uniform specifications, any part of the Image or any other unit construction, design, appearance or operation associated with the Franchised Business,then, the Franchisee must immediately comply with such notice at its own Cost; and
  - (iii) use such modified, additional or substitute marks, trade name, network name, System's colors, trade dress, decor, uniforms, image, unit construction, design, appearance or operation in accordance with the terms of such notice, this Agreement and the Operations Manual;
  - (iv) cease to use any marks, System's colors, trade dress, decor, uniforms, designs, appearances or attributes declared by Poolwerx to be obsolete or discontinued; and
  - (v) undertake all refurbishments, build outs, reprints and modifications to the Vehicles and Premises used by the Franchisee in the Franchised Business, Approved Equipment, letterhead, business cards, stationery and uniforms as are required by Poolwerx.
2. Neither Poolwerx nor any Affiliate of Poolwerx is liable to the Franchisee or any other person for any loss, Cost or damages arising from any change under this clause 24.7.

#### **24.7 Rights to Trade Name and Clients**

The Franchisee agrees that all the goodwill and other rights and interest arising from the:

1. Franchisee's use of the Trade Name, Network Name (or any derivative of the Trade Name or Network Name);
2. Client Data Base, Client Information, Client Service History Cards; and
3. Trademarks, Image and System belong to Poolwerx.

#### **24.8 Trade Name**

The Franchisee must at the expiration or termination of this Agreement do all things necessary to cease to carry on any business under, or otherwise use, the Poolwerx Trade Name, or any derivation thereof.

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## 24.9 Assignment of Intellectual Property in Franchisee's Improvements

1. The Franchisee hereby assigns all of its rights to, and intellectual property rights in, the Franchisee's Improvements to Poolwerx or its nominee as and when such intellectual property rights are created.
2. If the Franchisee's rights to, or intellectual property rights in, the Franchisee's Improvements are not capable of assignment in accordance with clause 24.10(a), the Franchisee grants to Poolwerx, as and when such intellectual property rights are created, an exclusive, worldwide, royalty free, irrevocable, fully assignable, perpetual license in respect of the Franchisee's Improvements for Poolwerx to use the Franchisee's Improvements and grant others the right to use the Franchisee's Improvements.
3. If Poolwerx wishes to register the intellectual property rights in any of the Franchisee's Improvements and the Franchisee is the owner, or a necessary applicant for that registration, the Franchisee must immediately, upon request by Poolwerx, apply in the Franchisee's own name for registration and then sign all documents and deeds, perform all acts and do all things necessary to assign that registration or application to Poolwerx or its nominee.
4. If the Franchisee is the author of any of the Franchisee's Improvements for the purposes of copyright law (**Author**), then, for the benefit of Poolwerx or its nominee (and any further assignee, licensee or successor) the Franchisee:
  - (i) consents to all acts or omissions done by Poolwerx, its nominee and any further assignee, licensee or successor in title in relation to the Franchisee's Improvements including:
    - (A) not naming the Author as an author of the Franchisee's Improvements;
    - (B) naming another person as the author of the Franchisee's Improvements; and
    - (C) amending or modifying (whether by changing, adding, deleting or removing) any part of the Franchisee's Improvements; and
  - (ii) acknowledges and agrees that:
    - (A) such consents do not constitute an infringement of the Author's rights under applicable law; and
    - (B) that each of the provisions in this clause 24.10(d) is fair and reasonable to enable Poolwerx or its nominee to obtain the full benefit of the rights intended to be conferred on Poolwerx by this clause 24.10.
5. Where the Franchisee is not the Author, the Franchisee agrees to procure from the relevant author applicable consents and acknowledgements in order to give full effect to the intention of clause 24.10(d).

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## **25. Internet E-Commerce and Domain Names**

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### **25.1 Use of the Internet**

The Franchisee must:

1. in connection with the Franchised Business:
  - (i) only use the email addresses approved by Poolwerx;
  - (ii) only use such email addresses in the manner prescribed by Poolwerx in the Operations Manual; and
  - (iii) change such email addresses or manner of use whenever required by Poolwerx;
2. ensure that the Franchisee's email address is displayed on the website, digital marketing, business stationery and all locally produced marketing materials in the manner and the location specified by Poolwerx;
3. advertise the domain name specified by Poolwerx on all of the Franchisee's business stationery, digital marketing, invoices and statements;
4. agrees that, at all times, ownership and control of the Poolwerx websites and domain names remain with Poolwerx or an Affiliate of Poolwerx;
5. not interfere with, alter or allow to be altered, the structure, content or layout of any of websites owned or operated by Poolwerx, any Affiliate of Poolwerx or by and third party in connection with the Franchised Business; and
6. not publish on the internet, world wide web or any social media site the Trademarks or any information or material concerning the Franchised Business, the Operations Manual, the Image or any other Intellectual Property without the prior written consent of Poolwerx.

### **25.2 Registration of Domain Names**

The Franchisee must not register as a domain name:

1. any of the Trademarks, or any part of the Trademarks;
2. any words or names similar to the Trademarks or any part the Trademarks;
3. any words or names similar to the Trade Name; or
4. any name which includes 1 or more the prohibited words specified in clause 24.4.

### **25.3 Conduct of Business on the internet**

1. The Franchisee acknowledges and agrees that Poolwerx has the right to:
  - (i) control or conduct business and market for business on the internet; and
  - (ii) offer for sale, via the internet, products and services which are the same or similar to the Approved Products or Approved Services.
2. Subject to clause 18.4(a), the Franchisee may market the Franchised Business via the internet or conduct, or attempt to conduct, the whole or any part of the



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Franchisee Business by way of the internet or similar technologies, provided it has obtained the prior written approval of Poolwerx, and the marketing content is at all times compliant with Poolwerx Standards and the Operations Manual.

3. Poolwerx may, at its discretion, use any Poolwerx owned or operated website to provide any leads, sales requests or requests for information:
  - (i) to the Franchisee or franchisees in whose Marketing Area the person is located; or
  - (ii) to such Franchisee as Poolwerx determines is best placed to service the Client in circumstances where:
    - (A) the person's location cannot be determined;
    - (B) the person is not located in a Marketing Area; or
    - (C) Poolwerx otherwise determines that the Client will be best served by such allocation.
4. Notwithstanding clause 25.3(c), the Franchisee acknowledges that e-commerce is continually changing and Poolwerx shall have the right, in consultation with the Franchisee or representatives of the Franchisee appointed by Poolwerx, to amend the arrangements described in clause 25.3(c) at any time, having regard always to the benefit of the Network, System and Image as a whole.

#### **25.4 Social Media, Networking and Loyalty Obligation**

1. The Franchisee acknowledges and agrees that:
  - (i) it must comply with the policies and procedures prescribed in the Operations Manual relating to the Franchisee's use of any social media networking sites (of any kind or nature including, web or internet-based, or mobile telephonic applications, including but not limited to Facebook, Instagram and Twitter, which enable the creation and exchange of user generated content) (**Social Media**) in connection with the Franchised Business and the Franchisee's involvement and experiences (adverse or otherwise) within the System;
  - (ii) Poolwerx has the absolute right to control and protect the use of its goodwill, the Network Name, Trademarks and Image, and Poolwerx can prohibit, limit or impose conditions upon the Franchisee's use of all or any of these in any Social Media that the Franchisee wishes to use directly or indirectly in connection with the Franchised Business;
  - (iii) it will not establish a website, webpage or blog, or otherwise participate in, make or post any offensive, derogatory, adverse or negative images, content, statements, satirical comments, blogs, tweets or postings about:

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- (A) Poolwerx or any Affiliate of Poolwerx, or any directors, officers or employees of Poolwerx or an Affiliate of Poolwerx;
  - (B) other Franchised Business or master franchisees (if any);
  - (C) any suppliers, Approved PiPs (or their officers or employees), Clients, Approved Products, Approved Services, Poolwerx Products or Poolwerx Services;
  - (D) the System;
  - (E) the Network; or
  - (F) anyone else connected to, or associated with, the Franchised Business, and the Franchisee acknowledges that such conduct can have an immediate detrimental effect on Poolwerx and its goodwill and Image, and that of other Franchised Business and master franchisees (if any) in the Network;
- (iv) if the Franchisee has a complaint or dispute with or concerning Poolwerx or the Network, it will:
- (A) follow the dispute resolution provisions contained in clause 40; and
  - (B) continue to adhere to the provisions of this Agreement, including the loyalty obligation in clause 25.4(g)(i) and the confidentiality requirements of clause 26.
2. The Franchisee irrevocably appoints Poolwerx and the senior officers of Poolwerx as the Franchisee's attorney-in-fact to:
- (i) access any Social Media site and change or remove any content which is posted or published in breach of the terms of this Agreement or any policy; and
  - (ii) authorize the Host or any provider or controller of the site to cause the immediate and permanent removal or deletion or variation of any content that the Franchisee has published, posted or caused to be published or posted on any Social Media in breach of this Agreement or in breach of any policy that Poolwerx has prescribed under the Operations Manual that relates to Social Media.
3. The Franchisee shall reimburse Poolwerx and its Affiliates for any loss, damage, Cost or expense (on a full indemnity basis) that Poolwerx may incur in taking any action:
- (i) contemplated by clause 25.4(b); or
  - (ii) to enforce its rights under this clause 25.4, including in circumstances where Poolwerx seeks any form of injunctive relief to compel the removal of any content in breach of this clause 25.4.
4. The Franchisee agrees to provide Poolwerx, as and when required by Poolwerx, unrestricted access (including provision of the Franchisee's user names and passwords) for all Social Media used by the Franchisee, and to promptly advise Poolwerx if those details change.

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5. The Franchisee agrees that upon the termination or expiry of this Agreement, it must sign all forms to:
    - (i) authorize Poolwerx to remove any content that relates to the System on any Social Media; or
    - (ii) transfer to Poolwerx control or use of all content and Social Media used in connection with the Franchised Business.
  
  6. The Franchisee agrees that if any photographs are to be taken or uploaded by the Franchisee to any Social Media platform, the Franchisee must, prior to the taking or uploading of such photographs, obtain the written consent:
    - (i) of the owner of the copyright in that photograph; and
    - (ii) if a person is represented in that photograph, of that person if they are 18 years of age or older, or their legal guardian if they are less than 18 years of age.
  
  7. The Franchisee acknowledges and agrees that:
    - (i) it must at all times demonstrate loyalty to the Franchised Business, Network and brand;
    - (ii) it must not make in any public forum (including the Intranet) any adverse or negative comments, statements, articles, broadcasts, blogs, tweets or other publications of any kind or nature that may show (or have the effect of showing) disloyalty to the Network or brand or bring (or have the effect of bringing) the brand or Network into disrepute; and
    - (iii) this obligation of loyalty is imposed upon the Franchisee to protect not only the brand and goodwill but also the goodwill of every other franchisee in the Network.

## **26. Confidential Information**

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### **26.1 Information is Derived from and Owned by Poolwerx**

1. The Franchisee acknowledges that its knowledge of the operation, promotion and organization of the Franchised Business, Client Data Base, Client Information, System and Network, including the products and services, marketing information, know-how and technology, is entirely derived from Confidential Information.
2. The Guarantor acknowledges that it may, due to its relationship with Poolwerx, gain knowledge of the Confidential Information.
3. The Franchisee and the Guarantor acknowledge and agree that the Confidential Information:
  - (i) is provided or has been obtained, under an obligation of strict confidence to Poolwerx;
  - (ii) contains trade secrets of Poolwerx; and

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- (iii) is the property of Poolwerx, even if part of it has been developed by the Franchisee.

## **26.2 Franchisee and the Guarantor Must Keep Confidential Information Secret**

The Franchisee and the Guarantor must not:

1. before, or after the end of the Franchise, disclose any Confidential Information to any person other than to employees of the Franchisee, but only to the extent necessary for the conduct of the Franchised Business; and
2. after the end of the Franchise or after a Transfer, use any part of the Confidential Information.

## **26.3 Manager, Directors, Shareholders, Agents and Employees must Maintain Confidentiality**

The Franchisee must:

1. ensure that:
  - (i) the Manager, all of the Franchisee's directors, shareholders, agents and employees; and
  - (ii) any agents, contractors or subcontractors used by the Franchisee in the Franchised Business,are, prior to receiving any Confidential Information, under obligations of confidentiality no less onerous than the provisions of this clause 26, and that evidence of such obligations is provided to Poolwerx promptly upon request by Poolwerx;
2. use its best efforts to cause its Manager, and all of its directors, shareholders, agents and employees who receive or have access to Confidential Information, to observe all of the Franchisee's obligations and undertakings contained in this clause 26; and
3. implement proper systems and procedures as may be necessary and as are required by Poolwerx to maintain the confidentiality of the Confidential Information.

**26.4** Franchisee agrees to notify Poolwerx in writing of any suspected unauthorized use of Confidential Information. Poolwerx and its affiliates have exclusive rights to bring an action for protect the Confidential Information and retain any amounts recovered with respect to such action, and to control any proceeding whether brought by or against Poolwerx or Franchisee. Poolwerx has no obligation to defend or otherwise protect Franchisee against any claims involving any Confidential Information or to indemnify Franchisee for any losses it may incur as a result of any loss Franchisee sustains as a result of any action brought by a third party concerning its use of the Confidential Information.

## **26.5 Survival**

The parties acknowledge and agree that this clause 26 expressly survives the expiration or earlier termination of this Agreement.

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## 27. Insurance

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### 27.1 Insurance Policies

1. The Franchisee must, at its Cost, take out and maintain, in full force and effect during the Term, the Insurance Policies:
  - (i) with an Approved PiP or a Poolwerx designated insurance company on terms and conditions acceptable to Poolwerx;
  - (ii) noting Poolwerx, and if required by Poolwerx, any Affiliate of Poolwerx, as additional insureds; and
  - (iii) including a provision that Poolwerx must receive:
    - (A) at least 30 days prior written notice of the termination, cancellation, default or late payment of the Insurance Policy; and
    - (B) copies of all reminder notices in connection with the Insurance Policies.
2. The Franchisee acknowledges and agrees that:
  - (i) Poolwerx may, at its discretion, modify the kinds of insurance required, and increase or decrease the scope or amount of coverage, including the amount of any deductibles; and
  - (ii) the Insurance Policies represent the minimum insurance the Franchisee is required to obtain, including as to the scope and amount of coverage, as well as the maximum deductibles under any policy of insurance.

### 27.2 Insurance Policies

For the purposes of this Agreement, **Insurance Policies** means insurance policies:

1. Comprehensive General Liability Insurance for liability to the public, including contractual Independent contractors, personal & advertising injury, products and completed operations coverages in the names of Poolwerx and the Franchisee for a limit of liability of at least \$2,000,000 for any one occurrence and \$2,000.00 annual aggregate for both the general and products liability/completed operations aggregates;
2. Errors & Omissions Liability Insurance for liability arising from any professional service provided by the Franchisee in the form of a professional indemnity insurance policy in the names of Poolwerx and the Franchisee for a limit of liability of at least \$2,000,000 for any one claim and in the annual aggregate;
3. Workers Compensation Insurance including employers' liability with limits of \$1,000,000/\$1,000,000/\$1,000,000; Individual franchise owners that are active in the business must include themselves as insured employees unless prohibited by State regulation.
4. Commercial Auto insurance insuring all motor vehicles owned, leased, or used by the Franchisee, providing the following coverages:

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- (i) Auto liability, including for hired and non-owned or leased vehicles including coverage of at least \$1,000,000 and including Poolwerx as an Additional Insured
    - (ii) Full Comprehensive and Collision insurance on all owned or leased vehicles. including coverage for any vehicle customization. fixtures or fittings in such vehicles including signage;
  5. Property in Transit Insurance, without limiting clause 27.2(d), for loss or damage to:
    - (i) any inventory of the Approved Products in any motor vehicle being used to transport the same;
    - (ii) any equipment or fittings used by the Franchisee in the Franchised Business, whether by fire, theft, burglary, willful damage by third parties or otherwise.
  6. as set out in clause 17.3(a) of this Agreement;
  7. in respect of sickness or accident in relation to the Franchisee and/or the Manager;
  8. which may be required by agreements entered into by the Franchised Business in the course of the Franchised Business; and
  9. which Poolwerx may from time to time require, as advised in writing by Poolwerx or as otherwise set forth in the Operations Manual or any updates thereof.
  10. Insurance policies other than Workers Compensation Policy were prohibited by State regulation and Errors & Omissions Liability Policy will stipulated that those polices are Primary and Non-Contributory with respect to any insurance of.

### **27.3 Proof of Insurance Policies**

Poolwerx may require the Franchisee to produce evidence that each Insurance Policy exists, is current, and is on terms and conditions consistent with clauses 27.1 and 27.2.

### **27.4 Report Claims**

1. The Franchisee must promptly, and in accordance with the terms of the relevant Insurance Policy, report to both the insurer and Poolwerx any claim, or any event which may give rise to a claim, against the Franchisee or Poolwerx.
2. The Franchisee grants its consent to Poolwerx requesting and receiving from the Franchised Business's insurer information regarding claims made by the Franchisee, and the nature and number of such claims.

### **27.5 Poolwerx May Effect Insurance**

1. If the insurance coverage as required by this clause 27 is not affected by the Franchisee, Poolwerx may obtain the insurance coverage on the Franchisee's behalf.

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2. The Franchisee must:
    - (i) execute all forms required to obtain such insurance coverage; and
    - (ii) pay on demand all Costs incurred and premiums paid by Poolwerx in obtaining such insurance coverage.

## **27.6 Post Termination Obligations**

1. For a period of 7 years after the expiration or termination of the Franchise, the Franchisee will, at its Cost, take out and maintain in full force and effect, professional indemnity insurance in accordance with clause 27.2(b).
2. The parties acknowledge and agree that this clause 27.6 expressly survives the expiration or earlier termination of this Agreement.

## **28. Manager and Employees**

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### **28.1 Appointment**

The Franchisee must:

1. appoint the Manager to manage the Franchised Business; and
2. ensure that the Manager devotes his full time and effort exclusively to the management and conduct of the Franchised Business.

### **28.2 Approval and Training**

The Manager must:

1. at the Cost of the Franchisee, complete the Initial Training Program to the satisfaction of Poolwerx; and
2. obtain the Accreditations.

### **28.3 Entitlements of Manager and Franchisee's Employees**

The Franchisee must:

1. pay all Costs associated with the Manager and the Franchisee's other employees, agents and contractors, including federal and state tax withholdings, all benefits, and all other amounts which the Franchisee is legally required to, or has contractually agreed to pay; and
2. maintain registrations, Accreditations and certificates under all applicable workplace health and safety Laws or compensation Laws in respect of the Manager, the Franchisee and the Franchisee's other employees, agents and contractors.

### **28.4 Employee Costs not Recoverable by the Franchisee**

1. The Franchisee acknowledges and agrees that Poolwerx is not liable, and that the Franchisee will not seek payment or reimbursement from Poolwerx, for any Costs, payments or remittances under clauses 28.2 and 28.3.

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2. The Franchisee will indemnify Poolwerx in respect of:
    - (i) any fine, penalty or other charge imposed on Poolwerx in relation to clause 12.15 or this clause 28; and
    - (ii) any non-compliance by the Franchisee with its statutory obligations.

### **28.5 Employee Records**

The Franchisee must:

1. maintain complete and up-to-date records in respect of each employee, as required by Poolwerx and all applicable Laws;
2. maintain all training and Accreditation records of all employees, including the Manager; and
3. demonstrate, whenever required by Poolwerx, that it is complying with this clause 28.5, including by producing, to the reasonable satisfaction of Poolwerx, all records maintained in accordance with this clause 28.5.

## **29. Entity Franchisee**

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### **29.1 Corporate or Limited Liability Organizational Documents**

1. Before the Franchise commences operation of the Franchised Business, the Franchisee must give to Poolwerx certified copies of:
  - (i) the Franchisee's articles of incorporation or organization; and
  - (ii) any other documents requested by Poolwerx from the Franchisee's company register.
2. The Franchisee and each Guarantor jointly and separately warrant that the Franchisee's organization or corporate documents do not preclude the Franchisee from being granted the Franchise, or otherwise from exercising its rights and performing its obligations under this Agreement.

### **29.2 Directors', Shareholders' or Equity Owners' Guarantees**

The Franchisee will procure that:

1. each of its directors, shareholders and equity owners gives a guarantee and indemnity on the terms set out in clause 38; and
2. any new director or shareholder or equity owner, when appointed, signs a guarantee and indemnity on, at the election of Poolwerx at its discretion:
  - (i) substantially the same terms as those set out in clause 38; or
  - (ii) terms then customarily used by Poolwerx in the Network at the time of such appointment.

### **29.3 Ownership of Franchisee**

The Franchisee and each Guarantor jointly and separately warrant that, as at the Commencement Date:

1. the directors, shareholders and equity owners of the Franchisee are as specified in Item 3 of Schedule 1; and



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2. all of the issued shares or equity interests in the Franchisee are beneficially held by these shareholders or equity owners.

#### **29.4 No Changes Without the Consent of Poolwerx**

1. The Franchisee must not, without first obtaining the written consent of Poolwerx, allow to occur any:
  - (i) change in the composition of the Franchisee's directors;
  - (ii) alteration to the Franchisee's corporate or organizational document;
  - (iii) Disposal of shares or equity interests in the Franchisee; or
  - (iv) reduction or alteration of the Franchisee's capital.
2. The consent of Poolwerx under clause 29.4(a) may be given or withheld at its discretion.
3. Without limiting clause 29.4(b), Poolwerx may, as a condition of consenting, require that the change does not adversely affect the Franchisee's ability to perform its obligations under this Agreement.

#### **29.5 Transfer**

Any Disposal in relation to the Franchisee will be deemed a Transfer for the purposes of clause 33.2, and the conditions of that clause will apply in respect of such Disposal.

#### **30. Trust Provisions**

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The Franchisee and the Guarantor represent and warrant that neither of them is acting as a trustee of any trust in executing this Agreement.

#### **31. Protection of the Goodwill of Poolwerx**

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##### **31.1 Restraints Reasonable**

The Franchisee and each Guarantor acknowledge and agree that:

1. Poolwerx has considerable and recognized goodwill in the conduct of its business, and in developing and promoting the Network and the System;
2. Poolwerx should be entitled to protect that goodwill for its own benefit and the benefit of all Franchised Business by restricting the Franchisee's ability to damage that goodwill by competing with Poolwerx or any Franchised Business; and
3. each of the restraints imposed upon the Franchisee and each Guarantor under clauses 31.2, 31.3, 31.4 and 31.5 is fair and reasonable, and is no greater than is reasonably necessary to protect such goodwill and the legitimate commercial interests of Poolwerx and the Network.

##### **31.2 Franchisee Must Not Compete Unfairly**

During the Term, the Franchisee and each Guarantor jointly and severally agree:

1. not to engage or have any interest in any business that:

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- (i) supplies products or services the same or similar to those at any time supplied in the Franchised Business; or
    - (ii) is a market competitor of the Network, Poolwerx or any Franchised Business; and
  2. to take all necessary actions to ensure that no Interested Parties engage in the conduct specified in clause 31.2(a)(i) or (ii).

### **31.3 Post-Term Restrictive Covenants**

For the Restraint Period following the later of the expiration or termination of this Agreement for any reason whatsoever, the Franchisee and each Guarantor jointly and severally agree not to:

1. engage or participate in, or derive any benefit from, any business within the Restraint Area which offers or sells any product or service, or component thereof, which:
  - (i) is the same or similar to any product or service to those at any time supplied in the Franchised Business;
  - (ii) composes a part of the System; or
  - (iii) competes directly or indirectly with the System;
2. employ or seek to employ any person who is employed, or in the past 12 months was employed, by Poolwerx, an Affiliate of Poolwerx or any other Franchised Business;
3. induce or seek to induce any person to leave his employment who is currently employed by Poolwerx, an Affiliate of Poolwerx or any other Franchised Business;
4. interfere or attempt to interfere with any business or commercial relationships of Poolwerx, an Affiliate of Poolwerx or any Franchised Business;
5. use any Confidential Information in contravention of clause 26 of this Agreement, including in any manner which is, or is intended to be, damaging or derogatory or hinder the relationship of:
  - (i) Poolwerx with its other Franchised Business, Clients, suppliers or other third parties; or
  - (ii) any other Franchised Business with its Clients, suppliers or other third parties;
6. divert or attempt to divert any Client or business from Poolwerx, an Affiliate of Poolwerx or any Franchised Business; or
7. solicit or endeavor to obtain the business of any person who was a Client of a Franchised Business operating under the terms of this Agreement.

### **31.4 Restraint Applies to Conduct of Franchisee in any Capacity**

The restraints in clauses 31.2 and 31.3 apply to the Franchisee and each Guarantor acting:

1. either alone or in partnership or association with another person;
2. as principal, agent, representative, director, officer or employee;

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3. as a member, shareholder, creditor, noteholder, equity owner or holder of any other security;
  4. as trustee for, or as a consultant or adviser to, any person; or
  5. in any other capacity.

### **31.5 Separate Restraint Agreements**

1. Each of the provisions of this clause 31 operate concurrently and independently.
2. If any provision or part thereof, is found to be unenforceable, illegal or void, that provision or part thereof, is severed and the other separate provisions remain in full force and effect.

### **31.6 Acceptable Conduct**

Nothing in this clause 31 prevents the Franchisee or any Guarantor from:

1. owning less than 5%, by market value, of securities in a publicly listed corporation; or
2. engaging or being concerned or interested in the Franchised Business in accordance with this Agreement.

### **31.7 Manager and Key Employees**

The Franchisee must ensure that:

1. the Manager; and
2. any of its key employees, as notified by Poolwerx, enter into service or employment contracts, in a form prescribed by Poolwerx, which contain a similar restraint as that provided in clause 31.

### **31.8 Survival**

The parties acknowledge and agree that this clause 31 expressly survives the expiration or earlier termination of this Agreement.

## **32. Assignment, Merger or Acquisition by Poolwerx**

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### **32.1 Assignment**

Poolwerx may transfer or assign all or any part of its rights, interests, obligations or liabilities under this Agreement.

### **32.2 Novation**

Poolwerx may novate all or any part of its rights, interests, obligations or liabilities under this Agreement.

### **32.3 Refinancing and Restructuring**

The Franchisee and each Guarantor acknowledge that Poolwerx may, in addition to, or as part of an assignment or novation pursuant to clauses 32.1 and 32.2:

1. sell itself, its assets and any of its Intellectual Property to a third party;
2. engage in a private placement of some or all of its securities; or
3. undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring.

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### **32.4 Acknowledgment and Agreement to Assignment**

In the event of an assignment of all or any part of the rights, interests, obligations or liabilities of Poolwerx under this Agreement, then:

1. the assignee must sign an agreement under which it accepts the assignment and assumes the obligations of Poolwerx to the Franchisee as and from the date of the assignment;
2. Poolwerx must obtain or enter into an agreement expressed to be for the benefit of, or in favor of, the Franchisee under which the assignee will assume and be responsible for the performance of each and all of the obligations of Poolwerx, as and from the date of the assignment; and
3. notwithstanding that the agreement may contain a release, the Franchisee and each Guarantor will remain liable to Poolwerx for all debts and liabilities owed under this Agreement up to the date of assignment.

### **32.5 Merger**

1. Poolwerx may purchase, merge, acquire or affiliate with an existing competitive or non- competitive franchise network, chain or any other business, and:
  - (i) operate, franchise or license those businesses to operate using the Trademarks and Intellectual Property of Poolwerx;
  - (ii) require the Franchisee to reimburse Poolwerx a proportion of the goodwill component of any acquired business where Poolwerx refers new Clients in the Marketing Area to the Franchisee; and
  - (iii) operate competitively with the Network using trademarks, intellectual property or other imagery of the other franchise network, chain or business.
2. The Franchisee acknowledges and agrees that Poolwerx will be free to enter into and complete any transaction contemplated by clause 32.5 notwithstanding that, as a consequence of the transaction, Poolwerx or any third party has acquired or will acquire rights in relation to the Franchisee's Marketing Area.

### **32.6 Consent**

The Franchisee and each Guarantor expressly and specifically:

1. consent to Poolwerx at any time taking any of the actions outlined in clauses 32.1, 32.2, 32.3 and 32.5;
2. waive any requirement for prior notice to the Franchisee or the Guarantor of any such action;
3. waive any and all claims, demands or damages arising from or related to the loss of the Trademarks, System, or association with, or identification of, Poolwerx as Poolwerx under this Agreement; and

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4. waive any and all other claims, demands or damages arising from or related to a merger, acquisition or restructure, and any other claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract, unconscionable conduct or unfair dealing.

### **32.7 Assignment by Poolwerx Generally**

1. The parties agree and acknowledge that:
  - (i) any assignment of this Agreement will be for the balance of the Term then remaining;
  - (ii) from the date of assignment or novation (**Assignment Date**):
    - (A) the assignee will be responsible for all rights, interests, obligations and liabilities of Poolwerx under this Agreement;
    - (B) Poolwerx will only be responsible for non-performance or non-observance of its obligations under this Agreement that occurred prior to the Assignment Date; and
    - (C) Poolwerx is released from all liability for any continuing obligations on its part under this Agreement.
2. The Franchisee and each Guarantor irrevocably appoint Poolwerx as their attorney-in-fact to do all things necessary, including signing any document, agreement, deed, statement or certificate, in order to effect or perfect an assignment or novation as contemplated by this clause 32.

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## **33. Transfer and Other Dealings by Franchisee**

### **33.1 Acknowledgment by Franchisee**

The Franchisee acknowledges and agrees that:

1. the Franchise has been granted to the Franchisee following a consideration by Poolwerx of the Franchisee's character, business experience, capability and financial capacity; and
2. because of this there are important restrictions in this clause 33 on the Franchisee's ability to deal with the Franchise and the Franchised Business.

### **33.2 Prohibition against Transfer by Franchisee**

1. Subject to clause 33.4, the Franchisee must not Transfer, assign, sell or otherwise Dispose of:
  - (i) the Franchised Business;
  - (ii) any of its Approved Equipment or other assets used in the Franchised Business; or
  - (iii) any rights to market in the Marketing Area, or to service or sell Poolwerx Products or Poolwerx Services to any Clients,without first obtaining the written consent of Poolwerx to such Disposal, which consent may be granted or withheld at the discretion of Poolwerx.
2. A request for the consent of Poolwerx under clause 33.2(a) must be accompanied by all information that Poolwerx requires to make an informed

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decision, including, in respect of Transfers of the Franchised Business, any information required to satisfy the conditions in clause 33.3.

3. Poolwerx may, acting reasonably, revoke any consent given under this clause 33.2 within 14 days of the giving of such consent, provided that Poolwerx informs the Franchisee in writing of such revocation with reasons for its decision.
4. Notwithstanding clause 33.2(a), the prior written consent of Poolwerx is not required for Transfers, assignments or other disposals of obsolete assets in the ordinary course of business, provided that such assets are immediately replaced with assets conforming to the specifications of Poolwerx or as set out in the Operations Manual.
5. The sale of pool routes is expressly prohibited unless otherwise authorized by us.

### **33.3 Conditions to be Satisfied Before Transfer can be Approved**

The Franchisee acknowledges and agrees that:

1. the consent to any Transfer of the Franchised Business may be given or withheld at the discretion of Poolwerx; and
2. in granting any consent, Poolwerx may require that the following conditions, at minimum, are satisfied:
  - (i) that the transferee, in the opinion of Poolwerx at its discretion:
    - (A) possesses the financial resources necessary to conduct and operate the Franchised Business, and to service any borrowings it makes in order to acquire the Franchised Business;
    - (B) is a reputable and responsible person, having the business experience and capabilities necessary to successfully operate the Franchised Business; and
    - (C) otherwise meets the criteria, as set by Poolwerx, for the selection of new Franchised Business;
  - (ii) that the Franchisee pays the Transfer Fee;
  - (iii) the Franchisee pays to Poolwerx the then current Transfer Fee, together with the Legal Costs and other Costs incurred by Poolwerx in approving, documenting and otherwise affecting the transfer;
  - (iv) Poolwerx is entitled to withhold an amount, as determined by Poolwerx at its discretion, by way of retention from the purchase consideration payable by the buyer to the Franchisee on Transfer of the Franchised Business (**Retention**);
  - (v) the Retention may be held for a period of time as determined by Poolwerx at its discretion, provided that such period must not exceed 3 months from the date of settlement of the transaction (**Retention Period**);
  - (vi) Poolwerx will apply, use and release the Retention as follows:
    - (A) towards any amounts owed by the Franchisee to Poolwerx, any Approved PiPs, or other third party supplier of Poolwerx Products or Poolwerx Services;

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- (B) towards any contingent warranty claim made by the buyer for any breach of a warranty under the business sale contract by the Franchisee; and
  - (C) at the expiration of the Retention Period, the balance of the Retention (if any), will be paid to the Franchisee;
  - (vii) the Franchisee is not in default under this Agreement or any Related Agreement at the time:
    - (A) of seeking consent to the Transfer; or
    - (B) of the Transfer;
  - (viii) the transferee executes all documents then customarily used by Poolwerx for Franchised Business, including:
    - (A) a franchise agreement in the form then used by Poolwerx, which may contain different terms and conditions to those set out in this Agreement, for:
      - 1. the balance of the Term (including any existing rights of renewal); or
      - 2. a new term,as determined by Poolwerx at its discretion; or
    - (B) a transfer agreement of the Franchisee's rights and obligations under this Agreement to the transferee in a form required by Poolwerx;
  - (ix) where the transferee is an Entity, its directors and shareholders and equity owners:
    - (A) satisfy the criteria in clause 33.3(b)(i); and
    - (B) each give a guarantee and indemnity in favor of, and in a form required by, Poolwerx in respect of the buyer's obligations to Poolwerx;
  - (x) the transferee's proposed manager is approved by Poolwerx and successfully completes the Initial Training Program; and
  - (xi) the Franchisee:
    - (A) gives to Poolwerx all details of the proposed transfer, including a copy of the contract for the sale of the Franchised Business and any other agreements between the Franchisee and the transferee;
    - (B) sells to the transferee all of the Franchisee's essential assets used in the Franchise;
    - (C) establishes to the satisfaction of Poolwerx that the proposed transfer will not have a significantly adverse effect on the Poolwerx System or Network; and
    - (D) satisfactorily completes the Transition Event Conditions as are relevant to a Transfer.

### **33.4 Right of First Refusal by Poolwerx**

- 1. This clause 33.4 applies:
  - (i) if the Franchisee wishes to Transfer:
    - (A) the Franchised Business; or

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- (B) a part of the Franchised Business, which in the opinion of Poolwerx at its discretion, will have a material effect on the Franchised Business; or
    - (ii) in the circumstances contemplated by clauses 7.5 or 29.5.
  2. Where this clause 33.4 applies:
    - (i) the Franchisee must first offer to sell the Franchised Business, or the part of the Franchised Business that the Franchisee wishes to sell, to Poolwerx, by giving Poolwerx written notice stating the price the Franchisee is willing to accept (**Offer Price**) and the terms and conditions of sale (**Offer Notice**);
    - (ii) the offer will be valid for the period of 30 days after Poolwerx receives the Offer Notice (**Offer Period**); and
    - (iii) Poolwerx may accept the offer contained in the Offer Notice by giving notice of acceptance to the Franchisee before the end of the Offer Period (**Acceptance Notice**).
  3. If the Franchisee receives the Acceptance Notice during the Offer Period, the Franchisee must sell, and Poolwerx must purchase, the Franchised Business for the Offer Price and upon the terms and conditions contained in the Offer Notice.
  4. If Poolwerx does not accept the offer contained in the Offer Notice within the Offer Period, the Franchisee is entitled to Transfer the Franchised Business to a third party provided that:
    - (i) such Transfer occurs within 60 Business Days of the end of the Offer Period;
    - (ii) the Franchisee otherwise complies with clauses 33.2 and 33.3; and
    - (iii) the Transfer is not made for less than the Offer Price or on terms and conditions more favorable to the third party than those contained in the Offer Notice.
  5. If the Franchisee does not Transfer the Franchised Business within the period referred to in clause 33.4(d)(i), the rights of Poolwerx under clause 33.4(b) are revived, and the Franchisee must not permit any Transfer without first offering the Franchised Business to Poolwerx.

### **33.5 No Encumbrances**

The Franchisee must not create or allow the creation of any Security Interest in this Agreement, the Franchise or the Franchised Business without first obtaining the written consent of Poolwerx.

### **33.6 No Sub-franchises**

The Franchisee must not lease, sub-lease, license, sub-license, franchise or part with possession of some or all of:

1. the Franchise or Franchised Business; or
2. rights in the Franchise or Franchised Business, without first obtaining the written consent of Poolwerx, which may be withheld at the discretion of Poolwerx.



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### 33.7 Restructuring by Franchisee

If the Franchisee is made up of:

1. two (2) or more persons and one (1) or more of them want to Transfer their interest in the Franchise to one or more of the others; or
2. one (1) or more individuals who want to Transfer the Franchise to an Entity beneficially owned by them and incorporated by them for the sole purpose of conducting the Franchised Business, the consent of Poolwerx may be given or withheld at its discretion, and in consenting, Poolwerx may, require that each of the following conditions is satisfied:
  3. the transferor assigns to the assignee all of its interest in the Franchise, the Franchised Business and any Related Agreement;
  4. the Transfer does not affect the transferor's obligations to Poolwerx prior to the date of the Transfer;
  5. Poolwerx has been given details of the proposed Transfer and any other details requested by Poolwerx at least 30 days before the proposed Transfer is to take effect;
  6. the person or persons who will own the Franchisee after the Transfer have the financial capacity and the ability to operate the Franchise successfully without the transferor's involvement;
  7. if the transferee is an Entity, the directors, shareholders and equity owners each give a guarantee and indemnity in favor of, and in a form required by, Poolwerx in respect of the obligations of the transferee to Poolwerx;
  8. the Franchisee, transferee and transferor execute such documentation as required by Poolwerx; and
  9. the Franchisee pays the Legal Costs of Poolwerx in connection with the Transfer.

### 33.8 Death or Permanent Incapacity

1. If any of:
  - (i) a natural person Franchisee (where there is one (1) or more of them); or
  - (ii) a director, shareholder, equity manager or equity owner of any Franchisee which is an Entity,

dies or suffers permanent incapacity, that person (or the person's executor or personal representative) must, within 60 Business Days after the person dies or becomes permanently incapacitated, effect a Transfer of the Franchise and the Franchised Business, or their interest in the Franchise and the Franchised Business, in accordance with this clause 33, which *inter alia* means:

    - (iii) if ownership of the Franchised Business is to be restructured in the manner contemplated by clause 33.7, that clause applies; and
    - (iv) otherwise:

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- (A) Poolwerx has a right of first refusal to acquire the Franchised Business under clause 33.4; and
    - (B) the Transfer must meet all the requirements of clause 33.3.
  2. Notwithstanding clause 33.8(a)(ii), any surviving director, shareholder, equity manager or equity owner (**Surviving Member**), will be permitted by Poolwerx to carry on operating the Franchise granted under this Agreement, provided that the Surviving Member:
    - (i) has satisfactorily completed the Initial Training Program; and
    - (ii) has the relevant skill, Accreditations and expertise to operate and manage the Franchise in the manner approved by Poolwerx, which shall be determined by Poolwerx at its discretion.
  3. If Poolwerx permits the Surviving Member to operate the Franchise, it shall be on the terms of this Agreement, subject to any modification agreed in writing by Poolwerx and those parties.
  4. If a Transfer under this clause 33.8 is not completed within the timeframe specified in clause 33.8(a), Poolwerx may terminate this Agreement and the Franchise by giving a written notice to the Franchisee.
  5. In this clause, permanent incapacity exists if, because of mental or physical infirmity, the Manager, Guarantor, director, shareholder, equity manager or equity owner of the Franchisee cannot, in the reasonable opinion of Poolwerx, actively participate in the Franchised Business for a total of 20 Business Days at any time or times during any consecutive 12 month period.

### **33.9 Temporary Operation**

If:

1. the Franchisee fails to keep the Franchised Business open during Business Hours;
2. the Franchisee stops operating or abandons the Franchised Business; or
3. clause 33.8(a) applies and there has been no Transfer of the Franchised Business as required by that clause,

Poolwerx may, but is not obligated to, operate and manage the Business until the occurrence of, as applicable:

4. the end of the Franchise;
5. a Transfer is effected in accordance with this Agreement; or
6. Poolwerx terminates the Agreement in accordance with clause 33.8(d).

### **33.10 Temporary Management**

If, in the opinion of Poolwerx at its discretion, the Manager is unable to operate the Franchised Business for any reason, including through accident, ill-health or inability, Poolwerx may manage the Franchised Business on behalf of the Franchisee for such period of time as determined by Poolwerx.

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### **33.11 Conditions of Management**

If Poolwerx for any reason manages the Franchised Business, including under clauses 33.9 or 33.10:

1. Poolwerx shall not be liable to the Franchisee for any loss or damage suffered by the Franchisee arising out of such management by Poolwerx;
2. the Franchisee must indemnify Poolwerx and its employees and agents against all damages, sums of money, Costs, actions, claims, liabilities, injuries and demands made against or suffered by Poolwerx, its employees or agents, which arise out of or in connection with such management;
3. the Franchisee must pay to Poolwerx the Management Fee for managing the Franchised Business and any travelling, accommodation or other expenses in relation to such management;
4. Poolwerx must account to the Franchisee for all net income received by Poolwerx while operating and managing the Franchised Business less the Management Fee;
5. the Franchisee must bear any losses incurred during operation and management of the Franchised Business by Poolwerx; and
6. Poolwerx is not liable to the Franchisee in any way for anything done by Poolwerx while it operates and manages the Franchised Business in accordance with this clause 33.11.

### **34. Termination Before Commencement of the Franchised Business**

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#### **34.1 Poolwerx May Terminate Before Franchised Business Commences**

1. Poolwerx may terminate this Agreement by giving a written notice to the Franchisee if Poolwerx considers that the Manager will not be able to complete, or has not completed, the Initial Training Program in accordance with clause 28.2.
2. If Poolwerx terminates this Agreement pursuant to clause 34.1(a):
  - (i) all Related Agreements also terminate when this Agreement terminates; and
  - (ii) the Franchisee shall not be entitled to any:
    - (A) refund of the Initial Franchise Fee, or any other sums paid to Poolwerx or any of its Affiliates; or
    - (B) reimbursement of any Costs incurred by the Franchisee.

### **35. Termination by Poolwerx for Franchisee's Default**

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#### **35.1 Default Event**

For the purposes of this Agreement, a **Default Event** means any one or more of the following:

1. where the Franchisee:

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- (i) fails or neglects to pay any monies owing to Poolwerx or its Affiliates by the earlier of ten days after receiving written notice of its default, or 30 days after the original due date of the payment;
  - (ii) has previously been given at least two notices of nonpayment within the last 12 months and the Franchisee subsequently fails to timely pay when due any monies;
  - (iii) is more than 60 days past due on its obligations to suppliers, trade creditors or lenders in an amount exceeding \$2,000, unless the Franchisee has given Poolwerx prior notice that the failure to pay is a result of a bona fide dispute with such supplier, trade creditor or lender that the Franchisee is diligently trying to resolve in good faith;
  - (iv) underreports Gross Revenues by more than 2% two times or more in any two- year period, or by 5% or more for any period of one month or more;
  - (v) hinders, or tries to hinder, an examination or audit of the Franchisee's books and records, the Franchised Business, or the Premises as required by this Agreement;
  - (vi) fails to timely file any periodic report required in this Agreement or the Operations Manual three (3) or more times in a 12-month period, whether or not the Franchisee subsequently cures the default;
  - (vii) submits to Poolwerx any report or statement that the Franchisee knows or should know to be false or misleading;
  - (viii) fails to deliver to Poolwerx a completely executed lease for the Premises within 30 days after its execution;
  - (ix) fails to open for business by the Commencement Date or such other date as required by this Agreement;
  - (x) fails to refurbish the Premises by the dates set out in Schedule 4;
  - (xi) fails to maintain possession of the Premises, or fails to secure the approval of Poolwerx to enter into a lease for a new accepted Premises within 90 days after the expiration or termination of the lease for the initial Premises;
  - (xii) voluntarily suspends operation of the Franchised Business, without the prior written consent of Poolwerx, for five (5) or more consecutive days on which the Franchisee was required to operate, unless Poolwerx determines, at its discretion, that the failure was beyond the Franchisee's control;
  - (xiii) misuses any of the Trademarks or any other identifying characteristic of Poolwerx, or uses the Trademarks other than in accordance with this Agreement;

- 
- (xiv) discloses or divulges the contents of the Operations Manual or any trade secrets or Confidential Information contrary to the provisions of this Agreement;
  - (xv) becomes insolvent or makes an assignment for the benefit of the Franchisee's creditors, or where:
    - (A) execution is levied against the Franchisee or the Franchisee's assets; or
    - (B) a suit to foreclose any lien or mortgage is instituted against the Franchisee or any of the Franchisee's assets, and such suit is not dismissed within 30 days;
  - (xvi) files a petition under the United States Bankruptcy Code for protection from creditors, or if a petition in bankruptcy is filed against the Franchised Business under the United States Bankruptcy Code and such petition is not dismissed within 30 days after the date of filing;
  - (xvii) breaches or fails to comply with any Law which results in a threat to the public's health or safety, and the Franchisee fails to cure such failure or non-compliance within 24 hours following receipt of notice thereof from Poolwerx or applicable public officials, whichever occurs first;
  - (xviii) defaults under any other franchise agreement or any Related Agreement between the Franchisee and Poolwerx (or an Affiliate of Poolwerx), provided that the default would permit Poolwerx or its Affiliate to terminate that agreement;
  - (xix) does not install and use the Software;
  - (xx) breaches or fails to comply with any other covenant, agreement, standard, procedure, practice, or rule prescribed by Poolwerx, whether contained in this Agreement, in the Operations Manual, or otherwise in writing, and fails to cure such breach or failure to Poolwerx's satisfaction within 30 days (or such longer period as applicable Law may require) after Poolwerx provides the Franchisee with written notice of the default; or
  - (xxi) is in default under this Agreement three or more times within any 18-month period, whether or not:
    - (A) such defaults are similar;
    - (B) such have been cured; or
    - (C) a formal breach notice was issued to the Franchisee, provided that the Franchisee was notified in writing of such default.

2. where the Franchisee, any Guarantor, or any of the Franchisee's officers or directors are convicted of, or plead *nolo contendere* to, a felony, a crime involving moral turpitude or consumer fraud, or any other crime or offense

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- that Poolwerx believes is likely to have an adverse effect on Poolwerx, the Trademarks, the System or and any associated goodwill (**Adverse Effect**);
3. where the Franchisee, any Guarantor, or any of the Franchisee's officers or directors, or its entity manager, or any equity owner has engaged in, or engages in, activities which in the reasonable opinion of Poolwerx, have or will have an Adverse Effect;
  4. where the Franchisee or any Guarantor violates and of the covenants in clause 33, including where any Transfer occurs which does not comply with the requirements therein; or
  5. where Poolwerx discovers that the Franchisee or any Guarantor:
    - (i) has made any material misrepresentations or omissions in connection with the Franchisee's application to Poolwerx for the Franchise; or
    - (ii) makes or has made any material misrepresentation or omissions in connection with this Agreement, or any Related Agreements, or the Franchisee.

### **35.2 Termination for a Default Event**

Poolwerx may, without prejudice to its accrued rights and remedies, and except as prohibited under applicable law, terminate this Agreement by written notice to the Franchisee, in the following circumstances:

1. where a Default Event is capable of remedy, and such Default Event has not been remedied:
  - (i) in the timeframe specified for the relevant Default Event in clause 35.1(b); or
  - (ii) where no such timeframe is specified, within a reasonable time as specified by Poolwerx in writing to the Franchisee; or
2. where a Default Event:
  - (i) is not capable of remedy; and
  - (ii) is a material breach of the Franchisee's obligations under this Agreement, immediately upon written notice to the Franchisee.

## **36. Effect of the Franchise Expiring or Terminating**

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### **36.1 Franchise Expires or Terminates**

Following the expiration or termination of this Agreement, including any termination in accordance with clause 35:

1. the Franchise comes to an end;
2. all rights and licenses of the Franchisee to use any of the Intellectual Property (including the Trade Name, the Trademarks and the Confidential Information) revert to Poolwerx without the need for anything else to be done; and
3. the provisions of this clause 36 apply.

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## 36.2 Franchisee's Obligations When the Franchise Ends

At the end of the Franchise, the Franchisee must:

1. immediately stop using and displaying in any manner the Trade Name, any of the Trademarks, any part of the Image or anything which imitates or is deceptively similar to these;
2. immediately stop using the Confidential Information and Intellectual Property;
3. if the Franchisee is to continue to use any Vehicle, immediately alter such Vehicle and remove or change any signs, fixtures, fittings, colors and layout to ensure that the appearance of the Vehicle cannot be confused with the then Image of a Franchised Business;
4. immediately return to Poolwerx all copies of the Operations Manual and all forms, stationery, business cards, advertising material, and other printed matter and signs used in the Franchised Business which bear the Trade Name or any of the Marks;
5. immediately deliver to Poolwerx the original and all copies of databases and all lists of suppliers to the Franchised Business held by the Franchisee;
6. immediately deliver to Poolwerx all Client Service History Cards, all databases in current and updated form (including financial and accounting system databases, water testing databases and Client relationship databases), and all other business information and records pertaining to the Franchised Business;
7. do everything necessary to cancel or to transfer to Poolwerx or its nominee all registrations relating to the Franchisee's use of the Intellectual Property, including the Trade Name, the Trademarks and any business or corporate name of the Franchisee;
8. transfer all telephone, facsimile and other communications numbers used in the Franchised Business to Poolwerx or its nominee;
9. transfer any email address or domain name used in the Franchised Business to Poolwerx or its nominee;
10. immediately satisfy any other requirements specified in the Operations Manual to ensure cessation of the Franchised Business, delivery by the Franchisee of all Intellectual Property rights associated with the Franchise, and compliance with the Franchisee's obligations in this clause 36.2;
11. where required by Poolwerx, do everything necessary, including signing any transfer agreement or instrument of transfer to transfer the Occupancy Right to Poolwerx or an Affiliate of Poolwerx; and
12. do anything reasonably required by Poolwerx in order to give full effect to the end of the Franchise.

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### 36.3 Settle Accounts

The Franchisee must, within 10 Business Days after the end of the Franchise, pay all amounts owing:

1. under this Agreement to Poolwerx, its Affiliates or any associate of Poolwerx;
2. to any employees engaged in the Franchised Business (including all employee entitlements);
3. to the Franchisee's trade creditors, suppliers and other creditors, including Approved PiPs; and
4. all federal, state or local government agencies or institutions.

### Further Assurances

The Franchisee must, at its Cost, do all things (including executing all documents) required by Poolwerx and as are necessary or desirable to give full effect to the Franchisee's obligations under this clause 36.

### 36.4 Poolwerx Rights

If the Franchisee does not do anything that it is required to do under this clause 36, Poolwerx may, at the Franchisee's Cost, do whatever the Franchisee should have done, and where Poolwerx exercises such right:

1. it is not a trespasser and is not liable to the Franchisee as a trespasser or in any other way; and
2. Poolwerx can rely on the power of attorney in clause 45.

### 36.5 Right to Purchase the Business by Poolwerx

1. Upon the expiration or termination of the Franchise, Poolwerx may, at its discretion, purchase all or part of the Franchisee's assets used in the Franchised Business, including all Vehicles and Approved Equipment, and assume some or all of the leases of the Vehicles or Approved Equipment used in the Franchised Business.
2. To exercise such right, Poolwerx must give the Franchisee written notice within 20 Business Days of the end of the Franchise specifying the assets to be purchased and the leases to be assumed (**Purchase Notice**).
3. Following receipt of the Purchase Notice, the Franchisee must not dispose of any of the assets mentioned in such notice.
4. The purchase price for any assets which Poolwerx decides to purchase is their fair market value as agreed between Poolwerx and the Franchisee, but if the parties cannot agree on such value within ten (10) Business Days after the Franchisee receives the Purchase Notice, the fair market value must be determined by an independent appraiser appointed by Poolwerx (**Appraisal**).
5. In conducting the Appraisal, the appraiser:
  - (i) must not include any component for goodwill or for leasehold improvements; and
  - (ii) acts as an expert and not as an arbitrator.



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6. The appraiser's decision is final and binding on Poolwerx and the Franchisee and the appraiser's Costs must be shared equally between Poolwerx and the Franchisee.
  7. The Franchisee remains liable for payment of any past due rent or other Costs under any assumed lease.
  8. Poolwerx may set off against the purchase price any amounts owed to it by the Franchisee.

## **37. Goodwill and Continuing Obligations**

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### **37.1 Poolwerx Goodwill**

The Franchisee acknowledges and agrees that:

1. Poolwerx owns valuable goodwill in the Trademarks, the Trade Name, Client Data Base, Client Information, the System and the Intellectual Property (**Poolwerx Goodwill**);
2. all rights to the Poolwerx Goodwill remains with Poolwerx at all times;
3. the Franchisee will have no right to use, or in any way deal with, the Poolwerx Goodwill at the expiration or termination of the Franchise;
4. the Franchisee will not receive any payment or compensation from Poolwerx for any goodwill in connection with the Trade Name, any derivative of the Trademarks, any reputation, the Client Data Base or any Client Information developed by the Franchisee in connection with the Franchised Business; and
5. all goodwill, even if all or part of it has been developed by the Franchisee or purchased through merger or acquisition of another competitor business, or Client Data Base, remains with or reverts to Poolwerx.

### **37.2 Continuing Obligations**

1. Each obligation and warranty which expressly or by implication survives the expiration or termination of the Franchise continues in force despite the expiration or termination of the Franchise.
2. At the expiration or termination of the Franchise, Poolwerx retains any rights it has against the Franchisee in respect of any past breach, in addition to any other rights, powers or remedies provided by Law.

## **38. Guarantee and Indemnity**

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### **38.1 Interested Party's Guarantee**

The Franchisee must procure from:

1. each Interested Party, a guarantee and indemnity on the terms set out in this clause 38; and
2. any new interested party, upon becoming an Interested Party, a guarantee and indemnity in respect of the Franchisee's obligations under this Agreement upon the then current terms used by Poolwerx.

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### **38.2 Consideration**

The Franchisee and the Guarantor have requested that Poolwerx enter into this Agreement with the Franchisee, and Poolwerx does so in consideration of, among other things, the guarantee and indemnity in this clause 38.

### **38.3 Guarantee**

1. The Guarantor unconditionally and irrevocably guarantees to Poolwerx prompt performance of all obligations of the Franchisee contained or implied in this Agreement.
2. If the obligation is to pay money, the Guarantor agrees that Poolwerx may recover the money from the Guarantor as a liquidated debt.

### **38.4 Indemnity**

In addition to the Guarantor's liability under clause 38.3, the Guarantor indemnifies Poolwerx against loss incurred because the Franchisee is not bound by some or all of its obligations under this Agreement.

### **38.5 Matters not affecting the Guarantor's Liability**

The Guarantor's liability under clauses 38.3 and 38.4 is not affected by:

1. a Transition Event Condition;
2. the granting of time, forbearance or other concession by Poolwerx to the Franchisee or any Guarantor;
3. an absolute or partial release of the Franchisee or any Guarantor, or a compromise with the Franchisee or any Guarantor;
4. any amendment to this Agreement;
5. a transfer of this Agreement by the Franchisee;
6. the expiration or termination of this Agreement;
7. any disputes or differences between the Franchisee and Poolwerx;
8. the fact that this Agreement is wholly or partially void, voidable or unenforceable;
9. the non-execution of this Agreement by one or more of the persons named as the Guarantor;
10. the unenforceability of the guarantee or indemnity against one or more of the Guarantors; or
11. the exercise or purported exercise by Poolwerx of its rights under this Agreement.

### **38.6 Payment Later Avoided**

The Guarantor's liability is not discharged by a payment to Poolwerx which is later nullified by Law, in which case the parties are restored to their respective rights and obligations as if the payment had not been made.

### **38.7 Indemnity on Disclaimer**

If a liquidator or trustee in bankruptcy rejects this Agreement, the Guarantor indemnifies Poolwerx against any resulting loss.

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### **38.8 Guarantee to Continue on Assignment of Rights**

If Poolwerx assigns its rights under this Agreement:

1. the benefit of the guarantee and indemnity in this clause 38 extends to the assignee; and
2. continues concurrently for the benefit of Poolwerx, regardless of the assignment, unless Poolwerx releases the Guarantor in writing.

### **39. Acknowledgement by the Franchisee and the Guarantor**

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The Franchisee and each Guarantor acknowledge that:

- (a) the Franchisee has received, read and had an opportunity to understand the Disclosure Document;
- (b) Poolwerx has advised the Franchisee to obtain independent legal, accounting and business advice with respect to this Agreement and all other aspects of operating the Franchised Business before entering this Agreement, and the Franchisee:
  - (i) has had an opportunity to obtain that advice; and
  - (ii) has absolutely and unconditionally satisfied itself as to that advice; and
- (c) Poolwerx has explained to the Franchisee that:
  - (i) strict compliance is required with the Poolwerx System and the terms of this Agreement;
  - (ii) Poolwerx will take action, including legal action, to enforce compliance with this Agreement;
  - (iii) Poolwerx may consult with the Franchisee or representatives of the Franchisee from time to time, but Poolwerx reserves and retains fundamental and sole control over the Poolwerx System and the Poolwerx image; and
  - (iv) there is no guarantee that the Franchisee will necessarily be successful, and it is the Franchisee's responsibility to form its own view on, and take responsibility for, the success of the Franchised Business.

### **40. Dispute Resolution**

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#### **40.1 Parties must use Alternative Dispute Resolution**

1. Poolwerx, the Franchisee and each Guarantor agree to use the Poolwerx Internal Dispute Resolution Process to resolve any dispute between the parties prior to taking any other action under this Agreement or at law.
2. The Franchisee must, on demand from Poolwerx, reimburse Poolwerx or a third party at the direction of Poolwerx, the Costs or any part of the Costs associated with a failure by the Franchisee to comply with the Poolwerx Internal Dispute Resolution Process.

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3. This clause may be pleaded as a complete bar to any other legal proceedings initiated by a party, unless the Poolwerx Internal Dispute Resolution has not resolved the dispute.
  4. Where the Poolwerx Internal Dispute Resolution Process has not resolved the dispute within 20 Business Days, the parties agree to use the procedure under clause 40.3(b).

#### **40.2 Notice**

A party claiming that a dispute has arisen must notify the other party in writing:

1. of the nature of the dispute;
2. what outcome the party wants; and what action the party thinks will settle the dispute, (the “**Dispute Notice**”).

#### **40.3 Procedure**

1. The parties agree that upon receipt of a Dispute Notice, they will first comply with clause 40.1 to attempt to resolve the dispute.
2. Following expiry of the time period specified in clause 40.1(d), either party may refer the dispute to a mediator, and if the parties cannot agree on a mediator, then either party may ask the American Arbitration Association to appoint a mediator.
3. The mediator will decide the time and place for mediation.
4. The parties must attend the mediation and try to resolve the dispute.

#### **40.4 Role of the Mediator**

1. The role of the mediator is to assist in negotiating a resolution of the dispute.
2. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.

#### **40.5 Confidentiality**

Unless otherwise provided by Law or judicial order, any information or documents disclosed by a party in the mediation process, the contents of discussions during the mediation process, and any outcomes or agreement from such process:

1. must be kept confidential, which for the avoidance of doubt means, among other restrictions, that the information, documents and any other materials cannot be disclosed to any other franchisee, the media, any other party, or on or via the internet, even if such disclosure purports to be anonymous; and
2. must only be used to attempt to resolve the dispute in accordance with the mediation process.

#### **40.6 Costs**

Each party must bear its own Costs of complying with this clause 40, and Poolwerx, on the one hand, and the Franchisee and each Guarantor, on the other hand, must bear equally:

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1. the Costs of any mediator appointed under clause 40.3; and
  2. the other Costs of the mediation, other than their own Costs.

#### **40.7 Injunctive relief**

Nothing in this clause 40 affects the right of a party to initiate legal proceedings to seek injunctive relief where this is necessary to prevent irreparable damage to the party making the application, or to the System, Network or any Intellectual Property.

### **41. Arbitration**

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#### **41.1 Disputes to be Arbitrated**

1. Except as set forth in clause 41.4, any controversy, claim or dispute arising out of or relating to the Franchised Business, this Agreement or its breach, including any claim that this Agreement or any part of this Agreement is invalid, illegal or otherwise voidable or void, shall be submitted to binding arbitration before and, unless otherwise provided herein, in accordance with the arbitration rules of the American Arbitration Association.
2. The arbitration shall be conducted at the Principal Office of Poolwerx by one arbitrator.
3. Notwithstanding any provision of this Agreement relating to which state Laws govern this Agreement, all issues relating to arbitrability or the enforcement of the agreement to arbitrate contained herein shall be governed by the Federal Arbitration Act (9 U.S.C. §1 et seq.) and the federal common law of arbitration.
4. No class actions or multi-plaintiff actions shall be permitted, nor shall any dispute involve more than one Franchised Business, unless the plaintiffs are all Affiliates, or all units involved in the arbitration are owned by the same owners.

#### **41.2 Entry of Judgment**

Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be final, binding and non-appealable.

#### **41.3 Procedures**

1. The arbitration provisions of this clause 41 are self-executing and shall remain in full force and effect after the expiration or termination of this Agreement.
2. If either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise, notwithstanding such failure to appear.

#### **41.4 Excepted Disputes**

The obligation herein shall not be binding upon either party with respect to claims relating to the Trademarks or any other Intellectual Property, or requests by any party for temporary restraining orders, preliminary injunctions or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to

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preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

**42. Warranties by the Franchisee**

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The Franchisee warrants that:

- (a) all information provided to Poolwerx for consideration by Poolwerx in its decision to grant the rights under this Agreement is true and not misleading; and
- (b) it has disclosed to Poolwerx all facts and things about the Franchisee's management and ownership, including their respective financial positions and past business history, which may be relevant to the decision by Poolwerx to grant the rights under this Agreement.

**43. Acknowledgments by the Franchisee**

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The Franchisee acknowledges and agrees that:

- (a) the success of the Franchised Business depends upon the Franchisee's own effort, and the Franchisee assumes responsibility for the success or failure of the Franchised Business; and
- (b) Poolwerx does not guarantee any return on amounts invested by the Franchisee in the Franchised Business, or any income or profit to the Franchisee.

**44. Grant of Security**

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- (a) The Franchisee will (and will require that any other person) grant in favor of Poolwerx all security reasonably requested by Poolwerx, in a form satisfactory to Poolwerx, at its discretion, to secure the performance by the Franchisee of its payment and other obligations to Poolwerx under this Agreement.
- (b) The Franchisee will execute all documents Poolwerx may request to protect and perfect its interest in any such security.

**45. Power of Attorney**

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**45.1 Appointment**

In consideration of Poolwerx entering into this Agreement and to secure performance by the Franchisee of its obligations under this Agreement, the Franchisee irrevocably appoints Poolwerx and each of its officers jointly and each of them severally to be the Franchisee's attorney-in-fact to exercise the powers described in this clause (**Attorney**).

**45.2 Powers**

- 1. The Attorney may, in the name and at the Cost of the Franchisee, do anything required to be done by the Franchisee under this Agreement which the Franchisee has not done, or has not done promptly or properly, including in the following circumstances:
  - (i) when a Default Event occurs;

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- (ii) when the conditions of clauses 6.1(b)(iii), 6.15, 7.6(e)(ii), 25.4(b), 32.7(b) and 36.5 are met;
  - (iii) in order to give effect to any decision that is binding on the parties under clause 40;
  - (iv) to perfect an interest in any security given by the Franchisee or the Guarantor to Poolwerx; or
  - (v) at the expiration or termination of the Franchise.
2. Without limitation, the Attorney may under this clause execute and deliver documents, transfers, assignments, deeds, forms, notices or other instruments.

#### **45.3 Powers Continue Despite the Franchise's Expiration or Termination**

The powers granted under this clause 45, being coupled with an interest, commence when this Agreement is executed, and continue despite the expiration or termination of this Agreement or the Franchise.

#### **45.4 Ratification**

The Franchisee:

1. ratifies and confirms anything an Attorney lawfully does under this clause 45; and
2. must pay on demand all the Costs or other liabilities incurred by or on behalf of Poolwerx or the Attorney under this clause 45.

#### **46. Indemnity**

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- (a) The Franchisee indemnifies Poolwerx and its Affiliates, and each of their agents, officers, directors and employees (the "**Indemnified Parties**"), against all damages, losses, claims, Costs and Legal Costs incurred by the Indemnified Parties in connection with a demand, action, arbitration, or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of, or in connection with:
  - (i) any act of Poolwerx or its officers performed as attorney for the Franchisee in accordance with the terms of this Agreement;
  - (ii) any Default Event;
  - (iii) a breach by the Franchisee of this Agreement or any Related Agreement;
  - (iv) any injury to, or loss of property of, any person in or on premises from which the Franchised Business is conducted;
  - (v) the Franchisee's taxes, liabilities or Costs in connection with the Franchised Business;
  - (vi) any negligent or willful act or omission of the Franchisee, its employees, agents, servants, contractors or others for whom the Franchisee is legally responsible; and

- 
- (vii) any warranty, promise or representation made by the Franchisee or any employee, agent, or other person acting on the Franchisee's behalf.
  - (b) The rights of Poolwerx at Law and under this Agreement, including the expiration or termination of the Franchise indemnified under this clause, are not affected by:
    - (i) Poolwerx accepting the Franchisee's repudiation of this Agreement; or
    - (ii) any other matter, fact or thing.

## **47. Changes in Laws**

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### **47.1 Taxes and Charges**

The parties agree that if any Laws are changed, new Laws are introduced, or any court or relevant authority interpret Laws differently, which results in Poolwerx having to pay a tax, duty, excise or levy (impost) on:

1. amounts received from the Franchisee under this Agreement (other than income tax); or
2. goods or services supplied by Poolwerx under this Agreement, then, the Franchisee must pay to Poolwerx an additional amount so that Poolwerx receives the equivalent amount that it would have received absent such tax, duty, excise or levy (impost).

### **47.2 Amend Agreement to Comply with Future Laws**

The parties agree that if any Laws are changed, or new Laws introduced or any court or relevant authority publishes or issues any statement, rules, code or requirement, which in the opinion of Poolwerx or its attorneys, renders or is likely to render all or part of this Agreement unenforceable, illegal or void, the parties will immediately amend this Agreement and do all things (including executing documents) necessary or desirable to ensure that this Agreement is not unenforceable, illegal or void.

## **48. General Provisions**

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### **48.1 Parties**

1. If a party consists of more than one person, this Agreement binds each of them separately and any 2 or more of them jointly.
2. A right, obligation, representation or warranty in favor of more than one person is for the benefit of them separately and jointly.

### **48.2 Relationship of Parties**

1. Nothing in this Agreement constitutes or creates a partnership, joint venture, agency or any form of fiduciary relationship between the Franchisee and Poolwerx.
2. Neither party has the power to bind any other party except as authorized by this Agreement.

### **48.3 Force Majeure**

1. If a party (**Affected Party**):



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- (i) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event; and
    - (ii) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect,then such obligation is suspended during the period the Prescribed Event continues, and for such further period as is reasonable in the circumstances.
  2. For the purposes of clause 48.3(a), a “**Prescribed Event**” means any of the following:
    - (i) an act of God;
    - (ii) war, riot, insurrection, vandalism or sabotage;
    - (iii) strike, lockout, ban, limitation of work or other industrial disturbance;
    - (iv) a change in, or the introduction of a new, Law, rule or regulation of any government or governmental agency, or any executive or administrative order or act of general or particular application;
    - (v) explosion;
    - (vi) power shortage; or
    - (vii) breakdown of plant, machinery or equipment,which is unforeseen or beyond the control of the Affected Party, and occurs without the fault or negligence of the Affected Party.
  3. Nothing in clause 48.3(a)(ii) obliges the Affected Party to settle any strike, lockout, ban, limitation of work or other industrial dispute.

#### **48.4 Notices**

1. A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
2. In addition to any other method of service provided by Law, the Notice may be:
  - (i) sent by prepaid post to the address of the addressee as set out in this Agreement, or as subsequently notified by the addressee to the other parties in writing;
  - (ii) sent by facsimile to the facsimile number of the addressee;
  - (iii) delivered at the address of the addressee as set out in this Agreement, or as subsequently notified by the addressee to the other parties in writing;
  - (iv) sent by email to the email address of the addressee; or
  - (v) sent by overnight courier by a recognized courier service.
3. A Notice will be deemed as given and received:
  - (i) if sent by post, on the second Business Day (at the address to which it is posted) after posting; or
  - (ii) if otherwise sent or delivered in a manner provided by clause 48.4(b) before 5:00 pm on a Business Day at the place of delivery, upon

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delivery, and otherwise on the next Business Day at the place of receipt.

4. Notwithstanding clause 48.4(c), a Notice sent by facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.
5. A Notice sent or delivered in a manner provided by clause 48.4(b) must be treated as validly given to, and received by, the party to which it is addressed even if:
  - (i) the addressee has been liquidated or deregistered, or is absent from the place at which the Notice is delivered or to which it is sent; or
  - (ii) the Notice is returned unclaimed.
6. Any Notice by a party may be given and signed by its attorney.
7. Any Notice to a party may be given to its attorney by any of the means listed in clause 48.4(b).

#### **48.5 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed from this Agreement, and the rest of this Agreement remains in force.

#### **48.6 Entire Understanding**

Subject to the provisions of any other written agreement entered into and approved by Poolwerx, and to which Poolwerx and the Franchisee are parties, this Agreement and the Disclosure Document:

1. are the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
2. supersede any prior agreement or understanding on anything connected with that subject matter.

#### **48.7 Amendment**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by Poolwerx and the Franchisee.

#### **48.8 Waiver**

1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
3. A waiver is not effective unless it is in writing.
4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

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#### **48.9 Further Assurance**

Each party must promptly at its own Cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

#### **48.10 Governing Law and Jurisdiction**

1. The Law of the state of where Poolwerx has its Principal Office on the Date of Agreement governs this Agreement without regard to that state's choice-of-law rules.
2. The parties submit to the exclusive jurisdiction of the courts of the state where Poolwerx has its Principal Office on the date any proceeding is commenced by or against the Franchisee (both State and Federal courts, where applicable in the Jurisdiction).

#### **48.11 Non-merger**

Each obligation which expressly survives or is capable of surviving the expiration or termination of the Franchise or this Agreement continues in force notwithstanding the expiration or termination of the Franchise or this Agreement.

#### **48.12 Time of the Essence**

Unless otherwise provided herein or in writing signed by the parties, time is of the essence of this Agreement.

#### **48.13 Execution of Counterparts**

This Agreement may be executed electronically or by original signature in any number of counterparts and each counterpart is an original, but the counterparts together are one and the same agreement. The counterparts may also be exchanged electronically.

#### **48.14 Grossing up**

If any gross receipts tax or other tax (but excluding any tax based upon the income of Poolwerx) is imposed or assessed on the Franchise Fees or Marketing Fees that the Franchisee is obligated to pay to Poolwerx, the amount of the Franchise Fees or Marketing Fees shall be increased (**Grossed Up**) so that the amount received by Poolwerx, after payment of such tax, shall equal the stated amount that would have been paid to Poolwerx absent such imposed or assessed tax.

#### **48.15 Special Conditions**

1. Any conditions set out in Item 20 of Schedule 1 form part of this Agreement.
2. If there is any inconsistency between a provision of the Special Conditions and a provision of this Agreement, the provision of the Special Conditions prevails to the extent of the inconsistency.

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#### **49. Executive Order 13224**

The Franchisee acknowledge that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (**Order**), Poolwerx is prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in, acts of terrorism, as defined in the Order. Accordingly, the Franchisee represents and warrants to Poolwerx that, as of the date

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of this Agreement, neither the Franchisee nor any person holding any ownership interest in the Franchisee, controlled by the Franchisee, or under common control with the Franchisee is designated under the Order as a person with whom Poolwerx may not be able to conduct business, and that the Franchisee: (i) does not, and hereafter will not, engage in any terrorist activity; (ii) is not affiliated with and does not support any individual or Entity engaged in, contemplating, or supporting terrorist activity; and (iii) is not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or Entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

**[SIGNATURE LINES APPEAR AT END OF DOCUMENT]**

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**Schedule 1 – Particulars**

<b>Item</b>	<b>Matter</b>	<b>Details</b>
Item 1	<b>Date of Agreement</b>	The date this Agreement is signed by the last party to sign it.
Item 2	<b>Franchisee</b>	[insert]
Item 3	<b>Guarantor(s)</b>	[insert]
Item 4	<b>Manager</b>	[insert]
Item 5	<b>Commencement Date</b>	<b>Mobile Unit</b> – [insert] <b>Retail Location</b> – [insert]
Item 6	<b>Trade Name</b>	[insert]
Item 7	<b>Marketing Area</b>	[insert]
Item 8	<b>Premises</b>	[insert]
Item 9	<b>Jurisdiction</b>	[insert]
Item 10	<b>Initial Franchise Fee</b>	[insert]
Item 11	<b>Fees a Commencement Date (Incentive Based Fee Structure)</b>	Poolwerx confirms that at the Commencement Date the following percentages of Franchise Fees and Marketing Fees will be charged. The Franchisee acknowledges and confirms that it is understood that the percentages set out below are subject to the provisions of Item 11(a) and Item 11(b) of this Schedule 1.

<b>Gross Revenue*</b>	<b>Franchise Fees</b>	<b>Marketing Fees</b>
\$0-\$1,065,000	7%	3%
\$1,065,001-\$1,597,500	6%	3%
\$1,597,501-\$2,662,500	5%	2%
\$2,662,501-\$5,325,000	5%	1.5%
>\$5,325,000	5%	1%

\*Amount may be adjusted annually based on the CPI Increase.

(a) **Hold-Over Period:** Where the Franchisee operates in any Hold-Over Period pursuant to Section 3.6 of the Franchise Agreement, the sum of the Franchise Fee that would be otherwise payable will be increased by an additional 1% of Gross Revenue.

(b) **Payment Terms:** The Franchise Fees and Marketing Fees are payable in arrears on the 15<sup>th</sup> day of each and every month of the Term or as otherwise specified in the Operations Manual or by Poolwerx from time to time.

**(c) Review of Franchise Fees and Marketing Fees:**

- The Franchise Fees and Marketing Fees are based on the Gross Revenue of the prior Financial Year.
- At the conclusion of each Financial Year the Franchise Fees and Marketing Fees will be reviewed to ascertain whether there are

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any changes to the Franchisee's Franchise Fees and Marketing Fees which apply to the following Financial Year.

- In the event of a partial sale of the Franchised Business, expansion of the Franchised Business, establishment of an additional Retail Location, or closure of a Retail Location, the Franchise Fees and Marketing Fees may be reviewed by Poolwerx to ascertain whether there are any changes to the Franchisee's Franchise Fees and Marketing Fees from the first day of the month following the relevant event.
- Details of the Incentive Based Fee Structure program can be found in the Operations Manual. Poolwerx reserves the right to vary the Incentive Based Fee Structure.

**Regional Area Marketing Fee:** \$1,500 per annum (as adjusted annually by the CPI Increase) for each Marketing Area.

**Local Area Marketing Obligation:** 1% of Gross Revenues.

**Convention Fee:** \$3,322 per annum (as adjusted annually by the CPI Increase, and by Poolwerx having regard to costs associated with that year's venue).

**Item 12 Technology Fee**

Currently 2% of Gross Revenue. The Technology Fee may be increased or decreased by Poolwerx in its sole discretion on an annual, calendar year basis to account for the pro rata aggregated system-wide technology and innovation costs anticipated by Poolwerx for the upcoming calendar year. The Technology Fee may cover, among other things, subsidiary licenses, POS user fees, admin fees, technician fees and other current or future technology focused fees or costs incurred in developing, operating and enhancing Franchised Business generally

**Item 13 Opening Promotional Amount (Grand Opening Advertising)**

Currently a minimum of \$8,000 for grand opening advertising and promotion of Mobile Unit and a further \$15,000 for grand opening advertising and promotion of a Retail Location.

**Item 14 Transfer Fee**

The Transfer Fee is the aggregate of the following amounts:

- \$5,000 (as adjusted annual by the CPI Increase) if the Franchised Business is to be transferred to an existing Franchised Business; or
- \$10,000 (as adjusted annual by the CPI Increase) if the Franchised Business is to be transferred to a new Franchised Business,

PLUS

- All Costs and Legal Cost incurred by Poolwerx in connection with the Transfer.

**Item 15 Renewal Fee**

The Renewal Fee is the aggregate of:

- \$10,000 (as adjusted annually by the CPI Increase) for renewal of the Franchised Business conducted by the Franchisee under this Agreement.

PLUS

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		<ul style="list-style-type: none"><li>• All Costs and Legal Costs incurred by Poolwerx in connection with any renewal of this Agreement.</li></ul>
<b>Item 16</b>	<b>Additional Service Fee</b>	\$800 per day or part thereof, or as otherwise specified in the Operations Manual or by Poolwerx from time to time.
<b>Item 17</b>	<b>Initial Term</b>	10 years from the Commencement Date.
<b>Item 18</b>	<b>Renewal Term</b>	10 years commencing on the expiration of the Initial Term.
<b>Item 19</b>	<b>Optional Third Term</b>	10 years commencing on the expiration of the Renewal Term.
<b>Item 20</b>	<b>Special Conditions</b>	N/A – addressed by Amendment of the Franchise Agreement.

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## Schedule 2 – Development Conditions

[insert, or amend as necessary]

1. The Franchisee must commence operations and open its Retail Location as provided in Item 5 of Schedule 1 within the Marketing Area defined in Item
2. If:
  - a. the Franchisee has not opened a Retail Location by the Retail Location Development Date; and
  - b. Poolwerx decides, at its discretion, that the Franchisee has not used reasonable endeavors to satisfy the Development Condition,  
  
Poolwerx may require the Franchisee to sell one of its Marketing Areas pursuant to clause 7.5 of the Agreement.
3. Failure to satisfy the Development Condition will be deemed a failure to meet Minimum Performance Criteria for the purposes of clause 7 of the Agreement.
4. The Franchisee acknowledges that where:
  - a. Poolwerx has presented the Franchisee with information and data which establish reasonable prospects of a commercial return at a proposed Retail Location (**Opportunity**); and
  - b. the Franchisee has on more than one occasion declined or otherwise refused to pursue such Opportunity (**Refusal**),  
  
then the Refusal will be taken into account by Poolwerx in determining whether the Franchisee has used reasonable endeavors to satisfy the Development Condition.



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### Schedule 3:

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#### Exclusive Marketing Area and Loan Area are defined as follows:

1. The Marketing Area known as **Poolwerx [insert]** comprising the following **insert Zip Codes / Carrier Codes** prevailing as at the Commencement Date:

[insert].

The following map sets out the boundaries of the Marketing Area. In the event of any discrepancy between the map and the zip or carrier codes above, the zip or carrier codes will prevail.

2. The Loan Area known as **Poolwerx [insert]** comprising the following **insert Zip Codes / Carrier Codes** prevailing as at the Commencement Date:

[insert].

The following map sets out the boundaries of the Loan Area. In the event of any discrepancy between the map and the zip or carrier codes above, the zip or carrier codes will prevail.

**Schedule 4 – Refurbishment Plan**

<b>STAGE 1 – POOLWERX BRANDING/RE-BRANDING</b>	<b>Responsibility</b>	<b>Completion Date</b>
Stationery (including business cards, stickers and magnets)	Franchisee	[insert]
Uniform	Franchisee	[insert]
Marketing Material	Franchisee	[insert]
<b>STAGE 2 – PRODUCT RANGE, QUALIFICATIONS &amp; TRAINING</b>	<b>Responsibility</b>	<b>Completion Date</b>
Product rollover compliance	Franchisee	[insert]
Product range - PiP	Franchisee	[insert]
Product training	Franchisee	[insert]
Required Qualifications and Staff training	Franchisee	[insert]
<b>STAGE 3 – SYSTEMS</b>	<b>Responsibility</b>	<b>Completion Date</b>
Business Management Systems / Software	Poolwerx	[insert]
Water Testing Software	Poolwerx	[insert]
Water Testing Devices	Poolwerx	[insert]
Internet/Intranet	Franchisee	[insert]
Telecommunications Provider (Telephone)	Franchisee	[insert]
Telecommunications Provider (internet)	Franchisee	[insert]
ICT Hardware (including Computer, Router, Printer)	Franchisee	[insert]
<b>STAGE 4 – MARKETING</b>	<b>Responsibility</b>	<b>Completion Date</b>
Proactive LAM plan as agreed and approved by the Regional Manager and Poolwerx Marketing Manager.	Poolwerx and Franchisee	[insert]

<b>STAGE 5 – IN RETAIL LOCATION BUILDOUT</b>	<b>Responsibility</b>	<b>Store location:</b>
		[insert]
Exterior Signage	Franchisee	[insert]
Interior Signage & Graphics	Franchisee	[insert]
Floor Design	Franchisee	[insert]

Counter	Franchisee	[insert]
Walls Fixtures	Franchisee	[insert]
Floor Fixtures	Franchisee	[insert]

<b>STAGE 5 – IN RETAIL LOCATION BUILDOUT</b>	<b>Responsibility</b>	<b>Store location:</b>
		[insert]
Flooring	Franchisee	[insert]
Lighting	Franchisee	[insert]
Ceiling	Franchisee	[insert]
Painting	Franchisee	[insert]
Merchandising Accessories	Franchisee	[insert]
Digital Display Systems	Franchisee	[insert]
Tele-communications Provider (Telephone)	Franchisee	[insert]
Tele-communications Provider (internet)	Franchisee	[insert]
ICT Hardware (Cabling Computer, Router, Printer)	Franchisee	[insert]

<b>STAGE 6 – VEHICLES</b>	<b>Responsibility</b>	<b>Completion Date</b>
Exterior signage in line with current Poolwerx Standards	Franchisee	[insert]
Racking installation	Franchisee	[insert]
Registration and safety certificate in accordance with the jurisdiction in which the Franchised Business operates	Franchisee	At all times
Vehicles to be fitted with lockable storage. All chemicals must be kept in that lockable storage area, and tools must be secured firmly to the vehicle.	Franchisee	At all times

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**Schedule 5 – Trademarks**

<b>Mark</b>	<b>Status</b>	<b>Serial No./ Filing Date:</b>	<b>Reg. No. Reg. Date</b>	<b>Owner</b>
POOLWER X	Registered	78837452 Mar 15, 2006	3499137 Sep 9, 2008	Poolwerx Holdings Pty Ltd ACN 094 349 247

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## Schedule 6 – Loan

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### INTRODUCTION

- A. The terms and conditions contained in this Schedule 6 (**Terms and Conditions**) together with the terms and conditions of the Agreement and the Confirmation and Acceptance Terms will apply to the parties where Poolwerx agrees to allow the Franchisee to temporarily operate the Franchised Business in one or more Loan Areas outside of the Marketing Area granted to the Franchisee under the Agreement.
- B. The parties agree that these Terms and Conditions apply unless they are otherwise varied by Poolwerx when offering a Loan Area to the Franchisee.
- C. The Terms and Conditions can be varied by the parties signing the Confirmation and Acceptance Terms provided by Poolwerx. The Franchisee must, if required by Poolwerx, sign any documentation required from time to time to record the particulars of each Loan Area arrangement.

#### 1. Definitions and interpretation

##### 1.1 Rules

- (a) All terms defined or interpreted in the Agreement will have the same meaning in these Terms and Conditions unless some other meaning is plainly intended.
- (b) The rules of interpretation contained in the Agreement apply to the interpretation of these Terms and Conditions.

##### 1.2 Defined terms: In this document:

**Agreement** means the Franchise Agreement to which this Schedule 6 is attached.

**Confirmation and Acceptance Terms** means the written confirmation and acceptance terms (whether in a letter or document: (a) that are signed by Poolwerx and accepted in writing or conduct by the Franchisee; (b) that identify the Loan Area and Loan Area Commencement Dates; (c) that may specify the Loan Area Fee, the Loan Area Franchise Fee, the Loan Area Marketing Fee and other amounts to be paid by the Franchisee to Poolwerx in accordance with these Terms and Conditions; (d) which may incorporate all or some of these Terms and Conditions by reference; and (e) which will confirm and evidence the terms and basis under which the Franchisee can temporarily operate (but must not market the Franchised Business) in the Loan Area (including any variation to these Terms and Conditions which apply).

**Loan Area Commencement Date** means (a) the date specified in the Confirmation and Acceptance Terms; or (b) such other date that Poolwerx agrees in writing on which the Franchisee is entitled to commence temporarily operating the Franchised Business in the Loan Area.

**Loan Area** means each loan area specified in the Confirmation and Acceptance Terms or as otherwise agreed by the parties in writing.

**Loan Area Clients** means the clients located within the Loan Area.

#### 2. Acknowledgement

##### 2.1 General Acknowledgements and Agreement by the Parties

The parties acknowledge and agree that:

- 
- (a) the Agreement contains the terms on which the Franchisee is being granted the right to establish and operate a Franchised Business using the Trademarks, Image, System and other Intellectual Property for the purpose of operating the Franchised Business in the Marketing Area;
  - (b) the Franchisee has, under the Agreement, the exclusive right to market in the Marketing Area for the Term and on the terms and conditions set out in the Agreement;
  - (c) the Agreement prevents the Franchisee from marketing outside the Marketing Area and to observe any exclusive territory rights granted in any area adjoining the Marketing Area;
  - (d) any marketing of the Franchisee's Franchised Business outside of the Marketing Area requires the consent of Poolwerx;
  - (e) that Poolwerx may, during the Term, consent to and relax some of the restrictions contained in the Agreement in an adjoining approved Loan Area on a temporary basis for such period and on such terms that Poolwerx may specify from time to time;
  - (f) there may be a necessity or benefit in the Franchisee operating on a temporary basis in one or more Loan Areas with the consent of Poolwerx;
  - (g) any such right to operate:
    - (i) is not a separate franchise, but a limited right to allow the Franchisee to operate (but not market) outside of its established Marketing Area for a limited period to service Loan Area Clients; and
    - (ii) is a personal license granted to the Franchisee and cannot be assigned or novated without the prior written consent of Poolwerx;
  - (h) where Poolwerx grants the Franchisee the right to operate the Franchised Business in a Loan Area, then the Franchisee must execute and deliver to Poolwerx any documentation reasonably required by Poolwerx to confirm and accept the terms under which it may operate in the Loan Area, including the Confirmation and Acceptance Terms;
  - (i) those Confirmation and Acceptance Terms (unless specified to the contrary) will incorporate these Terms and Conditions unless otherwise varied by written agreement and apply to the Loan Area within which Poolwerx will allow it to operate;
  - (j) the right to operate in a Loan Area is intended to simply allow the Franchisee to operate the Franchised Business outside the Marketing Area in a Loan Area for a Limited duration and by doing so, it does not form part of the exclusive Marketing Area or vary the terms of the Agreement or alter the definition of the Marketing Area;
  - (k) on the termination or expiration of the Franchisee's right to operate within the Loan Area for any reason, no compensation of any kind is payable to the Franchisee by Poolwerx; and
  - (l) these Terms and Conditions bind the parties and will commence to apply if Confirmation and Acceptance Terms are entered into for a Loan Area.

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### **3. Loan Area**

#### **3.1 Rights to operate in the Loan Area**

- (a) Poolwerx may during the Term give its consent in writing to the Franchisee operating the Franchised Business in one or more Loan Areas.
- (b) Where Poolwerx grants such consent, it will provide to the Franchisee the Confirmation and Acceptance Terms for the Franchisee to sign to record the basis on which that consent will apply to each specified Loan Area.
- (c) The Confirmation and Acceptance Terms:
  - (i) will specify and describe:
    - (A) the Loan Area;
    - (B) the actual or proposed Loan Area Commencement Date; and
    - (C) such other information that Poolwerx thinks fit and relevant;
  - (ii) incorporate by reference such of these Terms and Conditions that will apply to those arrangements;
  - (iii) evidence and confirm that upon acceptance in writing, the Franchisee will have the limited temporary non-exclusive right to operate the Franchised Business in the Loan Area; and
  - (iv) may vary or amend these Terms and Conditions to the extent and manner contained in the Confirmation and Acceptance Terms.
- (c) The Franchisee must (unless otherwise provided to the contrary in the Terms and Conditions) operate the Franchised Business in the same manner in the Loan Area as it would otherwise be required to operate its Franchised Business in the Marketing Area.
- (d) The Franchisee must actively continue to service and market to its existing clients and prospective clients in the Marketing Area and not allow its standards of service in the Marketing Area to be adversely affecting by its operations in the Loan Area.
- (e) Nothing in the Terms and Conditions or through the Franchisee conducting any approved marketing or operating within the Loan Area, confers upon the Franchisee:
  - (i) any separate franchise for or exclusivity in the Loan Area; or
  - (ii) any right to claim goodwill in relation to Loan Area Clients.
- (f) Nothing conveys any automatic right or entitlement or expectation that Poolwerx will consent to allow the right in these Terms and Conditions to be extended, renewed, transferred or novated on the renewal, extension, transfer or novation of the Agreement.
- (g) The right for the Franchisee to operate in a Loan Area may not be transferred, assigned or novated and will not form the part of any sale of a Marketing Area by a Franchisee under the Agreement.

### **4. Duration of Rights to Loan Area**

#### **4.1 Commencement and Continuation**

The right to operate in a Loan Area will only apply if the parties sign Confirmation and Acceptance Terms in which event the right will commence on the Loan Area Commencement Date or such other date agreed to by the parties and will continue for the period (if any) expressed in the Confirmation and Acceptance Terms until the earlier of:

- 
- (a) the date specified in the Confirmation and Acceptance Terms;
  - (b) the Agreement coming to an end for whatever reason; or
  
  - (c) the Franchisee being in breach of the Agreement or these Terms and Conditions.

#### **4.2 Termination by Poolwerx**

Poolwerx may, at any time, terminate the Franchisee's right to operate in the Loan Area for any reason whatsoever (and without having to establish good cause) by giving thirty (30) days prior written notice of termination to the Franchisee, or such shorter period as agreed by the parties in writing.

#### **4.3 Termination by the Franchisee**

The Franchisee may, at any time, terminate its right to operate in the Loan Area for any reason whatsoever (and without having to establish good cause) by giving thirty (30) days prior written notice of termination to Poolwerx, or such shorter period as agreed by the parties in writing.

#### **4.4 Suspension by Poolwerx and right to impose other conditions**

Poolwerx may suspend or impose other conditions on the Franchisee's right to operate the Franchised Business in the Loan Area if:

- (a) the Franchisee is in breach of these Terms and Conditions;
- (b) the Franchisee is in breach of the Agreement; or
- (c) on the occurrence of a Default Event,

irrespective of whether the Franchisee remedies such breach or Default Event.

#### **4.5 Consequences of Termination or Expiration**

If either these Terms and Conditions or the Agreement expire, terminate or otherwise end for any reason, then:

- (a) the rights conferred on the Franchisee to operate in the Loan Area immediately terminate;
- (b) the right to service the Loan Area Clients immediately cease; and
- (c) Poolwerx may, at its discretion and without obligation to pay any compensation to the Franchisee:
  - (i) continue to service the Loan Area Clients in any way that Poolwerx thinks appropriate;
  - (ii) arrange for another Franchised Business to service the Loan Area Clients;
  - (iii) grant a franchise that may include, as its exclusive marketing area, the Loan Area; and
  - (iv) require the Franchisee to simultaneously and contemporaneously give and hand over to Poolwerx, or an incoming Franchised Business, all Client Information and Client Service History Cards in respect of the Loan Area Clients within fourteen of written notice.

#### **4.6 Obligations When Arrangements End**

On the earlier of termination or expiration of the right to operate in the Loan Area, the Franchisee must immediately:

- (a) cease all marketing activities within the Loan Area;



- 
- (b) return to Poolwerx all copies, forms, stationery, business cards, advertising material and other printed matter and signs used in the Franchised Business which bear reference to the Loan Area;
  - (c) deliver to Poolwerx the original and all copies of databases and lists held by the Franchisee of suppliers to the Franchised Business that relate to the Loan Area; and
  - (d) comply with such other provisions in the Agreement that relate to termination or expiration as are relevant and would apply to the Loan Area.

## **5. Marketing**

### **5.1 Not to Undertake Local Area Marketing**

- (a) Subject to clause 8 of these Terms and Conditions (and except insofar as the interpretation or application of the restraint of trade in the Agreement is concerned), the Marketing Area as specified in the Agreement is not varied or amended to include the Loan Area and the Franchisee is not obligated or permitted (without the consent of Poolwerx) to undertake Local Area Marketing within the Loan Area.
- (b) The Franchisee may only undertake marketing within the Loan Area with the prior written consent of Poolwerx.

### **5.2 Trade Name**

- (a) The Franchisee must conduct and operate the Franchised Business in the Loan Area under the trade name approved in the Agreement unless otherwise specified in the Confirmation and Acceptance Terms.
- (b) If a separate trade name is registered, then the provisions in the Agreement applying on termination or expiration of the Agreement shall also apply in respect of such trade name.
- (b) In the event that the Franchisee registers a trade name as permitted by the Confirmation and Acceptance Terms, the Franchisee must upon the termination or expiration of the right to operate in the Loan Area cause the cancellation and or transfer of that trade name to Poolwerx or its nominee as directed by Poolwerx.

## **6. Fees and Costs**

### **6.1 Payments under Agreement**

All payments required in relation to the Loan Area are on the same terms, and are to be paid in the same manner and on the same due date for payment as required for the Marketing unless otherwise specified in the Confirmation and Acceptance Terms.

### **6.2 Initial Fees, Costs and Expenses**

On or before Loan Area Commencement Date, the Franchisee is required to pay:

- (a) the Loan Area Fee specified in the Confirmation and Acceptance Terms; and
- (b) all Costs and expenses (including Legal Costs) of and incidental to the negotiation, preparation and execution of the documentation to give effect to the Loan Area arrangements.

### **6.3 Franchise Fee**

- (a) While the Franchisee operates in the Loan Area, the Franchisee must pay the Franchise Fee in relation to the Gross Revenue earned by it in the Loan Area.

- 
- (b) Such Franchise Fee payable in respect of the Loan Area is in addition to the Franchise Fee already paid in relation to the Marketing Area.

#### **6.4 Marketing Fee**

- (a) While the Franchisee operates in the Loan Area, the Franchisee must pay the Marketing Fee in relation to the Gross Revenue earned in the Loan Area.
- (b) Such Marketing Fee payable in respect of the Loan Area is in addition to the Marketing Fee already paid in relation to the Marketing Area.

#### **6.5 Regional Area Marketing Fee**

The Franchisee is not required to pay a Regional Area Marketing Fee in relation to its operations in the Loan Area.

### **7. Other Requirements**

#### **7.1 Use Loan Area Identifiers**

The name of the Loan Area, Poolwerx domain name, email address, mobile number and national client “1800 number” must be included on all letterheads, invoices, statements, stationery and pump stickers used or distributed in the Loan Area.

#### **7.2 Reporting**

- (a) The Franchisee’s reporting obligations contained in clause 21 of the Agreement apply in relation to the operation of the Franchised Business in the Loan Area.
- (b) The Franchisee must ensure that all reports that relate to the Loan Area are kept separate from the reports required for the Marketing Area.

#### **7.3 Client Lists**

- (a) The Franchisee’s obligations regarding its Clients' details and records contained in clause 22 of the Agreement apply in relation to the Loan Area Clients.
- (b) In addition, the Franchisee must also deliver to Poolwerx, as and when required by Poolwerx, complete Client lists and records, and files in respect of the Loan Area Clients, including on or before the 30th day of June and 31st day of December of each year.

### **8 Restraint**

In consideration of Poolwerx granting the Franchisee the Loan Area on the Terms and Conditions, the Franchisee and each Guarantor agree:

- (a) to observe the restraints of trade specified in clause 31 as they relate to the Loan Area; and
- (b) that each of the restraints imposed upon the Franchisee and each Guarantor in relation to the Loan Area is fair and reasonable and is no greater than necessary to protect the goodwill of Poolwerx and the legitimate commercial interests of Poolwerx and the Network.

**[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the undersigned have hereunto set their hand and seal as of the  
Date of Agreement

SIGNATURE PAGE

**POOLWERX FRANCHISE MANAGEMENT**  
LLC, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**GUARANTOR:**

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

## Poolwerx Franchise Management LLC

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### PAYMENT AND PERFORMANCE GUARANTEE

In order to induce Poolwerx Franchise Management LLC (“**Franchisor**”) to enter into a Franchised Business Agreement (the “**Franchise Agreement**”) by and between Franchisor and the Franchisee named in the Franchise Agreement to which this Payment and Performance Guarantee (the “**Guarantee**”) is attached (“**Franchisee**”), the undersigned (collectively referred to as the “**Guarantors**” and individually referred to as a “**Guarantor**”) hereby covenant and agree as follows:

1. **Guarantee of Payment and Performance.** The Guarantors jointly and severally unconditionally guarantee to Franchisor, and Franchisor’s affiliates the payment and performance when due, whether by acceleration or otherwise, of all obligations, indebtedness, and liabilities of Franchisee to Franchisor or Franchisor’s affiliates, as applicable, direct or indirect, absolute or contingent, of every kind and nature, whether now existing or incurred from time to time hereafter, whether incurred pursuant to the Franchise Agreement or otherwise, together with any extension, renewal, or modification thereof in whole or in part (the “**Guaranteed Liabilities**”). The Guarantors agree that if any of the Guaranteed Liabilities are not so paid or performed by Franchisee when due, the Guarantors will immediately do so. The Guarantors further agree to pay all expenses (including reasonable attorneys’ fees) paid or incurred in endeavoring to enforce this Guarantee or the payment of any Guaranteed Liabilities.

2. **Waivers by Guarantors.** The Guarantors waive presentment, demand, notice of dishonor, protest, and all other notices whatsoever, including without limitation notices of acceptance hereof, of the existence or creation of any Guaranteed Liabilities, of the amounts and terms thereof, of all defaults, disputes, or controversies between Franchisor and Franchisee and of the settlement, compromise, or adjustment thereof. This Guarantee is primary and not secondary, and will be enforceable without Franchisor having to proceed first against Franchisee or against any or all of the Guarantors or against any other security for the Guaranteed Liabilities. This Guarantee will be effective regardless of the insolvency of Franchisee by operation of law, any reorganization, merger, or consolidation of Franchisee, or any change in the ownership of Franchisee.

3. **Term: No Waiver.** This Guarantee will be irrevocable, absolute, and unconditional and will remain in full force and effect as to each of the Guarantors until the later of (i) such time as all Guaranteed Liabilities of Franchisee to Franchisor and Franchisor’s affiliates, as applicable, have been paid and satisfied in full, or (ii) the Franchise Agreement and all obligations of Franchisee thereunder expire. No delay or failure on the part of Franchisor in the exercise of any right or remedy will operate as a waiver thereof, and no single or partial exercise by Franchisor of any right or remedy will preclude other further exercise of such right or any other right or remedy.

4. **Other Covenants.** Each of the Guarantors agrees to comply with the provisions of Sections 17 (Vehicle), 20 (The Premises Where a Franchise Request to Operate a Retail Location), 24. (Intellectual Property), 26. (Confidential Information), 31. (Protection of the Goodwill of Poolwerx) and 46. (Indemnity) of the Franchise Agreement as though each such Guarantor were the Franchisee named in the Franchise Agreement and agrees that the undersigned must take any and all actions as may be necessary or appropriate to cause Franchisee to comply with the Franchise Agreement and must not take any action that would cause Franchisee to be in breach of the Franchise Agreement.

5. **Dispute Resolution.** Section 41 (Arbitration) of the Franchise Agreement is hereby incorporated herein by reference and will be applicable to any and all disputes between Franchisor and any of the Guarantors, as though Guarantor were the Franchisee referred to in the Franchise Agreement.

6. **Miscellaneous.** This Agreement will be binding upon the Guarantors and their respective spouses, heirs, executors, successors, and assigns, and will inure to the benefit of Franchisor and its successors and assigns.

**IN WITNESS WHEREOF**, the undersigned Guarantors have caused this Guarantee to be duly executed as of the day and year first above written.

**GUARANTOR:**

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

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## STATE-REQUIRED ADDENDA TO FRANCHISE AGREEMENT

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### ADDENDUM TO POOLWERX FRANCHISE MANAGEMENT LLC FRANCHISE DISCLOSURE DOCUMENT FOR THE STATE OF CALIFORNIA

Preliminary Comment: Each provision of this Appendix to the Franchise Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the California Franchise Investment Law, Cal. Corp. Code §§31000 - 31516, and the California Franchise Relations Act, Cal Bus. & Prof. Code §§2000 - 20043, are met independently without reference to this Addendum to the Franchise Disclosure Document.

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

No disclaimer, questionnaire, clause, or statement signed by a franchisee in connection with the commencement of the franchise relationship shall be construed or interpreted as waiving any claim of fraud in the inducement, whether common law or statutory, or as disclaiming reliance on or the right to rely upon any statement made or information provided by any franchisor, broker or other person acting on behalf of the franchisor that was a material inducement to a franchisee's investment. Any statements or representations signed by a franchisee purporting to understand any fact or its legal effect shall be deemed made only based upon the franchisee's understanding of the law and facts as of the time of the franchisee's investment decision. This provision supersedes any other or inconsistent term of any document executed in connection with the franchise.

1. Item 3 is amended to reflect that:

Neither we nor any person or broker identified in Item 2 of the Franchise Disclosure Document is subject to any current effective order of any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934, U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

2. Item 5 is amended to reflect that:

Franchisees shall not be required to remit any fees to Franchisor until such time as Franchisor has fulfilled all its initial obligations owed to Franchisee under the Franchise Agreement, or other documents, and the Franchisee has commenced doing business pursuant to the Franchise Agreement.

3. Item 6 is amended to reflect that the maximum interest rate allowed in California is 10%.

4. Item 17 is amended by the addition of the following statements:

California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer or nonrenewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

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

The California Corporations Code, Section 31125, requires that we give you a disclosure document, approved by the Department of Corporations, before we solicit a proposed material modification of an existing franchise.

The Franchise Agreement contains a liquidated damages clause, under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

The Franchise Agreement requires the application of the laws and forum of Delaware. This provision may be unenforceable under California Law.

The Franchise Agreement requires you to sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring a franchise to waive compliance with any provision of that law or any rule or order is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). California Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

5. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.
6. OUR WEB SITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEB SITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [www.dpfi.ca.gov](http://www.dpfi.ca.gov).
7. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a Franchise Agreement restricting venue to a forum outside the State of California.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF CALIFORNIA**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

CALIFORNIA LAW MODIFICATIONS

1. The California Department of Financial Protection and Innovation requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. CORP. CODE Section 31000 et. seq., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 et. seq. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

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

b. Franchisees shall not be required to remit any fees to Franchisor until such time as Franchisor has fulfilled all its initial obligations owed to Franchisee under the Franchise Agreement, or other documents, and the Franchisee has commenced doing business pursuant to the Franchise Agreement.

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

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

e. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

f. The Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

g. Under California law, the maximum interest rate that may be charged is 10%.

2. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of the California Business and Professions Code, with respect to each such provision, are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. No disclaimer, questionnaire, clause or statement signed by a franchisee in connection with the commencement of the franchise relationship shall be construed or interpreted as waiving any claim or fraud in the inducement, whether common law or statutory, or as disclaiming reliance on or the



right to rely upon any statement made or information provided by any franchisor, broker or other person acting on behalf of the franchisor that was a material inducement to a franchisee's investment. This provision supersedes any other or inconsistent term of any documents executed in connection with the franchise.

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT  
LLC**, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF ILLINOIS**

Illinois law governs the Franchise Agreements.

The following information applies to franchisors and franchisees subject to the Illinois Disclosure Act of 1987. Item numbers correspond to those in the main body:

a. Item 17 - Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a franchise agreement may provide for arbitration outside of Illinois.

b. Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise disclosure Act or any other law of Illinois is void.

c. Item 17 - Your rights upon termination and non-renewal of a franchise agreement are set forth in sections 19 and 20 of the Illinois Franchise disclosure act.

d. Item 5 and Cover Page - The following statement is added to the Cover Page and Item 5:

The Illinois Attorney General's Office has determined that either the franchisor has not demonstrated it is adequately capitalized or that the franchisor must rely on franchise fees to fund operations. The Illinois Attorney General's Office has imposed a requirement for the franchisor to maintain a surety bond in the amount of \$196,000 during the registration period, which is available for you to recover your damages in the event the franchisor does not fulfill its obligations to you to open your franchised business.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF ILLINOIS**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

ILLINOIS LAW MODIFICATIONS

1. Illinois law governs the Franchise Agreements.
2. The Illinois Attorney General’s Office requires that certain provisions contained in franchise documents be amended to be consistent with Illinois law, including the Franchise Disclosure Act of 1987, 515 ILCS 705/1 et. seq. To the extent that this Agreement contains provisions that are inconsistent with the following, such provision are hereby amended:
  - a. Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a franchise agreement may provide for arbitration outside of Illinois.
  - c. Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise disclosure Act or any other law of Illinois is void.
  - d. The Illinois Attorney General’s Office has determined that either the franchisor has not demonstrated it is adequately capitalized or that the franchisor must rely on franchise fees to fund operations. The Illinois Attorney General’s Office has imposed a requirement for the franchisor to maintain a surety bond in the amount of \$196,000 during the registration period, which is available for you to recover your damages in the event the franchisor does not fulfill its obligations to you to open your franchised business.
  - e. Your rights upon termination and non-renewal of a franchise agreement are set forth in sections 19 and 20 of the Illinois Franchise disclosure act.
3. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act, with respect to each such provision, are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT  
LLC, a Delaware limited liability company**

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF MARYLAND**

Item 5 of the Franchise Disclosure Document is amended to include the following paragraph:

Item 17 of the Franchise Disclosure Document is amended to include the following paragraph:

The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Franchise Disclosure Document is amended to include the following sentence:

A provision in the Franchise Agreement that provides for termination on your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

Item 17 of the Franchise Disclosure Document is modified to include the words:

“a franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.”

Item 17 is amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Item 17 of the Franchise Disclosure Document is amended to include the following:

The Franchise Agreement provides that disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF MARYLAND**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

MARYLAND LAW MODIFICATION

1. The Maryland Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Maryland law, including the Maryland Franchise Registration and Disclosure Law, MD CODE ANN., BUS. REG. Sections 14-201 to 14-233 (2010 Repl. Vol. and Supp. 2010) (the “Law”). To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Law.

b. All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

c. Franchisee may bring a lawsuit in Maryland for claims arising under the Law.

d. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

3. The Franchise Agreement provides that disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

4. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, with respect to each such provision, are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT**  
LLC, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF MINNESOTA**

The following is added to Item 5 and Item 7:

Item 13 of the Franchise Disclosure Document is amended to state that we will protect your right to use the trademarks, service marks, trade names, logotypes of other commercial symbols (“Marks”) or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the Marks.

The following is added to Item 17 of the Franchise Disclosure Document:

Under Minnesota law and except in certain specified cases, POOLWERX FRANCHISE MANAGEMENT LLC must give you 90 days’ notice of termination with 60 days to cure. POOLWERX FRANCHISE MANAGEMENT LLC also must give you at least 180 days’ notice of its intention not to renew a franchise, and sufficient opportunity to recover the fair market value of the franchise as a going concern. To the extent that the Franchise Agreement is inconsistent with the Minnesota law, the Minnesota law will control.

To the extent that any condition, stipulation or provision contained in the Franchise Agreement (including any choice of law provision) purports to bind any person who, at the time of acquiring a franchise is a resident of Minnesota, or, in the case of a partnership or corporation, organized or incorporated under the laws of Minnesota, or purporting to bind a person acquiring any franchise to be operated in Minnesota to waive compliance with the Minnesota Franchises law, such condition, stipulation or provision may be void and unenforceable under the nonwaiver provision of the Minnesota Franchises Law.

Minn. Stat. §80C.21 and Minn. Rule 2860.4400J. prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Franchise Disclosure Document or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

Minn. Rule 2860.4400J. prohibits us from requiring you to consent to liquidated damages and prohibits waiver of a jury trial. If the Franchise Agreement contains a provision that is inconsistent with the Minn. Rule, the provisions of the Franchise Agreement will be superseded by the Minn. Rule’s requirements and will have no force or effect.

Minn. Rule 2860.4400J. prohibits us from requiring you to assent to a general release. To the extent that the Franchise Agreement requires you to sign a general release as a condition of renewal or transfer, the Franchise Agreement will be considered amended to the extent necessary to comply with Minnesota law.

Minn. Rule 2860.4400J. prohibits us from requiring you to pay a termination fee. To the extent that the Franchise Agreement requires you to pay a termination fee, the provisions of the Franchise Agreement will be superseded by the Minn. Rule’s requirements and will have no force or effect.



**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF MINNESOTA**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

MINNESOTA LAW MODIFICATION

1. The Commissioner of Commerce for the State of Minnesota requires that certain provisions contained in franchise documents be mended to be consistent with Minnesota Franchise Act, Minn. Stat. Section 80C.01 et. seq., and the Rules and Regulations promulgated under the Act (collectively the “Franchise Act”). To the extent that the Agreement and/or Franchise Disclosure Document contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The Minnesota Department of Commerce requires that franchisors indemnify Minnesota franchisees against liability to third parties resulting from claims by third parties that the franchisee’s use of the franchisor’s proprietary marks infringes trademark rights of the third party.

b. Minn. Stat. Sec. 80C.14. Subds. 3, 4, and 5 requires, except in certain specified cases, that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement. If the Agreement contains a provision that is inconsistent with the Franchise Act, the provisions of the Agreement shall be superseded by the Act’s requirements and shall have no force or effect.

c. If the Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Franchise Act, such release shall exclude claims arising under the Franchise Act, and such acknowledgments shall be void with respect to claims under the Franchise Act.

d. If the Agreement requires that it be governed by the law of a State other than the State of Minnesota or arbitration or mediation, those provisions shall not in any way abrogate or reduce any rights of the Franchisee as provided for in the Franchise Act, including the right to submit matters to the jurisdiction of the courts of Minnesota.

e. Any provision that requires the Franchisee to consent to a claims period that differs from the applicable statute of limitations period under Minn. Stat. 80C.1, Subd. 5, may not be enforceable under Minnesota law.

2. Minn. Stat. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Franchise Disclosure Document or Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes Ch. 80C, including your rights to any procedure, forum, or remedies provided for in that law.

3. The Agreement and/or Franchise Disclosure Document is hereby amended to delete all references to Liquidated Damages (as defined) in violation of Minnesota law; provided, that no such deletion shall excuse Franchisee from liability for actual or other damages and the formula for Liquidated Damages in the Agreement and/or Franchise Disclosure Document shall be admissible as evidence of actual damages.

4. To the extent required by Minnesota Law, the Agreement and/or Franchise Disclosure Document is amended to delete all references to a waiver of jury trial.

5. All sections of the Agreement and/or Franchise Disclosure Document referencing Franchisor's right to obtain injunctive relief are hereby amended to refer to Franchisor's right to seek to obtain such relief.

6. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of Minnesota Law applicable to the provision are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT**  
LLC, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF NEW YORK**

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, 23RD FLOOR, NEW YORK, NEW YORK 10271. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities

association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 4:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

4. The following is added to the end of Item 5:

The Initial Franchise Fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The following is added to the end of the “Summary” sections of Item 17(c), titled “**Requirements for franchisee to renew or extend**,” and Item 17(m), entitled “**Conditions for franchisor approval of transfer**”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this provision that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the “Summary” section of Item 17(d), titled “**Termination by franchisee**”:

You may terminate the agreement on any grounds available by law.

7. The following is added to the end of the “Summary” section of Item 17(j), titled “**Assignment of contract by franchisor**”:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

8. The following is added to the end of the “Summary” sections of Item 17(v), titled “**Choice of forum**”, and Item 17(w), titled “**Choice of law**”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF NEW YORK**

The Franchise Agreement between **POOLWERX FRANCHISE MANAGEMENT LLC**, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_, a \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Franchise Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

NEW YORK LAW MODIFICATION

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SERVICES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is to be added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor’s principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled “**Requirements for franchisee to renew or extend,**” and Item 17(m), entitled “**Conditions for franchisor approval of transfer**”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “**Termination by franchisee**”:

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled “**Choice of forum**”, and Item 17(w), titled “**Choice of law**”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York

6. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of New York General Business Law, with respect to each such provision are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above..

**POOLWERX FRANCHISE MANAGEMENT**  
LLC, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF NORTH DAKOTA**

The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):

- A. Restrictive Covenants: Franchise Disclosure Documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
- B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
- C. Restriction on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- E. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- F. Applicable Laws: Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
- G. Waiver of Trial by Jury: Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
- H. Waiver of Exemplary and Punitive Damages: Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
- I. General Release: Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF RHODE ISLAND**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

**RHODE ISLAND LAW MODIFICATIONS**

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law Tit. 19 Ch. 28.1 Sections 19-28.1-1 to 19-28.1-34. To the extent that this Agreement contains provisions that re inconsistent with the following, such provisions are hereby amended:

a. If this Agreement requires litigation to be conducted in a forum other than the State of Rhode Island, the requirement is void with respect to any claims brought under Rhode Island Franchise Investment Act Sec. 19-21.1-14.

b. If this Agreement requires that it be governed by a state’s law, other than the State of Rhode Island, to the extent that such law conflicts with Rhode Island Franchise Investment Act it is void under Section 19-28.1-14.

c. If Franchisee is required in this Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule or order under the Act, such release shall exclude claims arising under the Rhode Island Franchise Investment Act, and such acknowledgments shall be void with respect to claims under the Act.

2. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of Rhode Island Franchise Investment Act, with respect to each such provision are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT**  
LLC, a Delaware limited liability company

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF VIRGINIA**

1. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, Item 17.h. of the Franchise Disclosure Document for POOLWERX FRANCHISE MANAGEMENT LLC is supplemented by the following:

“Under Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.”

“Any securities offered or sold by the Investor Franchisee as part of the POOLWERX FRANCHISE MANAGEMENT LLC Franchise must either be registered or exempt from registration under Section 13.1-514 of the Virginia Securities Act.”

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF WASHINGTON**

(i) In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A general release of claims, release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act, RCW 19.100, or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF WASHINGTON**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

WASHINGTON LAW MODIFICATIONS

(ii) In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A general release of claims, release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act, RCW 19.100, or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any

employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT  
LLC, a Delaware limited liability company**

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**ADDENDUM TO  
POOLWERX FRANCHISE MANAGEMENT LLC  
FRANCHISE AGREEMENT  
FOR THE STATE OF WISCONSIN**

The Franchise Agreement between POOLWERX FRANCHISE MANAGEMENT LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_ (the “Agreement”) shall be amended by the addition of the following language, which shall be considered an integral part of the Agreement (the “State Addendum”):

WISCONSIN LAW MODIFICATIONS

1. Notwithstanding anything that may be contained in the body of the Franchise Agreement to the contrary, the Agreement is hereby amended to add the following provision:

For all franchises sold in the State of Wisconsin, the Company will provide Franchisee at least 90 days’ prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice will state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and will provide that Franchisee have 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice will be void. These notice requirements shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due under the franchise, Franchisee will be entitled to written notice of such default, and will have not less than 10 days in which to remedy such default from the date of delivery or posting of such notice.

2. Ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of this Agreement or a related document between the Company and Franchisee inconsistent with the Law.

3. Each provision of this State Addendum shall be effective only to the extent that the jurisdictional requirements of Washington law, with respect to each such provision are met independent of this State Addendum. This State Addendum shall have no force or effect if such jurisdictional requirements are not met.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this State Addendum, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this State Addendum and be bound thereby. The parties have duly executed and delivered this State Addendum to the Agreement on the date first set forth above.

**POOLWERX FRANCHISE MANAGEMENT  
LLC, a Delaware limited liability company**

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**EXHIBIT B**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT - FINANCIAL STATEMENTS**





# **Poolwerx Franchise Management, LLC**

## **Consolidated Financial Statements**

As of and for the Years Ended  
December 31, 2022 and 2021

# **Poolwerx Franchise Management, LLC**

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## **Consolidated Financial Statements**

As of and for the Years Ended  
December 31, 2022 and 2021

# Poolwerx Franchise Management, LLC

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2929 Allen Parkway, 20th Floor  
Houston, TX 77019

## Independent Auditor's Report

To the Members of  
Poolwerx Franchise Management, LLC  
Farmers Branch, Texas

### *Opinion*

We have audited the consolidated financial statements of Poolwerx Franchise Management, LLC (the "Company"), which comprise the consolidated balance sheets as of December 31, 2022, and the related consolidated statements of income, member's deficit, and cash flows for the year then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying 2022 consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

### *Basis for Opinion*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America ("GAAS"). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Other Matter*

The 2021 consolidated financial statements of the Company, were audited by other auditors, whose report dated March 31, 2022 expressed an unmodified opinion on those statements.

### *Responsibilities of Management for the Consolidated Financial Statements*

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued or available to be issued.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

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### ***Auditor's Responsibilities for the Audit of the Consolidated Financial Statements***

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*BDO USA, LLP*

May 22, 2023

## **Consolidated Financial Statements**

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**Poolwerx Franchise Management, LLC**

**Consolidated Balance Sheets**

<i>December 31,</i>	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 221,574	\$ 98,520
Accounts receivable, net	444,239	398,412
Unbilled revenue	95,903	70,029
Related party receivables	-	952,862
Inventory	93,448	30,237
Prepaid expenses	139,277	112,112
<b>Total Current Assets</b>	<b>994,441</b>	<b>1,662,172</b>
<b>Property and Equipment, net</b>	<b>20,682</b>	<b>93,877</b>
<b>Total Assets</b>	<b>\$ 1,015,123</b>	<b>\$ 1,756,049</b>
<b>Liabilities and Member's Deficit</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 219,243	\$ 203,488
Franchise excellence program liability	104,995	197,500
National marketing fund liability	167,279	345,485
Deferred revenue	379,242	278,853
Related party payables	1,085,339	2,637,714
<b>Total Current Liabilities</b>	<b>1,956,098</b>	<b>3,663,040</b>
<b>Long-Term Liabilities</b>		
Deferred revenue	363,749	213,234
<b>Total Long-Term Liabilities</b>	<b>363,749</b>	<b>213,234</b>
<b>Total Liabilities</b>	<b>2,319,847</b>	<b>3,876,274</b>
<b>Commitments and Contingencies (Note 9)</b>		
<b>Member's Deficit</b>	<b>(1,304,724)</b>	<b>(2,120,225)</b>
<b>Total Liabilities and Member's Deficit</b>	<b>\$ 1,015,123</b>	<b>\$ 1,756,049</b>

*See accompanying notes to consolidated financial statements.*

**Poolwerx Franchise Management, LLC**

**Consolidated Statements of Income**

<i>Years Ended December 31,</i>	<b>2022</b>	<b>2021</b>
<b>Revenues</b>		
Franchise fees	\$ 337,102	\$ 163,443
Royalty fees	1,650,474	1,692,279
Marketing fees	555,450	758,281
Franchise excellence program fees	132,505	364,937
Rebate income	633,626	733,555
Partners in Profit fees	193,087	127,963
Franchise support fees	210,752	182,763
Other revenues	231,002	292,663
<b>Total Revenues</b>	<b>3,943,998</b>	<b>4,315,884</b>
<b>Operating Expenses</b>		
Depreciation	73,182	47,654
Management fees	1,065,269	1,363,946
Selling, general and administrative	1,955,200	2,225,962
<b>Total Operating Expenses</b>	<b>3,093,651</b>	<b>3,637,562</b>
<b>Income from Operations</b>	<b>850,347</b>	<b>678,322</b>
<b>Income Tax Expense</b>	<b>34,846</b>	<b>-</b>
<b>Net Income</b>	<b>\$ 815,501</b>	<b>\$ 678,322</b>

*See accompanying notes to consolidated financial statements.*



**Poolwerx Franchise Management, LLC**  
**Consolidated Statements of Members' Deficit**

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	<b>Amount</b>
<b>Balance at January 1, 2021</b>	<b>\$ (2,798,547)</b>
Net income	678,322
<b>Balance at December 31, 2021</b>	<b>(2,120,225)</b>
Net income	815,501
<b>Balance at December 31, 2022</b>	<b>\$ (1,304,724)</b>

*See accompanying notes to consolidated financial statements.*

**Poolwerx Franchise Management, LLC**

**Consolidated Statements of Cash Flows**

<i>Years Ended December 31,</i>	<b>2022</b>	<b>2021</b>
<b>Cash Flows from Operating Activities</b>		
Net income	\$ 815,501	\$ 678,322
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	73,182	47,654
Provision (recovery) for doubtful accounts	(348,833)	184,405
Changes in operating assets and liabilities:		
Accounts receivable	303,006	(416,475)
Unbilled revenue	(25,874)	47,862
Related party receivables	952,863	-
Inventory	(63,211)	159
Prepaid expenses	(27,165)	(112,112)
Accounts payable and accrued expenses	15,768	43,999
Franchise excellence program liability	(92,505)	(316,437)
National marketing fund liability	(178,206)	17,422
Deferred revenue	250,904	108,785
Related party payables	(1,552,375)	(173,955)
<b>Net Cash Provided by Operating Activities</b>	<b>123,054</b>	<b>109,629</b>
<b>Cash Flows from Investing Activities</b>		
Purchase of property and equipment	-	(11,535)
<b>Net Cash Used in Investing Activities</b>	<b>-</b>	<b>(11,535)</b>
<b>Net Increase in Cash and Cash Equivalents</b>	<b>123,054</b>	<b>98,094</b>
<b>Cash and Cash Equivalents - Beginning of Year</b>	<b>98,520</b>	<b>426</b>
<b>Cash and Cash Equivalents - End of Year</b>	<b>\$ 221,574</b>	<b>\$ 98,520</b>

*See accompanying notes to consolidated financial statements.*

**Poolwerx Franchise Management, LLC**  
**Notes to Consolidated Financial Statements**

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## **1. Organization and Operations**

### ***Description of Business***

Poolwerx Franchise Management, LLC (the “Company”), a wholly owned subsidiary of Poolwerx USA LLC (the “Parent”), is incorporated in the state of Delaware and commenced operations on May 2, 2015. The Company’s operations consist of selling franchises (collectively, “Poolwerx Businesses”) that are expected to provide pool maintenance and repair services, and retail pool supplies.

The Company is an affiliate of both Poolwerx Development, LLC (“Development”) and Poolwerx Operations, LLC (“Operations”). Each affiliate company performs different types of activities in the United States and are subsidiaries of the Parent, a subsidiary of the ultimate parent company Poolwerx Holdings LLC (“Group Holdings”).

Poolwerx Holdings Pty Ltd (“Poolwerx Holdings”), owns the trademarks and other intellectual property relating to the Poolwerx franchise system and has granted the Company a license to use and sublicense the use of the trademarks and other intellectual property to the Company’s franchisees pursuant to the terms of a Trademark License Agreement dated March 2, 2015. This agreement is perpetual in duration and may be terminated unilaterally by either party only upon a material breach. Poolwerx Holdings is a subsidiary of Group Holdings.

During the years ended December 31, 2022 and 2021, 13 and 4 franchised territories were opened, and 10 and 6 were closed, respectively. As of December 31, 2022 and 2021, there were 62 and 59 franchised territories, respectively. At December 31, 2022 and 2021, the Company had 1 and 2 stores, respectively, that were owned and operated by an affiliated sister company.

## **2. Summary of Significant Accounting Policies**

### ***Basis of Accounting***

The Company uses the accrual basis of accounting in accordance with the accounting principles generally accepted in the United States (“US GAAP”). Under this method, revenue is recognized when earned and expenses are recognized as incurred.

### ***Use of Estimates***

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements. Actual results could differ from those estimates.

### ***Fair Value***

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to the valuation techniques used to measure fair value. The fair value hierarchy has three levels, which are based on reliable available inputs of observable data and requires the use of observable market data when available.

Assets and liabilities that are carried at fair value are classified and disclosed in one of the following three categories:

- Level 1: Quoted market prices in active markets for identical assets and liabilities.
- Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.
- Level 3: Unobservable inputs that are not corroborated by market data.

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company's financial instruments consist primarily of cash and cash equivalents, accounts receivable, and accounts payable, and their carrying values are considered to be representative of their respective fair values due to the short-term nature of these instruments.

Non-recurring fair value measurements include the assessment of property and equipment for impairment. As there is no corroborating market activity to support the assumptions used, the Company has designated these estimates as Level 3.

#### ***Cash and Cash Equivalents***

For purposes of reporting cash flows, all highly liquid investments with a maturity of three months or less are considered cash equivalents.

#### ***Accounts Receivable***

The balance in accounts receivable consists primarily of receivables from franchisees and contractually determined receivables from major suppliers, less an allowance for doubtful accounts. Management determines the allowance for doubtful accounts by identifying troubled accounts and by using historical experience applied to an aging of accounts. Accounts aged longer than thirty days are considered past due. No interest is charged on outstanding receivables. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts.

#### ***Inventory***

Inventory consists of supplies, mainly uniforms and promotional items for franchisees. Inventory is stated at the lower of cost or net realizable value and expensed as selling, general and administrative costs using the first-in-first-out method when it is sold to the franchisees.

#### ***Property and Equipment***

Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives of the respective asset:

Estimated Useful Life:

- Equipment - 3 Years
- Furniture and Fixtures - 7 Years

Maintenance and repair costs are expensed in the period incurred. Expenditures for purchases and improvements that extend the useful lives of property and equipment are capitalized.

#### ***Impairment of Long-Lived Assets***

The Company assesses potential impairment of its long-lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors that the Company considers important which could trigger an impairment review include, but are not limited to, significant under-performance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the Company's overall business, and significant industry or economic trends. When the Company determines that the carrying value of the long-lived assets may not be recoverable based upon the existence of one or more of the above indicators, the Company determines the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate.

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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Impairment losses are recognized in the period in which the impairment occurs and represent the excess of the asset carrying value over its estimated future undiscounted net cash flows. During the years ended December 31, 2022 and December 31, 2021, no impairment charges were recognized related to long-lived assets.

#### ***Revenue Recognition***

The Company recognizes revenue based on the transfer of goods or services to customers at an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services.

The Company's primary sources of revenue are as follows:

#### ***Franchise Fees***

Initial Franchise Fees are franchise agreements that are generated from the sale of new franchises and territories and the sale of additional franchises and territories to existing franchise owners. Typically, franchise agreements are granted to franchise owners for an initial term of five years with an option to renew. The Company will recognize renewal fees over the term of the renewal. In the event a franchise agreement is terminated, any remaining deferred fees are recognized in the period of termination. Our performance obligations under franchise agreements consist of providing a license of our brand's intellectual property, a list of approved suppliers, certain training programs, an operation manual, and to maintain the marketing fund. These performance obligations are highly interrelated, and we do not consider them to be individually distinct, and account for them as the services provided to the franchise owner are substantially the same month to month and that progress and performance of the service are measured consistently as time passes, because the performance obligations are satisfied evenly over the contract term as the owner simultaneously receives and consumes the benefits provided. As such, franchise fee revenue is recognized over time.

#### ***Location Opening Fees***

The Company recognizes initial opening fees, which include pool school fees and store opening fees such as initial marketing fees as revenue when substantially all initial services required by the franchise agreement are performed, which is generally upon opening of the franchise. However, if revenue from initial fees is collectible over an extended period of time, and collectability is not reasonably assured, revenue would be recognized using the installment method as fees are collected.

#### ***Royalty Fees***

Royalty fees are charged to existing franchise owners based on a percentage of each franchise owner's gross sales. These fees are generally 7% of the franchise owner's weekly service and retail sales depending various factors. The fees are recognized as earned less any associated discounts. Direct costs of sales and servicing of franchise agreements are charged to expense as incurred. The Company received Gross Royalty Fees totaling \$1,764,841 and \$1,980,699 for the years ended December 31, 2022 and 2021, respectively and associated Royalty Discounts totaling \$114,367 and \$288,420 for the years ended December 31, 2022 and 2021, respectively

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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#### *Marketing Fees*

These fees are collected from existing franchise owners and are typically a percentage of each franchise owners' gross sales depending various factors. The Company maintains a national marketing fund to promote general brand recognition of the franchise system, services, and products sold by franchisees.

Funds are collected from franchisees based on an agreed-upon percentage of franchisee's monthly gross revenue and used to pay costs of, or associated with, marketing, advertising, digital marketing, contact tracing, promotions, brand building, commercial business development, retail growth strategies including merchandising, the look and feel of displays, merchandise, public relations and costs to administer the national marketing fund. Related expenses are paid out of the national marketing fund account as incurred.

The national marketing fund gross revenue totaling \$585,594 and \$848,122 for the years ended December 31, 2022 and 2021 and associated Marketing Fee Discounts totaling \$30,144 and \$89,841 for the years ended December 31, 2022 and 2021, respectively. Total marketing expenses incurred were \$746,404 and \$740,860 for the years ended December 31, 2022 and 2021, respectively.

Income from the national marketing fund is recorded in marketing fees on the income statement. The net balance of \$167,279 and \$345,485 is reported as the national marketing fund liability in the balance sheet as of December 31, 2022 and 2021, respectively. We have determined that we are the principal in these arrangements and marketing fund contributions and expenditures are reported on a gross basis in the statements of operations.

#### *Franchise Excellence Program Fees*

These incentives are earned from services performed for unrelated third parties under our Franchise Excellence Program ("FEP"). The FEP is a program operated by Poolwerx Franchise Management in which the Company will pay to renovate current retail stores or mobile units to fit Poolwerx franchise requirements on behalf of the franchisees. The Company receives FEP contributions from partners in profit vendors and records these amounts as a liability.

Franchise store renovation expenses are paid out of the FEP Account when incurred.

The Company collected \$40,000 and \$48,500 related to this program for the years ended December 31, 2022 and 2021, respectively, and total expenses incurred were \$132,505 and \$364,937 for the years ended December 31, 2022 and 2021, respectively, and are recorded in franchise excellence program fees on the statements of operations.

The net balance of \$104,995 and \$197,500 is reported as the franchise excellence program liability on the balance sheet as of December 31, 2022 and 2021, respectively.

We have determined that we are the principal in these arrangements and 2022 and 2021 FEP contributions and expenditures are reported on a gross basis in the statements of operations.

#### *Rebate Income*

The Company receives supplier rebates based on purchases from preferred vendors by its franchisees and records income when such rebates are earned and collection is probable. Rebates totaling \$633,626 and \$733,555 were recognized in other revenue for the years ended December 31, 2022 and 2021, respectively. Rebates earned but not yet billed to suppliers are included in the financial statements as unbilled revenue.

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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#### *Partners in Profits Fees*

The Company receives supplier fees based on the opening of new retail outlets. These fees totaling \$193,087 and \$127,963 were recognized as Partners in Profit Fees for the years ended December 31, 2022 and 2021, respectively.

#### *Franchisee Support Fees*

The Company earned revenue through fees charged to franchisees for back-office support that includes software licensing, training, uniforms, and promotional items totaling \$210,752 and \$182,763 for the years ended December 31, 2022 and 2021, respectively, and in franchisee support fees on the statement of operations.

#### *Other Revenues*

The Company holds a convention once a year. Amounts received for the convention are recorded as deferred revenue until the Company substantially completes its obligations for the convention event. Convention fees of \$121,297 and \$142,668 were recognized for the years ended December 31, 2022 and 2021, respectively. The Company also received settlement payments for the termination of franchise agreements totaling \$27,661 and \$104,000 for the years ended December 31, 2022 and 2021, respectively, and earned various other miscellaneous revenues that totaled \$82,044 and \$45,995 for the years ended December 31, 2022 and 2021, respectively.

#### *Disaggregation of Revenue by Source*

The following table disaggregates revenue by source for the year ended December 31, 2022:

	Point in Time	Over Time	Total
Franchise fees	\$ -	\$ 337,102	\$ 337,102
Royalty fees	-	1,650,474	1,650,474
Marketing fees	-	555,450	555,450
Franchise excellence program fees	132,505	-	132,505
Rebate income	633,626	-	633,626
Partners in Profit Fees	193,087	-	193,087
Franchise support fees	210,752	-	210,752
Other revenues	231,002	-	231,002
<b>Total Revenues</b>	<b>\$ 1,400,972</b>	<b>\$ 2,543,026</b>	<b>\$ 3,943,998</b>

**Poolwerx Franchise Management, LLC**  
**Notes to Consolidated Financial Statements**

	<b>Contract Liabilities</b>
<b>Balance at December 31, 2020</b>	\$ 383,302
Fees received from franchise owners	212,000
Franchise sales revenue recognized	(163,443)
Other changes in deferred revenue	60,228
	492,087
<b>Balance at December 31, 2021</b>	
Fees received from franchise owners	361,000
Franchise sales revenue recognized	(337,102)
Other changes in deferred revenue	89,978
	492,087
<b>Balance at December 31, 2022</b>	\$ 605,963

The following table disaggregates revenue by source for the year ended December 31, 2021:

	Point in Time	Over Time	Total
Franchise fees	\$ -	\$ 163,443	\$ 163,443
Royalty fees	-	1,692,279	1,692,279
Marketing fees	-	758,281	758,281
Franchise excellence program fees	364,937	-	364,937
Rebate income	733,555	-	733,555
Partners in Profit Fees	127,963	-	127,963
Franchise support fees	182,763	-	182,763
Other revenues	292,663	-	292,663
<b>Total Revenues</b>	<b>\$ 1,701,881</b>	<b>\$ 2,614,003</b>	<b>\$ 4,315,884</b>

***Contract Liabilities***

Contract liabilities consist of deferred revenue resulting from the unamortized portion of initial franchise fees that are currently being amortized into revenue, amounts related to pending agreements or other deferred revenues not related to franchise agreements. The Company classifies the contract liabilities as deferred revenue in the balance sheet.



## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

The following table reflects the change in contract liabilities from December 31, 2020 through December 31, 2022:

	<b>Contract Liabilities</b>
<b>Balance at December 31, 2020</b>	\$ 383,302
Fees received from franchise owners	212,000
Franchise sales revenue recognized	(163,443)
Other changes in deferred revenue	60,228
	<b>492,087</b>
<b>Balance at December 31, 2021</b>	
Fees received from franchise owners	361,000
Franchise sales revenue recognized	(200,074)
Other changes in deferred revenue	89,978
	<b>250,904</b>
<b>Balance at December 31, 2022</b>	\$ 742,991

The following table illustrates estimated revenues expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) as of December 31, 2022:

<b>Years Ending December 31,</b>	
2023	\$ 379,242
2024	125,913
2025	118,893
2026	90,888
2027	28,055
	<b>\$ 742,991</b>

#### **Advertising and Marketing Expense**

The Company expenses the costs of advertising and marketing related to the establishment of new franchises when incurred. Generally, in 2022, new franchisees are charged \$8,000 initial market fees to be market their new franchise.

#### **Income Taxes Status**

The Company is a single member LLC and, as such, is treated as a division of its parent, Poolwerx USA LLC, for federal income tax purposes. Because of its status, the Company is disregarded as a separate entity for income tax purposes, therefore the Company itself does not file an income tax return separate and apart from its parent. The Company recognizes income tax related interest and penalties in interest expense and other general and administrative expenses, respectively.

#### **Recent Accounting Pronouncements**

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses* (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables. In November 2018, the FASB issued ASU No. 2018-19, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses* (“ASU 2018-19”), which clarifies that receivables arising from operating leases are

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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accounted for using lease guidance and not as financial instruments. In April 2019, the FASB issued ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments (“ASU 2019-04”), which clarifies the treatment of certain credit losses.

In May 2019, the FASB issued ASU No. 2019-05, *Financial Instruments - Credit Losses* (Topic 326): Targeted Transition Relief (“ASU 2019-05”), which provides an option to irrevocably elect to measure certain individual financial assets at fair value instead of amortized cost. In November 2019, the FASB issued ASU No. 2019-11, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses* (“ASU 2019-11”), which provides guidance around how to report expected recoveries. ASU 2016-13, ASU 2018-19, ASU 2019-04, ASU 2019-05 and ASU 2019-11 (collectively, “ASC 326”) are effective for fiscal years beginning after December 15, 2022, with early adoption permitted. The Company is currently evaluating the impact this guidance will have on its consolidated financial statements.

We reviewed all other significant newly issued accounting pronouncements and concluded that they either are not applicable to our operations or that no material effect is expected on our financial statements as a result of future adoption.

### 3. Certain Significant Risks and Uncertainties

The Company maintains its cash in bank deposit accounts that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant risk on cash or cash equivalents. The Company maintains its deposits in one financial institution.

### 4. Accounts Receivable

Accounts receivable consisted of the following at December 31, 2022 and 2021:

<i>December 31,</i>	<b>2022</b>	<b>2021</b>
Accounts receivable	\$ 534,160	\$ 837,166
Less: allowance for doubtful accounts	(89,921)	(438,754)
<b>Accounts Receivable, net</b>	<b>\$ 444,239</b>	<b>\$ 398,412</b>

### 5. Property and Equipment

The principal asset classifications of property and equipment, at cost, are as follows at December 31, 2022 and 2021:

<i>December 31,</i>	<b>2022</b>	<b>2021</b>
Computer and equipment	\$ 141,531	\$ 141,531
Less: accumulated depreciation	(120,849)	(47,654)
<b>Property and Equipment, net</b>	<b>\$ 20,682</b>	<b>\$ 93,877</b>

## Poolwerx Franchise Management, LLC

### Notes to Consolidated Financial Statements

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For the years ended December 31, 2022 and 2021, depreciation expense was \$73,182 and \$47,654, respectively.

#### 6. Income Taxes

The Company's parent files income tax returns in the U.S. federal jurisdiction, and the states in which it operates. The Company is subject to routine audits by taxing jurisdictions, however, there are currently no audits for any tax periods in progress. The Company believes it is no longer subject to income tax examinations for years prior to 2017. Income tax benefits are recognized for income tax positions taken or expected to be taken in a tax return, only when it is determined that the income tax position will more-likely-than-not be sustained upon examination by taxing authorities. The Company has analyzed tax positions taken for filing with the Internal Revenue Service and all state jurisdictions where it operates. The Company believes that income tax filing positions will be sustained upon examination and does not anticipate any adjustments that would result in a material adverse effect on the Company's financial condition, results of operations or cash flows. Accordingly, the Company has not recorded any reserves, or related accruals for interest and penalties for uncertain income tax positions at December 31, 2022 and 2021.

#### 7. Related Party Transactions

The Company is dependent on the Parent to perform certain management functions on behalf of the Company, prospective franchisees and active franchisees and is charged a monthly management fee. Total management fees charged by Poolwerx USA were \$1,065,269 and \$1,363,946 for the years ended December 31, 2022 and 2021, respectively. in management fees on the statements of operations. The related party payable account is unsecured, bears no interest, and is due on demand. The Company charged franchises currently operated by affiliated companies for royalty service fees. For the years ended December 31, 2022 and 2021, a total of \$295,103 and \$340,730 were charged to affiliated companies, respectively. The Company charged franchises currently operated by affiliated companies for monthly marketing fees. For the years ended December 31, 2022 and 2021, a total of \$59,748 and \$74,034 were charged to affiliated companies, respectively.

#### 8. Concentration

As of December 31, 2022 and 2021, there were two and four vendors that exceeded 10% of total accounts payable, respectively, and accounted for approximately 59% and 63% of total accounts payable, respectively.

#### 9. Commitments and Contingencies

Various legal actions and claims which have arisen in the normal course of business may be pending against the Company from time to time. It is the opinion of management that the ultimate resolution of these contingencies will not have a material effect on the financial condition, results of operations or liquidity of the Company.

While we are unable to predict the ultimate outcome of these actions, requires management make judgments about future events that are inherently uncertain. We are required to record a loss during any period in which we believe a contingency is probable and can be reasonably estimated. To the extent that actual outcomes differ from our estimates, or additional facts and circumstances cause us to revise our estimates, our earnings will be affected. We record legal costs as incurred, and all recorded legal liabilities are revised, as required, as better information becomes available to us.

**Poolwerx Franchise Management, LLC**  
**Notes to Consolidated Financial Statements**

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**10. Subsequent Events**

The Company has evaluated subsequent events through May 22, 2023, the date the financial statements were available to be issued.



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## **Independent Auditor's Report**

To the Member  
Poolwerx Franchise Management, LLC  
Farmers Branch, Texas

### **Report on the Financial Statement**

#### ***Opinion***

We have audited the financial statements of Poolwerx Franchise Management, LLC (the "Company"), which comprises the balance sheet as of December 31, 2021 and the related statements of operations, changes in member's deficit, and cash flows for the year then ended, and related notes to the financial statements.

In our opinion, the accompanying financial statements presents fairly, in all material respects, the financial position of the Company as of December 31, 2021 and the results of its operations, changes in member's deficit and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Opinion***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Poolwerx Franchise Management, LLC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### ***Other Matter***

The financial statements of the Company for the year then ended December 31, 2020, were audited by another auditor who expressed an unmodified opinion on those financial statements on April 30, 2021.

#### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Poolwerx Franchise Management, LLC's ability to continue as a going concern within one year from the date the financial statements are issued.

### ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users made on the basis of these financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Poolwerx Franchise Management, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used, and the reasonableness of, significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Poolwerx Franchise Management, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

**A+G LLP**

Dallas, Texas  
April 8, 2022

**Balance Sheets**

As of December 31,

**2021**

**2020**

**Assets**

Current assets:

Cash and cash equivalents	\$	<b>98,520</b>	\$	426
Accounts receivable, net		<b>398,412</b>		166,342
Unbilled revenue		<b>70,029</b>		117,891
Related party receivables		<b>952,862</b>		952,862
Inventory		<b>30,237</b>		30,396
Prepaid expenses		<b>112,112</b>		-
Total current assets		<b>1,662,172</b>		1,267,917

Property and equipment, net		<b>93,877</b>		129,996
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<b>Total assets</b>	<b>\$</b>	<b>1,756,049</b>	<b>\$</b>	<b>1,397,913</b>
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**Liabilities and Member's Deficit**

Current liabilities:

Accounts payable and accrued expenses	\$	<b>203,488</b>	\$	159,489
Franchise excellence program liability		<b>197,500</b>		513,937
National marketing fund liability		<b>345,485</b>		328,063
Deferred revenue		<b>278,853</b>		215,707
Related party payables		<b>2,637,714</b>		2,811,669
Total current liabilities		<b>3,663,040</b>		4,028,865

Long-term liabilities:

Deferred revenue, net		<b>213,234</b>		167,595
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Member's deficit		<b>(2,120,225)</b>		(2,798,547)
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<b>Total liabilities and member's deficit</b>	<b>\$</b>	<b>1,756,049</b>	<b>\$</b>	<b>1,397,913</b>
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**Statements of Operations**

For the years ended December 31,

**2021**

2020

Revenues:

Franchise fees	\$	163,443	\$	152,548
Royalty service fees		1,367,750		1,435,506
Marketing fees		848,122		848,544
Franchise excellence program fees		364,937		204,684
Other revenues		1,571,632		952,557
Total revenues		4,315,884		3,593,839

Expenses:

Depreciation		47,654		-
Management fees		1,363,946		1,528,612
Selling, general and administrative		2,225,962		1,510,582
Total operating expenses		3,637,562		3,039,194

<b>Net income</b>	<b>\$</b>	<b>678,322</b>	<b>\$</b>	<b>554,645</b>
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**Statements of Changes in Member's Deficit**

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Balance at December 31, 2019	\$	(3,353,192)
Net income		554,645
Balance at December 31, 2020		<hr/> (2,798,547)
Net income		678,322
<b>Balance at December 31, 2021</b>	<b>\$</b>	<b>(2,120,225)</b>

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**Statements of Cash Flows**

For the years ended December 31,

**2021**

2020

**Operating Activities**

Net income	\$	678,322	\$	554,645
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation		47,654		-
Provision for (recovery of) doubtful accounts		184,405		(136,520)
Changes in operating assets and liabilities:				
Accounts receivable		(416,475)		511,853
Unbilled revenue		47,862		(117,891)
Related party receivables		-		542,517
Inventory		159		(30,396)
Prepaid expenses		(112,112)		17,926
Accounts payable and accrued expenses		43,999		(80,268)
Franchise excellence program liability		(316,437)		(136,428)
National marketing fund liability		17,422		126,126
Deferred revenue		108,785		(244,179)
Related party payables		(173,955)		(861,043)
Net cash provided by operating activities		109,629		146,342

**Investing Activities**

Purchase of property and equipment		(11,535)		(127,623)
Net cash used by investing activities		(11,535)		(127,623)

**Financing Activities**

Repayments of note payable		-		(16,210)
Net cash provide (used) by financing activities		-		(16,210)

Net increase in cash and cash equivalents 98,094 2,509

Cash and cash equivalents, beginning of period 426 (2,083)

Cash and cash equivalents, end of period \$ 98,520 \$ 426

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

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## **1. Organization and Operations**

### **Description of Business**

Poolwerx Franchise Management, LLC (the “Company”), a wholly owned subsidiary of Poolwerx USA LLC (the “Parent”), is incorporated in the state of Delaware and commenced operations on May 2, 2015. The Company’s operations consist of selling franchises (collectively, “Poolwerx Businesses”) that are expected to provide pool maintenance and repair services, and retail pool supplies.

The Company is an affiliate of both Poolwerx Development, LLC (“Development”) and Poolwerx Operations, LLC (“Operations”). Each affiliate company performs different types of activities in the United States and are subsidiaries of the Parent, a subsidiary of the ultimate parent company Poolwerx Global Pty Ltd as trustee for Poolwerx Global Trust (“Australia”).

Poolwerx Holdings Pty Ltd (“Poolwerx Holdings”), owns the trademarks and other intellectual property relating to the Poolwerx franchise system and has granted the Company a license to use and sublicense the use of the trademarks and other intellectual property to the Company’s franchisees pursuant to the terms of a Trademark License Agreement dated March 2, 2015. This agreement is perpetual in duration and may be terminated unilaterally by either party only upon a material breach. Poolwerx Holdings is the parent of Poolwerx Global Pty Ltd.

During the years ended December 31, 2021 and 2020, 4 and 7 franchised territories were opened, and 6 and 13 were closed, respectively. As of December 31, 2021 and 2020, there were 59 and 61 franchised territories, respectively. At December 31, 2021 and 2020, the Company had 2 and 2 stores, respectively, that were owned and operated by an affiliated sister company.

### **Going Concern**

Management has evaluated our ability to continue as a going concern as of December 31, 2021. Due to the positive earnings and cash flows from operations and the continued support from our Parent, we have concluded that there is not significant doubt about our ability to continue as a going concern.

### **COVID-19**

On March 11, 2020, the World Health Organization declared the novel strain of coronavirus (COVID-19) a global pandemic and recommended containment and mitigation measures worldwide. The COVID-19 outbreak in the United States has caused business disruption. The full impact of the pandemic will continue to depend on future developments, including the continued spread and duration of the pandemic, the emergence of future variant strains of COVID-19, the availability and distribution of effective medical treatments or vaccines as well as any related federal, state or local governmental orders or restrictions. Accordingly, the Company cannot reasonably determine the ultimate impact the COVID-19 pandemic will have on its future results of operations due to the continuing uncertainty surrounding the pandemic’s magnitude and duration.

## **2. Significant Accounting Policies**

### **Basis of Accounting**

The Company uses the accrual basis of accounting in accordance with the accounting principles generally accepted in the United States (“US GAAP”). Under this method, revenue is recognized when earned and expenses are recognized as incurred.

### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements. Actual results could differ from those estimates.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

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**2. Significant Accounting Policies (continued)**

**Comparative Financial Statements**

Certain prior period amounts have been reclassified to conform to current year presentation.

**Fair Value**

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to the valuation techniques used to measure fair value. The fair value hierarchy has three levels, which are based on reliable available inputs of observable data, and requires the use of observable market data when available.

Assets and liabilities that are carried at fair value are classified and disclosed in one of the following three categories:

**Level 1:** Quoted market prices in active markets for identical assets and liabilities.

**Level 2:** Observable market-based inputs or unobservable inputs that are corroborated by market data.

**Level 3:** Unobservable inputs that are not corroborated by market data.

Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company's financial instruments consist primarily of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses. The carrying values of cash and cash equivalents, trade receivables, trade payables, and accrued expenses and debt are considered to be representative of their respective fair values due to the short-term nature of these instruments.

Non-recurring fair value measurements include the assessment of property and equipment for impairment. As there is no corroborating market activity to support the assumptions used, the Company has designated these estimates as Level 3.

**Cash and Cash Equivalents**

For purposes of reporting cash flows, all highly liquid investments with a maturity of three months or less are considered cash equivalents.

**Accounts Receivable**

The balance in accounts receivable consists primarily of receivables from franchisees and contractually-determined receivables from major suppliers, less an allowance for doubtful accounts. Management determines the allowance for doubtful accounts by identifying troubled accounts and by using historical experience applied to an aging of accounts. Accounts aged longer than thirty days are considered past due. No interest is charged on outstanding receivables. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts.

**Inventory**

Inventory consists of supplies, mainly uniforms and promotional items for franchisees. Inventory is stated at the lower of cost or market and expensed as selling, general and administrative costs using the first-in-first-out basis when it is provided to the franchisees.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

**2. Significant Accounting Policies (continued)**

**Property and Equipment**

Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives of the respective asset:

	Estimated Useful Life
Equipment	3 Years
Furniture and fixtures	7 Years

Equipment consist of tax software purchased during the year ended December 31, 2020 which was placed in service starting January 1, 2021 and therefore no depreciation is reflected for the year ended December 31, 2020.

Maintenance and repair costs are expensed in the period incurred. Expenditures for purchases and improvements that extend the useful lives of property and equipment are capitalized.

**Impairment of Long-Lived Assets**

The Company assesses potential impairment of its long lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors that the Company considers important which could trigger an impairment review include, but are not limited to, significant under-performance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the Company's overall business, and significant industry or economic trends. When the Company determines that the carrying value of the long-lived assets may not be recoverable based upon the existence of one or more of the above indicators, the Company determines the recoverability by comparing the carrying amount of the asset to net future undiscounted cash flows that the asset is expected to generate. If the carrying value is not recoverable, an impairment is recognized in the amount by which the carrying amount exceeds the fair value of the asset. During the years ended December 31, 2021 and December 31, 2020, no impairment charges were recognized related to long-lived assets.

**Revenue Recognition**

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2014-09 "Revenue with Contracts from Customers (Topic 606)." as amended by multiple updates to the standard. The update requires the entity to recognize revenue to depict the transfer of goods or services to customers at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The Company adopted the new guidance on January 1, 2020.

The Company's primary sources of revenue are as follows:

Franchise fees

**Initial Franchise Fees:** Under our franchise agreements are generated from the sale of new franchises and territories and the sale of additional franchises and territories to existing franchise owners. Typically, franchise agreements are granted to franchise owners for an initial term of ten years with an option to renew. The Company will recognize renewal fees over the term of the renewal. In the event a franchise agreement is terminated, any remaining deferred fees are recognized in the period of termination. Our performance obligations under franchise agreements consist of providing a license of our brand's intellectual property, a list of approved suppliers, certain training programs, an operations manual, and to maintain the marketing fund. These performance obligations are highly interrelated and we do not consider them to be individually distinct, and therefore account for them under Topic 606 as a single performance obligation. Revenue related to franchise fees is recognized evenly over the term of the agreement.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

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**2. Significant Accounting Policies (continued)**

**Revenue Recognition (continued)**

Franchise fees (continued)

Location opening fees: The Company will recognize initial opening fees, which include pool school fees and store opening fees such as initial marketing fees as revenue when substantially all initial services required by the franchise agreement are performed, which is generally upon opening of the franchise. However, if revenue from initial fees is collectible over an extended period of time, and collectability is not reasonably assured, revenue would be recognized using the installment method as fees are collected.

Royalty Service Fees

Royalty service fees are charged to existing franchise owners based on a percentage of each franchise owner's gross sales. These fees are generally 7% of the franchise owner's weekly sales, depending various factors. The fees are recognized as earned. Direct costs of sales and servicing of franchise agreements are charged to expense as incurred.

Marketing Fees

These fees are collected from existing franchise owners and are typically a percentage of each franchise owners' gross sales depending various factors. The Company maintains a national marketing fund to promote general brand recognition of the franchise system, services, and products sold by franchisees. Funds are collected from franchisees based on an agreed-upon percentage of franchisee's monthly gross revenue and used to pay costs of, or associated with, marketing, advertising, digital marketing, contact tracing, promotions, brand building, commercial business development, retail growth strategies including merchandising, the look and feel of displays, merchandise, public relations and costs to administer the national marketing fund. Related expenses are paid out of the national marketing fund account as incurred. The national marketing fund collected \$758,281 and \$648,118 for the years ended December 31, 2021 and 2020, respectively, and total marketing expenses incurred were \$740,860 and \$519,698 for the years ended December 31, 2021 and 2020, respectively. Income from the national marketing fund is recorded in marketing fees on the income statement. The net balance of \$345,485 and \$328,063 is reported as the national marketing fund liability in the balance sheet as of December 31, 2021 and 2020, respectively. We have determined that we are the principal in these arrangements and marketing fund contributions and expenditures are reported on a gross basis in the statements of operations.

Franchise Excellence Program Fees

These incentives are earned from services performed for unrelated third parties under our Franchise Excellence Program (FEP). The FEP is a program operated by Poolwerx Franchise Management in which the Company will pay to renovate current retail stores or mobile units to fit Poolwerx franchise requirements on behalf of the franchisees. The Company receives FEP contributions from partners in profit vendors and records these amounts as a liability. Franchise store renovation expenses are paid out of the FEP Account when incurred. The Company collected \$48,500 and \$67,500 related to this program in the years ended December 31, 2021 and 2020, respectively and total expenses incurred were \$364,937 and \$204,684 in the years ended December 31, 2021 and 2020, respectively, recorded in franchise excellence program fees on the statements of operations. The net balance of \$197,500 and \$513,937 is reported as the franchise excellence program liability on the balance sheet as of December 31, 2021 and 2020 respectively. We have determined that we are the principal in these arrangements and 2021 and 2020 FEP contributions and expenditures are reported on a gross basis in the statements of operations.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

## 2. Significant Accounting Policies (continued)

### Revenue Recognition (continued)

#### Other Revenues

Annual Convention Fee: The Company holds a convention once a year. Amounts received for the convention are recorded as deferred revenue until the Company substantially completes its obligations for the convention event. Convention fees of \$142,668 and \$127,001 were recognized in other revenues for the years ended December 31, 2021 and 2020, respectively.

Rebate Income: The Company receives supplier rebates based on purchases from preferred vendors by its franchisees and records income when such rebates are earned and collection is probable. Rebates totaling \$733,555 and \$644,529 were recognized in other revenue for the years ended December 31, 2021 and 2020, respectively. Rebates earned but not yet billed to suppliers are included in the financial statements as unbilled revenue.

#### Disaggregation of revenue by source

The following table disaggregates revenue by source for the year ended December 31, 2021:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise fees	\$ -	\$ 163,443	\$ 163,443
Royalty service fees	-	1,367,750	1,367,750
Marketing fees	-	848,122	848,122
Franchise excellence program fees	364,937	-	364,937
Other revenues	1,571,632	-	1,600,164
Total revenues, net	<u>\$ 1,571,632</u>	<u>\$ 2,744,252</u>	<u>\$ 4,315,884</u>

The following table disaggregates revenue by source for the year ended December 31, 2020:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise fees	\$ -	\$ 152,548	\$ 152,548
Royalty service fees	-	1,435,506	14,435,506
Marketing fees	-	848,544	848,544
Franchise excellence program fees	204,684	-	204,684
Other revenues	952,557	-	952,557
Total revenues, net	<u>\$ 1,157,241</u>	<u>\$ 2,436,598</u>	<u>\$ 3,593,839</u>

#### Contract Liabilities

Contract liabilities consist of deferred revenue resulting from the unamortized portion of initial franchise fees that are currently being amortized into revenue, amounts related to pending agreements or other deferred revenues not related to franchise agreements. The Company classifies the contract liabilities as deferred revenue in the balance sheet.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

**2. Significant Accounting Policies (continued)**

**Revenue Recognition (continued)**

Contract Liabilities (continued)

The following table reflects the change in contract liabilities from December 31, 2019 through December 31, 2021:

	<u>Contract Liabilities</u>
Balance at December 31, 2019	\$ 627,481
Fees received from franchise owners	76,000
Franchise sales revenue recognized	(152,548)
Other changes in deferred revenue	(167,631)
Balance at December 31, 2020	<u>383,302</u>
Fees received from franchise owners	212,000
Franchise sales revenue recognized	(163,443)
Other changes in deferred revenue	60,228
Balance at December 31, 2021	<u>\$ 492,087</u>

The following table illustrates estimated revenues expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) as of December 31, 2021:

2022	\$ 278,853
2023	86,219
2024	56,351
2025	49,331
2026	21,333
Total	<u>\$ 492,087</u>

**Advertising and Marketing Expense**

The Company expenses the costs of advertising and marketing related to the establishment of new franchises when incurred. Advertising and marketing expense related to the establishment of new franchises was \$144,365 and \$30,060 for the years ended December 31, 2021 and 2020, respectively, and are included in selling, general and administrative expenses.

**Income Taxes Status**

The Company is a single member LLC and, as such, is treated as a division of its parent, Poolwerx USA LLC, for federal income tax purposes. Because of its status, the Company is disregarded as a separate entity for income tax purposes, therefore the Company itself does not file an income tax return separate and apart from its parent. The Company recognizes income tax related interest and penalties in interest expense and other general and administrative expenses, respectively.



NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

**2. Significant Accounting Policies (continued)**

**Recent Accounting Pronouncements**

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). The guidance in ASU 2016-02 (as subsequently amended by ASU 2018-01, ASU 2018-10, ASU 2018-11 and ASU 2018-20) requires that a lessee recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. As with previous guidance, there continues to be a differentiation between finance leases and operating leases, however this distinction now primarily relates to differences in the manner of expense recognition over time and in the classification of lease payments in the statement of cash flows. Lease assets and liabilities arising from both finance and operating leases will be recognized in the statement of financial position. ASU 2016-02 leaves the accounting for leases by lessors largely unchanged from previous GAAP. The transitional guidance for adopting the requirements of ASU 2016-02 calls for a modified retrospective approach that includes a number of optional practical expedients that entities may elect to apply. In addition, ASU 2018-11 provides for an additional (and optional) transition method by which entities may elect to initially apply the transition requirements in Topic 842 at that Topic's effective date with the effects of initially applying Topic 842 recognized as a cumulative effect adjustment to the opening balance of retained earnings in the period of adoption and without retrospective application to any comparative prior periods presented. Also, ASU 2018-20 provides certain narrow-scope improvements to Topic 842 as it relates to lessors. The ASU is effective for fiscal years beginning after December 15, 2021, with early adoption permitted. The Company is currently evaluating the impact this guidance will have on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables. In November 2018, the FASB issued ASU No. 2018-19, Codification Improvements to Topic 326, Financial Instruments - Credit Losses ("ASU 2018-19"), which clarifies that receivables arising from operating leases are accounted for using lease guidance and not as financial instruments. In April 2019, the FASB issued ASU No. 2019-04, Codification Improvements to Topic 326, Financial Instruments - Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments ("ASU 2019-04"), which clarifies the treatment of certain credit losses. In May 2019, the FASB issued ASU No. 2019-05, Financial Instruments - Credit Losses (Topic 326): Targeted Transition Relief ("ASU 2019-05"), which provides an option to irrevocably elect to measure certain individual financial assets at fair value instead of amortized cost. In November 2019, the FASB issued ASU No. 2019-11, Codification Improvements to Topic 326, Financial Instruments - Credit Losses ("ASU 2019-11"), which provides guidance around how to report expected recoveries. ASU 2016-13, ASU 2018-19, ASU 2019-04, ASU 2019-05 and ASU 2019-11 (collectively, "ASC 326") are effective for fiscal years beginning after December 15, 2022, with early adoption permitted. The Company is currently evaluating the impact this guidance will have on its consolidated financial statements.

We reviewed all other significant newly-issued accounting pronouncements and concluded that they either are not applicable to our operations or that no material effect is expected on our financial statements as a result of future adoption.

**3. Certain Significant Risks and Uncertainties**

The Company maintains its cash in bank deposit accounts that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant risk on cash or cash equivalents. The Company maintains its deposits in one financial institution.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

**4. Accounts Receivable**

Accounts receivable consisted of the following at December 31, 2021 and 2020:

	<b>2021</b>	2020
Accounts receivable	<b>\$ 837,166</b>	\$ 432,511
Less: allowance for doubtful accounts	<b>(438,754)</b>	(266,169)
Accounts receivable, net	<b><u>\$ 398,412</u></b>	<u>\$ 166,342</u>

For the years ended December 31, 2021 and 2020, the Company recognized \$206,405 and \$0 bad debt expense related to accounts receivable, respectively.

**5. Property and Equipment**

The principal asset classifications of property and equipment, at cost, are as follows at December 31, 2021 and 2020:

	<b>2021</b>	2020
Furniture and fixtures and equipment	<b>\$ 141,531</b>	\$ 129,996
Less: accumulated depreciation	<b>(47,654)</b>	-
Property and equipment, net	<b><u>\$ 93,877</u></b>	<u>\$ 129,996</u>

For the years ended December 31, 2021 and 2020, depreciation expense was \$47,654 and \$0, respectively.

**6. Income Taxes**

The Company is a single member LLC and, as such, is treated as a division of its parent for federal income tax purposes. Because of its status, the Company is disregarded as a separate entity for income tax purposes, therefore the Company itself does not file an income tax return separate and apart from its parent.

The Company's parent files income tax returns in the U.S. federal jurisdiction, and the states in which it operates. The Company is subject to routine audits by taxing jurisdictions, however, there are currently no audits for any tax periods in progress. The Company believes it is no longer subject to income tax examinations for years prior to 2017.

In accordance with FASB ASC 740-10, *Income Taxes*, the Company is required to disclose uncertain tax positions. Income tax benefits are recognized for income tax positions taken or expected to be taken in a tax return, only when it is determined that the income tax position will more-likely-than-not be sustained upon examination by taxing authorities. The Company has analyzed tax positions taken for filing with the Internal Revenue Service and all state jurisdictions where it operates. The Company believes that income tax filing positions will be sustained upon examination and does not anticipate any adjustments that would result in a material adverse effect on the Company's financial condition, results of operations or cash flows. Accordingly, the Company has not recorded any reserves, or related accruals for interest and penalties for uncertain income tax positions at December 31, 2021 and 2020.

NOTES TO FINANCIAL STATEMENTS  
December 31, 2021 and 2020

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**7. Related Party Transactions**

The Company is dependent on the Parent to perform certain management functions on behalf of the Company, prospective franchisees and active franchisees and is charged a monthly management fee. Total management fees charged by Poolwerx USA were \$1,363,946 and \$1,528,612 for the years ended December 31, 2021 and 2020, respectively, and are included in related party payables on the balance sheets and in management fees on the statements of operations. The related party payable account is unsecured, bears no interest, and is due on demand.

The Company charged franchises currently operated by affiliated companies for royalty service fees. For the years ended December 31, 2021 and 2020, a total of \$340,730 and \$248,749 were charged to affiliated companies, respectively.

The Company charged franchises currently operated by affiliated companies for monthly marketing fees. For the years ended December 31, 2021 and 2020, a total of \$74,034 and \$122,738 were charged to affiliated companies, respectively.

**8. Concentration**

As of December 31, 2021 and 2020, there were four and four vendors that exceeded 10% of total accounts payable, respectively, and accounted for approximately 63% and 80% of total accounts payable, respectively

**9. Commitments and Contingencies**

Various legal actions and claims which have arisen in the normal course of business may be pending against the Company from time to time. It is the opinion of management, based on consultation with counsel, that the ultimate resolution of these contingencies will not have a material effect on the financial condition, results of operations or liquidity of the Company.

**10. Subsequent Events**

The Company has evaluated subsequent events through April 8, 2022, the date the financial statements were available to be issued.



# Poolwerx Franchise Management, LLC

## Financial Statements

December 31, 2020 and 2019

# **Poolwerx Franchise Management, LLC**

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Financial Statements  
December 31, 2020 and 2019

# Poolwerx Franchise Management, LLC

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## **Independent Auditor's Report**

To the Members of Poolwerx Franchise Management, LLC.  
Farmers Branch, TX

We have audited the consolidated financial statements of Poolwerx Franchise Management, LLC, (the "Company"), which comprise the balance sheet as of December 31, 2020 and 2019, and the related statements of operations and changes in member's equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Emphasis of a Matter***

As discussed in Note 2 to the consolidated financial statements, the Company has changed its accounting policy related to revenue from contracts with customers on a full retrospective approach due to the adoption of Accounting Standards Codification Topic 606, Revenue From Contracts With Customers. Our opinion is not modified with respect to this matter.

### ***Responsibilities of Management for the Consolidated Financial Statements***

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued or available to be issued.



### ***Auditor's Responsibilities for the Audit of the Consolidated Financial Statements***

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

BDO USA, LLP

Dallas, Texas  
April 30, 2021



## Financial Statements

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# Poolwerx Franchise Management, LLC

## Balance Sheets

<i>December 31,</i>	<b>2020</b>	<b>2019</b>
<b>Assets</b>		
<b>Current Assets</b>		
Cash	\$ 426	\$ (2,083)
Accounts receivable - net of allowance for doubtful accounts of \$266,169 and \$410,980	166,342	541,674
Unbilled revenue	117,891	-
Related party receivables	952,862	1,495,379
Inventory	30,396	-
Prepaid expenses	-	17,926
<b>Total Current Assets</b>	<b>1,267,917</b>	<b>2,052,896</b>
Equipment, net	129,996	2,373
<b>Total Assets</b>	<b>\$ 1,397,913</b>	<b>\$ 2,055,269</b>
<b>Liabilities and Member's Deficit</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 159,489	\$ 263,501
Franchise excellence program liability	513,937	651,121
Refundable deposits	-	2,500
National marketing fund liability	328,063	201,937
Deferred revenue - current	215,707	398,538
Related party payables	2,811,669	3,672,711
Notes payable - current	-	16,210
<b>Total Current Liabilities</b>	<b>4,028,865</b>	<b>5,179,518</b>
<b>Long-Term Liabilities</b>		
Deferred revenue - non-current	167,595	228,943
<b>Total Long-Term Liabilities</b>	<b>167,595</b>	<b>228,943</b>
<b>Total Liabilities</b>	<b>4,196,460</b>	<b>5,408,461</b>
<b>Commitment and Contingencies (Note 6)</b>		
<b>Members' Deficit</b>	<b>(2,798,547)</b>	<b>(3,353,192)</b>
<b>Total Liabilities and Members' Deficit</b>	<b>\$ 1,397,913</b>	<b>\$ 2,055,269</b>

*The notes to these financial statements are an integral part of this report.*

**Poolwerx Franchise Management, LLC**  
**Statements of Operations and Changes in Members' Equity**

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<i>For the Years Ended December 31,</i>	<b>2020</b>	<b>2019</b>
<b>Revenues</b>		
Franchise fees	\$ 152,548	\$ 166,185
Royalty service fees	1,435,506	1,248,143
Marketing fees	848,544	723,916
Franchise excellence program fees	204,684	781,540
Other revenues	<b>952,557</b>	<b>2,181,060</b>
<b>Total Revenues</b>	<b>3,593,839</b>	<b>5,100,844</b>
<b>Expenses</b>		
Management fees	1,528,612	1,920,850
Selling, general and administrative	1,510,582	4,013,205
<b>Total Operating Expenses</b>	<b>3,039,194</b>	<b>5,934,205</b>
<b>Net Income / (Loss)</b>	<b>554,645</b>	<b>(833,361)</b>
<b>Members Deficit Beginning Balance</b>	<b>(3,353,192)</b>	<b>(2,074,794)</b>
Adoption of ASC 606	-	445,037
<b>Members Deficit Ending Balance</b>	<b>\$ (2,798,547)</b>	<b>\$ (3,353,192)</b>

*The notes to these financial statements are an integral part of this report.*

# Poolwerx Franchise Management, LLC

## Statements of Cash Flows

<i>For the Years Ended December 31,</i>	<b>2020</b>	<b>2019</b>
<b>Cash Flows from Operating Activities</b>		
Net income/(loss)	\$ 554,645	\$ (833,361)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Provision for (recovery of) doubtful accounts	(136,520)	58,156
Deferred revenue amortization	(152,548)	166,185
Change in operating assets and liabilities:		
Accounts receivable	511,853	(170,048)
Unbilled revenue	(117,891)	-
National marketing fund	126,126	44,400
Related party receivables	542,517	(418,523)
Inventory	(30,396)	-
Prepaid expenses	17,926	-
Accounts payable and accrued expenses	(80,268)	16,960
Related party payables	(861,043)	1,119,337
Franchise excellence program liability	(136,428)	160,939
Deferred revenue	(91,631)	(125,840)
<b>Net cash provided by in operating activities</b>	<b>146,342</b>	<b>18,205</b>
<b>Cash Flow from Investing Activity</b>		
Purchase of equipment	(127,623)	(1,569)
<b>Net cash used in investing activities</b>	<b>(127,623)</b>	<b>(1,569)</b>
<b>Cash Flow from Financing Activity</b>		
Repayments of note payable	(16,210)	(11,272)
<b>Net cash used in financing activities</b>	<b>(16,210)</b>	<b>(11,272)</b>
<b>Net Increase in Cash</b>	<b>2,509</b>	<b>5,364</b>
<b>Cash, Beginning of Year</b>	<b>(2,083)</b>	<b>(7,446)</b>
<b>Cash, End of Year</b>	<b>\$ 426</b>	<b>\$ (2,083)</b>

*The notes to these financial statements are an integral part of this report.*

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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### 1. Organization

Poolwerx Franchise Management, LLC (the “Company”), a wholly owned subsidiary of Poolwerx USA LLC (the “Parent”), is incorporated in the state of Delaware and commenced operations on May 2, 2015. The Company’s operations consist of selling franchises (collectively, “Poolwerx Businesses”) that are expected to provide pool maintenance and repair services, and retail pool supplies.

Management has evaluated our ability to continue as a going concern as of December 31, 2020. Due to the positive cash flows from our operations and the continued support from our Parent we have concluded that there is not significant doubt about our ability to continue as a going concern.

The Company is an affiliate of both Poolwerx Development, LLC (“Development”) and Poolwerx Operations, LLC (“Operations”). Each affiliate company performs different types of activities in the United States and are subsidiaries of the Parent a subsidiary of the ultimate parent company Poolwerx Global Pty Ltd as trustee for Poolwerx Global Trust (“Australia”).

At December 31, 2020 and 2019, the Company had 1 and 8 stores, respectively, that were owned and operated by an affiliated sister company, and had 25 and 27 franchised stores, respectively.

#### *Impact of COVID-19*

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the “COVID-19 Outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 Outbreak as a pandemic, based on the rapid increase in exposure globally.

The Company’s operations were able to continue to operate during the stay at home orders issued by the jurisdictions where it has operations, however, the full impact of the COVID-19 Outbreak continues to evolve as of the date of this report. As such, it is uncertain as to the full magnitude that the pandemic will have on the Company’s financial condition, liquidity, and future results of operations. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 Outbreak and the global responses to curb its spread, the Company is not able to estimate the effects of the COVID-19 Outbreak on its results of operations, financial condition, or liquidity for fiscal year 2021.

Although the Company cannot estimate the length or gravity of the impact of the COVID-19 Outbreak at this time, if the pandemic continues, it may have a material adverse effect on the Company’s results of future operations, financial position, and liquidity in fiscal year 2021.

### 2. Summary of Significant Accounting Policies

The following is a summary of significant accounting policies followed in the preparation of these financial statements.

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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### ***Basis of Presentation***

The financial statements were prepared in conformity with accounting principles generally accepted in the United States of America (“US GAAP”).

### ***Cash and Cash Equivalents***

The Company considers all highly liquid investments with maturities of three months or less to be cash equivalents. The Company maintains cash in financial institutions, which at times may exceed federally insured limits. The Company believes it is not exposed to any significant credit risk on such accounts.

### ***Accounts Receivable***

Accounts receivable consists primarily of receivables from franchisees and contractually-determined receivables from major suppliers. The Company monitors the financial condition of its franchisees and records provisions for estimated losses on receivables when it believes that its franchisees are unable to make their required payments. While the Company uses the best information available in making its determination, the ultimate recovery of recorded receivables is also dependent upon future economic events and other conditions that may be beyond its control. As of December 31, 2020 and 2019, the Company held an allowance for doubtful accounts of \$266,169 and \$410,980, respectively.

### ***Inventory***

Inventory consists of supplies, mainly uniforms and promotional items for franchisees. Inventory is stated at the lower of cost or market and expensed as selling, general and administrative costs using the first-in-first-out basis when it is provided to the franchisees.

### ***Equipment***

Equipment consist of tax software purchased during fiscal 2020 which was place in service starting January 1, 2021 and therefore no depreciation is reflected for the year ended December 31, 2020. Equipment is stated at cost and is depreciated using the straight-line method over the estimated useful life of 5 years. Management evaluates long-lived assets used in operations for impairment when indications of impairment are present. Impairment losses are recorded in the amount that carrying value exceeds fair market value when the undiscounted cash flows estimated to be generated by those assets are less than the carrying amount of the assets.

### ***Refundable Deposits***

Potential franchisees remit funds to the Company, which are fully refundable, as part of the franchisee due diligence process. Such amounts represent costs of the franchisee for airfare and other costs, all of which are refundable if the franchise document is not executed.

Refundable deposits at December 31, 2020 and 2019 were \$0 and \$2,500, respectively, and are reported as current liabilities on the accompanying balance sheet.

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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### ***Advertising and Marketing Expense***

The Company expenses the costs of advertising and marketing related to the establishment of new franchises when incurred. Advertising and marketing expense related to the establishment of new franchises was \$30,060 and \$59,218 for the years ended December 31, 2020 and 2019, respectively, and are included in selling, general and administrative expenses.

### ***Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. An estimate is made in the calculations and assessments of allowance for doubtful accounts. Actual results could differ from those estimates under different assumptions or conditions.

### ***Reclassifications***

Certain prior period balances have been reclassified to conform to the current period presentation in the Company's consolidated financial statements and the accompanying notes. Such reclassifications were immaterial and had no effect on previously reported operating results.

### ***Fair Value of Financial Instruments***

In accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 820 *Fair Value Measurements*, certain assets and liabilities are carried at fair value and are categorized based on the level of judgement associated with the inputs used to measure their fair value. The standard establishes a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1 - Inputs are unadjusted quoted market prices in active markets for identical assets or liabilities at the measurement date.

Level 2 - Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date for the duration of the instrument's anticipated life.

Level 3 - Inputs are unobservable and therefore reflect management's best estimate of the assumptions that market participants would use in pricing the asset or liability.

The Company believes the carrying amounts of financial instruments as of December 31, 2020 and 2019, including cash equivalents, accounts receivable, accounts payable, accrued liabilities, and debt approximate their fair values due to their short maturities. Thus, management believes their carrying amounts approximate fair value.

### ***Recent Accounting Pronouncements***

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). The guidance in ASU 2016-02 (as subsequently amended by ASU 2018-01, ASU 2018-10, ASU 2018-11 and ASU 2018-20) requires that a lessee recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. As with previous guidance, there continues to be a differentiation between finance leases and operating leases, however this distinction now primarily relates to differences in the manner of expense recognition over time and in the classification of lease payments in the statement of cash flows. Lease assets and liabilities arising from both finance and operating leases will be recognized in the statement of financial position. ASU 2016-02 leaves the accounting for leases by lessors largely unchanged from previous GAAP. The transitional guidance for adopting the requirements of ASU 2016-02 calls for a modified retrospective approach that includes a number of optional practical expedients that entities may elect to apply. In addition, ASU 2018-11 provides for an additional (and optional) transition method by which entities may elect to initially apply the transition requirements in Topic 842 at that Topic's effective date with the effects of initially applying Topic 842 recognized as a cumulative effect adjustment to the opening balance of retained earnings in the period of adoption and without retrospective application to any comparative prior periods presented. Also, ASU 2018-20 provides certain narrow-scope improvements to Topic 842 as it relates to lessors. The ASU is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact this guidance will have on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables. In November 2018, the FASB issued ASU No. 2018-19, Codification Improvements to Topic 326, Financial Instruments - Credit Losses ("ASU 2018-19"), which clarifies that receivables arising from operating leases are accounted for using lease guidance and not as financial instruments. In April 2019, the FASB issued ASU No. 2019-04, Codification Improvements to Topic 326, Financial Instruments - Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments ("ASU 2019-04"), which clarifies the treatment of certain credit losses. In May 2019, the FASB issued ASU No. 2019-05, Financial Instruments - Credit Losses (Topic 326): Targeted Transition Relief ("ASU 2019-05"), which provides an option to irrevocably elect to measure certain individual financial assets at fair value instead of amortized cost. In November 2019, the FASB issued ASU No. 2019-11, Codification Improvements to Topic 326, Financial Instruments - Credit Losses ("ASU 2019-11"), which provides guidance around how to report expected recoveries. ASU 2016-13, ASU 2018-19, ASU 2019-04, ASU 2019-05 and ASU 2019-11 (collectively, "ASC 326") are effective for fiscal years beginning after December 15, 2022, with early adoption permitted. The Company is currently evaluating the impact this guidance will have on its consolidated financial statements.

### ***Revenue Recognition***

Effective January 1, 2020, we adopted Accounting Standards Update 2014-09, "Revenue from Contracts with Customers (Topic 606)" and all subsequent ASUs that modified Topic 606. The new guidance clarifies the principles used to recognize revenue for all entities and requires companies to recognize revenue when it transfers goods or services to a customer in an amount that reflects the consideration to which a company expects to be entitled. We elected to apply the full retrospective method of adoption. Results for reporting periods beginning after January 1, 2019 are presented under Topic 606. Our transition to Topic 606 represents a change in accounting principle.



# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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The Company's primary sources of revenue are as follows:

### *Franchise Fees*

Initial Franchise Fees: Under our franchise agreements are generated from the sale of new franchises and territories and the sale of additional franchises and territories to existing franchise owners. Typically, franchise agreements are granted to franchise owners for an initial term of ten years with an option to renew. The Company will recognize renewal fees over the term of the renewal. In the event a franchise agreement is terminated, any remaining deferred fees are recognized in the period of termination. Our performance obligations under franchise agreements consist of providing a license of our brand's intellectual property, a list of approved suppliers, certain training programs, an operations manual, and to maintain the marketing fund. These performance obligations are highly interrelated and we do not consider them to be individually distinct, and therefore account for them under Topic 606 as a single performance obligation. Revenue related to franchise fees is recognized evenly over the term of the agreement.

Location opening fees: The Company will recognize initial opening fees, which include pool school fees and store opening fees such as initial marketing fees as revenue when substantially all initial services required by the franchise agreement are performed, which is generally upon opening of the franchise. However, if revenue from initial fees is collectible over an extended period of time, and collectability is not reasonably assured, revenue would be recognized using the installment method as fees are collected.

### *Royalty Service Fees*

Royalty service fees are charged to existing franchise owners based on a percentage of each franchise owner's gross sales. These fees are generally 7% of the franchise owner's weekly sales, depending various factors. The fees are recognized as earned. Direct costs of sales and servicing of franchise agreements are charged to expense as incurred.

### *Marketing Fees*

These fees are collected from existing franchise owners and are typically a percentage of each franchise owners gross sales depending various factors. The Company maintains a national marketing fund to promote general brand recognition of the franchise system, services, and products sold by franchisees. Funds are collected from franchisees based on an agreed-upon percentage of franchisee's monthly gross revenue and used to pay costs of, or associated with, marketing, advertising, digital marketing, contact tracing, promotions, brand building, commercial business development, retail growth strategies including merchandising, the look and feel of displays, merchandise, public relations and costs to administer the national marketing fund. Related expenses are paid out of the national marketing fund account as incurred. The national marketing fund collected \$648,118 and \$676,327 for the years ended December 31, 2020 and 2019, respectively, and total marketing expenses incurred were \$519,698 and \$807,949 for the years ended December 31, 2020 and 2019, respectively. Income from the national marketing fund is recorded in marketing fees on the income statement. The net balance of \$328,063 and \$201,937 is reported as the national marketing fund liability in the balance sheet as of December 31, 2020 and 2019, respectively. We have determined that we are the principal in these arrangements and marketing fund contributions and expenditures are reported on a gross basis in the consolidated statements of operations.

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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### *Franchise Excellence Program Fees*

These incentives are earned from services performed for unrelated third parties under our Franchise Excellence Program (FEP). The FEP is a program operated by Poolwerx Franchise Management in which the Company will pay to renovate current retail stores or mobile units to fit Poolwerx franchise requirements on behalf of the franchisees. The Company receives FEP contributions from partners in profit vendors and records these amounts as a liability. Franchise store renovation expenses are paid out of the FEP Account when incurred. The Company collected \$67,500 and \$460,864 related to this program in the years ended December 31, 2020 and 2019, respectively and total expenses incurred were \$204,684 and \$189,502 in the years ended December 31, 2019 and 2018, respectively, recorded in franchise excellence program fees on the income statement. The net balance of \$513,937 and \$651,121 is reported as the franchise excellence program liability on the balance sheet as of December 31, 2020 and 2019 respectively. We have determined that we are the principal in these arrangements and 2020 and 2019 FEP contributions and expenditures are reported on a gross basis in the consolidated statements of operations.

### *Other Revenues*

**Annual Convention Fee:** The Company holds a convention once a year. Amounts received for the convention are recorded as deferred revenue until the Company substantially completes its obligations for the convention event. Convention fees of \$127,001 and \$155,571 were recognized in other revenues for the years ended December 31, 2020 and 2019, respectively.

**Rebate Income:** The Company receives supplier rebates based on purchases from preferred vendors by its franchisees and records income when such rebates are earned and collection is probable. Rebates totaling \$644,529 and \$356,944 were recognized in other revenue for the years ended December 31, 2020 and 2019, respectively. Rebates earned but not yet billed to suppliers are included in the financial statements as unbilled revenue.

### *Contract Balances*

The contract liabilities which we classify as “deferred revenue” consist primarily of the unamortized portion of initial franchise fees that are currently being amortized into revenue, amounts related to pending agreements or other deferred revenues not related to franchise agreements. Contract deferred franchise revenue represents our remaining performance obligations to our franchise owners.

	2020	2019
Balance at beginning of period	\$ 627,481	\$ 587,137
Fees received from franchise owners	76,000	100,546
Franchise sales revenue recognized	(152,548)	(166,185)
Other changes in deferred revenue	(167,631)	105,983
Balance at end of period	383,302	627,481
Less: current portion	(215,707)	(398,538)
Deferred revenue non-current	\$ 167,595	\$ 288,943

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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As of December 31, 2020, the deferred revenue expected to be recognized for each of the next five years and in the aggregate is as follows:

*Years ending December 31,*

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2021	\$	215,707
2022		59,971
2023		57,453
2024		27,971
2025		22,200
	\$	383,302

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### 3. Income Taxes

On December 22, 2017, the U.S government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (The “Tax Act”). The Tax Act, among other things, reduces the U.S. federal corporate tax rate and imposes significant limitations on certain corporate deductions and credits. The Tax Act places future limitations on the usage of net operating loss carryforwards generated in the year ended December 31, 2019 and after. The Tax Act is comprehensive containing several other provisions, some of which will not materially impact the Company. The estimates of the Tax Act may be adjusted in future periods as required. The Tax Act has significant complexity and future implementation guidance from the Internal Revenue Service, clarifications of state tax law or the completion of the Company’s 2017 tax return filings could all impact these estimates. The Company does not believe potential adjustments in future periods would materially impact the Company’s financial condition or results of operations.

On March 27, 2020, President Trump signed into law the “Coronavirus Aid, Relief, and Economic Security (CARES) Act.” The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property. As of December 31, 2020, the Company has not realized significant tax benefits from the CARES Act.

Being a limited liability company, the Company is not a tax paying entity for federal income tax purposes and the Company’s income, losses, and tax credits are reported by its members on the member’s income tax return. Therefore, no provision for federal income taxes is included in the financial statements.

The Company follows guidance issued by the FASB regarding accounting for uncertainty in income taxes. This guidance clarifies the accounting for income taxes by prescribing the minimum recognition threshold an income tax position is required to meet before being recognized in the financial statements and applies to all income tax position. Each income tax position is assessed using a two-step process. A determination is first made as to whether it is more likely than not that the income tax position will be sustained, based upon technical merits, upon examination by the taxing authorities.

# Poolwerx Franchise Management, LLC

## Notes to Financial Statements

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If the income tax position is expected to meet the more likely than not criteria, the benefit recorded in the financial statements equals the largest amount that is greater than 50% likely to be realized upon its ultimate settlement.

### 4. Related Party Transactions

The Company is dependent on the Parent to perform certain management functions on behalf of the Company, prospective franchisees and active franchisees and is charged a monthly management fee. Total management fees charged by Poolwerx USA were \$1,337,045 and \$1,920,850 for the years ended December 31, 2020 and 2019, respectively, and are included in related party payables on the balance sheet and in management fees on the statement of operations. The related party payable account is unsecured, bears no interest, and is due on demand.

The Company charged franchises currently operated by affiliated companies for monthly marketing fees. For the years ended December 31, 2020 and 2019, a total of \$122,738 and \$153,592 were charged to affiliated companies, respectively.

### 5. Note Payable

On August 11, 2017, the Company entered a promissory note payable that provided for a loan of \$45,537 due August 11, 2020. At December 31, 2020 and 2019 there was \$0 and \$16,210 outstanding on this note, respectively. The interest rate on the promissory note payable at December 31, 2019 was 5.00%. There are no positive or negative covenants related to this promissory note.

### 6. Commitment and Contingencies

Various legal actions and claims which have arisen in the normal course of business may be pending against the Company from time to time. It is the opinion of management, based on consultation with counsel, that the ultimate resolution of these contingencies will not have a material effect on the financial condition, results of operations or liquidity of the Company.

### 7. Concentration

As of December 31, 2020, there were four vendors that exceeded 10% of total accounts payable and accounted for approximately 80% of total accounts payable. As of December 31, 2019, there were 2 vendors that exceeded 10% of total accounts payable and accounted for approximately 56% of total accounts payable.

### 8. Subsequent Events

The Company evaluated its December 31, 2020 financial statements for subsequent events through April 30, 2021 the date the financials were available to be issued. The Company is not aware of any subsequent events which would require recognition or disclosure in the financial statements.

**THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.**

# Poolwerx Franchise Management, LLC

## Balance Sheet

Unaudited

**March 31, 2023**

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### Assets

#### Current Assets:

Cash and cash equivalents	\$	66,211
Accounts receivable, net of allowance for doubtful accounts of \$5,801		432,697
Unbilled revenue		155,111
Related party receivables		-
Inventory		158,730
Prepaid expenses		37,106
<b>Total current assets</b>		<b>849,856</b>

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Property and equipment, net		40,904
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<b>Total Assets</b>		<b>890,760</b>
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### Liabilities and Member's Deficit

#### Current liabilities

Accounts payable and accrued expenses		257,565
Franchise excellence program liability		115,500
National marketing fund liability		167,279
Deferred revenue		103,147
Related party payables		1,498,680
<b>Total current liabilities</b>		<b>2,142,170</b>

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#### Long term liabilities:

Deferred revenue		363,749
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<b>Member's deficit</b>		<b>(1,615,159)</b>
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<b>Total Liabilities and Member's Deficit</b>	\$	<b>890,760</b>
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# Poolwerx Franchise Management, LLC

## Statement of Operations

Unaudited

**March 31, 2023**

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### Revenues

Franchise fees	\$	185,465
Royalty fees		320,998
Marketing fees		111,350
Franchise excellence program fees		73,113
Rebate income		159,319
Partners in Profit fees		73,113
Other revenues		263,116

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**Total Revenues** 1,186,475

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### Operating Expenses

Depreciation		11,034
Management fees		496,889
Selling, general and administrative		1,007,149

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**Total Operating Expenses** 1,515,072

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**Income from Operations** (328,597)

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**Income Tax Expense** (1,645)

**Net Income** \$ (326,952)

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**EXHIBIT C**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**  
**STATE ADMINISTRATORS AND AGENTS FOR PROCESS OF SERVICE**

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>Agent for Process of Service</b>
California	Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West 4th St., Suite 750 Los Angeles, California 90013 (866) 275-2677	Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West 4th Street Suite 750 Los Angeles, CA 90013- 2344
Hawaii	Commissioner of Securities 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	Commissioner of Securities Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813
Illinois	Franchise Bureau Office of Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	Attorney General 500 South Second Street Springfield, IL 62706
Indiana	Chief Deputy Commissioner Franchise Section Indiana Securities Division Secretary of State Room E-111 302 West Washington Street Indianapolis, Indiana 46204 (317) 232-6681	Secretary of State 302 West Washington Street Indianapolis, Indiana 46204
Maryland	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202 (410) 576-7042	Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020



STATE	STATE ADMINISTRATOR	Agent for Process of Service
Michigan	Franchise Administrator Consumer Protection Division Antitrust and Franchise Unit Michigan Department of Attorney General 670 Law Building Lansing, Michigan 48913 (517) 373-7117	Michigan Department of Commerce Corporations and Securities Bureau 670 Law Building Lansing, MI 48913
Minnesota	Franchise Examiner Minnesota Department of Commerce 85 East 7th Place, Suite 500 St. Paul, Minnesota 55101 (612) 296-6328	Minnesota Commissioner of Commerce 85 7th Place East Suite 500 St. Paul, MN 55101
New York	NYS Department of Law Investor Protection Bureau 28 Liberty St. 21st Fl New York, NY 10005 212-416-8222	Secretary of State 41 State Street Albany, NY 12231
North Dakota	Franchise Examiner N.D. Securities Department Fifth Floor, Dept. 414 600 East Boulevard Bismarck, North Dakota 58505-0510 (701) 328-4712	North Dakota Securities Commissioner Fifth Floor 600 East Boulevard Bismarck, ND 58505
Rhode Island	Chief Securities Examiner Division of Securities 233 Richmond Street, Suite 232 Providence, Rhode Island 02903 (401) 277-3048	Rhode Island Attorney General 233 Richmond Street Providence, RI 02903-4232
South Dakota	Department of Revenue and Regulation SD Division of Securities 445 E. Capitol Ave. Pierre, South Dakota 57501 (605) 773-4013	Department of Revenue and Regulation SD Division of Securities 445 E. Capitol Ave. Pierre, SD 57501
Virginia	State Corporation Commission Division of Securities and Retail Franchising 1300 E. Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051	Clerk of the State Corporation Commission State Corporation Commission 1300 E. Main Street First Floor Richmond, VA 23219

STATE	STATE ADMINISTRATOR	Agent for Process of Service
Washington	Administrator Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, Washington 98507-9033 (360) 902-8760	Department of Financial Institutions Securities Division 150 Israel Road, S.W. Tumwater, WA 98501
Wisconsin	Franchise Administrator Securities and Franchise Registration Wisconsin Securities Commission P.O. Box 1768 Madison, Wisconsin 53701 (608) 266-8559	Commissioner of Securities Department of Financial Institutions P.O. Box 1768 Madison, Wisconsin 53701
All Other States	N/A	Corporation Service Company 2711 Centerville Road, Suite 400, Wilmington, DE 19808

## EXHIBIT D

### TO THE FRANCHISE DISCLOSURE DOCUMENT TABLE OF CONTENTS FOR SYSTEM MANUAL

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Franchise Development	Tools
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HR	Recruitment
HR	Remuneration and Entitlements
HR	Termination
HR	Tools
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The System Manual only exists in electronic form. There are no page numbers.

**EXHIBIT E**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**  
**CURRENT AND FORMER FRANCHISEES AS OF DECEMBER 31, 2022**

**Current Franchisees:**

<b>State</b>	<b>Entity Name</b>	<b>Territory Granted</b>	<b>Address of franchised retail stores/or location out of which Franchisee operates</b>	<b>Telephone</b>
Arizona	MEH Pool Services Inc	Union Hills	1909 W Union Hills Dr Phoenix, AZ 85027	(602) 993-7025
Arizona	MEH Pool Services Inc	Scottsdale & Cactus	13802 N Scottsdale Road Ste 141 Scottsdale, AZ 85254	(602) 993-7025
Arizona	MEH Pool Services Inc	McDowell & Mountain Ranch	1909 W Union Hills Dr Phoenix, AZ 85027	(602) 993-7025
Arizona	MEH Pool Services Inc	Cactus Corridor	1909 W Union Hills Dr Phoenix, AZ 85027	(602) 993-7025
Arizona	MEH Pool Services Inc	Deer Valley	6740 W Deer Valley Rd U D108, Glendale AZ 85310	(623) 566-8966
Arizona	MEH Pool Services Inc	Riggs & McQueen	990 E Riggs Rd, #8 Chandler, AZ 85249	(480) 895-9696
Arizona	Bobbi's Pool Supply LLC	Higley and Elliot	139 S Higley Rd Ste 102, Gilbert, AZ 85296	(480) 558-0111
Arizona	Bobbi's Pool Supply LLC	Higley and Pecos	3126 S Higley Rd Ste 106, Gilbert, AZ 85296	(480) 457-8899
Arizona	Bobbi's Pool Supply LLC	Power & McDowell	139 S Higley Rd Ste 102, Gilbert, AZ 85296	(480) 558-0111
Arizona	Madmax Solutions LLC	Tucson	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	Cataline Foothills	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	East Tucson	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	Rita Ranch	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	Oro Valley	7918 North Oracle Road, Tucson AZ 85704	520-797-2299
Arizona	Madmax Solutions LLC	South Tucson	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	Tanque Verde	7960E 22 <sup>nd</sup> Street, Tucson, AZ 85710	(520) 886-1211
Arizona	Madmax Solutions LLC	Sierra Vista	1160 E. Fry Boulevard, Sierra Vista AZ 85635	520-458-9291

<b>State</b>	<b>Entity Name</b>	<b>Territory Granted</b>	<b>Address of franchised retail stores/or location out of which Franchisee operates</b>	<b>Telephone</b>
Arizona	Tropical Oasis Pools LLC	Surprise	11805 W Laurel Lane, El Mirage, AZ 85335	(623) 299-6060
California	Redlands Pool & Spa Center Inc	Redlands	310 Alabama Street, Redlands CA 92373	(909) 793-9082
California	Redlands Pool & Spa Center Inc	San Bernadi no	310 Alabama Street, Redlands CA 92373	(909) 793-9082
Florida	KB Jax LLC	Beaches	13546 Beach Blvd. #6 Jacksonville, FL 32224	(904) 599-2190
Florida	KB Jax LLC	Fruit Cove	13546 Beach Blvd. #6 Jacksonville, FL 32224	(904) 599-2190
Florida	Suncoast SRQ Inc	Sarasota Central	8436 N Lockwood Ridge Road Sarasota, FL 34243	(941) 914-7665
Florida	Suncoast SRQ Inc	Lakewood Ranch	8436 N Lockwood Ridge Road Sarasota, FL 34243	(941) 914-7665
Georgia	PBJ Capital Ventures, LLC	Rome	PO Box 1234 Silver Creek, GA 30173	(706) 662-5402
Nevada	Desert Pool Supply	Pahrump	150 S Nevada Hwy 160, Ste 3, Pahrump, NV, 89048	(775)209-7665
Oklahoma	Highlander Sales & Services LLC	Oklahoma City	9324 S Shields Blvd Oklahoma City, OK 73160	(405) 799-9133
Oklahoma	Highlander Sales & Services LLC	Edmond	36 W Memorial Road, Oklahoma City 73114	(405) 751-3105
Oklahoma	Highlander Sales & Services LLC	Stillwater	1411 Cimarron Plaza, Stillwater 74075	(405) 624-8833
Oklahoma	Highlander Sales & Services LLC	Mustang	9324 S Shields Blvd Oklahoma City, OK 73160	(405) 799-9133
South Carolina	M Weatherford and Associates LLC	Florence	2704 W Palmetto St Florence, SC 29501	(843) 669-4567
South Carolina	HygieniKleen LLC	Myrtle Beach	3675 Hwy 17 Bypass, Ste #2, Murrells Inlet, SC 29576	(843)372-4469
South Carolina	Southern Pools & Spas Inc	Greenville	1421 W Wade Hampton Blvd, Greer, SC 29660	(864) 877-4728
South Carolina	Southern Pools & Spas Inc	Anderson	1421 W Wade Hampton Blvd, Greer, SC 29660	(864) 877-4728
South Carolina	Southern Pools & Spas Inc	Spartanburg	1421 W Wade Hampton Blvd, Greer, SC 29660	(864) 877-4728

<b>State</b>	<b>Entity Name</b>	<b>Territory Granted</b>	<b>Address of franchised retail stores/or location out of which Franchisee operates</b>	<b>Telephone</b>
Texas	Ocellaris LLC	Los Colinas	7522 Campbell Road Suite 110, Dallas, TX 75248	(214) 363-4501
Texas	Ocellaris LLC	Irving	7522 Campbell Road Suite 110, Dallas, TX 75248	(214) 363-4501
Texas	Ocellaris LLC	University Park	7522 Campbell Road Suite 110, Dallas, TX 75248	(214) 363-4501
Texas	Ocellaris LLC	Richardson	7522 Campbell Road Suite 110, Dallas, TX 75248	(972) 250-4048
Texas	Empty Box LLC	Flower Mound	2250 Morriss Rd #208, Flower Mound, TX 75028	(972) 537-5039
Texas	YOUNT2 Enterprises LLC	Denton	3400 FM 407 E, Suite 200-10, Bartonville, TX, 76266	(940) 208-5545
Texas	YOUNT2 Enterprises LLC	Keller	8528 Davis Boulevard, Suite 190, North Richland Hills, TX 76182	(817) 919-0247
Texas	YOUNT2 Enterprises LLC	Southlake	8528 Davis Boulevard, Suite 190, North Richland Hills, TX 76182	(817) 919-0247
Texas	YOUNT2 Enterprises LLC	Denton	3400 FM 407 E Suite 200-10 Bartonville, Texas 76226	(940) 208 5545
Texas	Jakada premier Enterprises LLC	Mansfield	990 US 287 Frontage Rd, Ste 103, Mansfield, TX 76063	(817) 228-6997
Texas	Poolwerks of Flowery Mound LLC	Highland Village	2021 Justin Road, Flower Mound, TX 75028	(972) 317- 2046
Texas	Poolwerks of Flowery Mound LLC	Frisco	2021 Justin Road, Flower Mound, TX 75028	(972) 317- 2046
Texas	Poolwerks of Flowery Mound LLC	North Preston	2021 Justin Road, Flower Mound, TX 75028	(972) 317- 2046
Texas	Poolwerks of Flowery Mound LLC	Coppell	2021 Justin Road, Flower Mound, TX 75028	(972) 317- 2046

<b>State</b>	<b>Entity Name</b>	<b>Territory Granted</b>	<b>Address of franchised retail stores/or location out of which Franchisee operates</b>	<b>Telephone</b>
Texas	Parker County Pools Inc	Weatherford	401 Palo Pinto St, Weatherford, TX 76086	(817) 341-7665
Texas	Parker County Pools Inc	Benbrook	401 Palo Pinto St, Weatherford, TX 76086	(817) 341-7665
Texas	Blue Bottom Pool Supply LLC	Cedar Park	601 East Whitestone Boulevard, Suite 700 Cedar Park Texas 78613	(512) 259-7665
Texas	Blue Bottom Pool Supply LLC	Round Rock	601 East Whitestone Boulevard, Suite 700 Cedar Park Texas 78613	(512) 259-7665
Texas	McKlou Enterprises, LLC	Haslet	13100 NW HWY 287 Ste 142 Haslet, TX 76052	(817) 228 4473
Texas	Pronghorn Plc Inc	Conroe	111 Pronghorn Pl, Conroe, TX 77316	(936) 235-1940
Texas	S.B.B.O Group Inc	Cinco Ranch	9711 S. Mason Rd., Ste 125 #124, Richmond, TX 74407	(832)520-6160
Texas	Aqua Alliance Group LLC	West Plano	501 W. Pres. George Bush Hwy., #125, Richardson TX 75080	(469)-371-4155
Texas	Midessa Pools LLC	Midland/Odesa	3001 W. Loop 250 N., Ste C-105, Midland, TX 79705	(432) 222-5767
Texas	Moksham LLC	Sugar Land	702 Tori Road Richmond, Tx 77469	(832) 206-1114
Tennessee	Campbell's Pool and Spa Construction LLC	Knoxville	7812 Montvue Rd NW, Knoxville, TN 37919	(865) 584-3607
Tennessee	Campbell's Pool and Spa Construction LLC	Lenoir City	756 Highway 321 N, #102, Lenoir City, TN 37771	(865) 584-3607
Tennessee	Campbell's Pool and Spa Construction LLC	Maryville	1904 West Broadway, Ste E Maryville, TN 37801	(865) 584-3607
Tennessee	Lemah Enterprises Inc	Chattanooga	3712 Ringgold Road, Ste #372 Chattanooga, TN 37412	(423)320-8606



**Franchisees who had an Outlet Terminated, Cancelled, Not Renewed, Transferred or Otherwise Voluntarily or Involuntarily Ceased to do Business under a Franchise Agreement as of the December 31, 2022 or Who has not Communicated with the Franchisor Within 10 Weeks of the Application Date:**

<b>State</b>	<b>Entity Name</b>	<b>Territory Granted</b>	<b>Address of franchised retail stores/or location out of which Franchisee operates</b>	<b>Telephone</b>
<b>Non-Renewals</b>				
California	Salvador Martinez	Temecula	35814 Banyan Rim Drive, Wildomar, CA 92595	(951) 760 2048
California	Salvador Martinez	Murrieta	35814 Banyan Rim Drive, Wildomar, CA 92595	(951) 760 2048
California	Sant'ana Operations LLC	Irvine	PO Box 54912, Irvine Ca 92619	(949) 383 0720
California	Sant'ana Operations LLC	Mission Viejo	PO Box 54912, Irvine Ca 92619	(949) 383 0720
California	Sant'ana Operations LLC	Rancho Santa Margarita	PO Box 54912, Irvine Ca 92619	(949) 383 0720
<b>Terminations</b>				
Florida	The North Lake Group, LLC	Longwood	390 Lakeview St, Orlando FL 32804	(407) 333-0148
Florida	The North Lake Group, LLC	Lake Mary	390 Lakeview St, Orlando FL 32804	(407) 333-0148
Florida	The North Lake Group, LLC	Oviedo	390 Lakeview St, Orlando FL 32804	(407) 333-0148
Florida	The North Lake Group, LLC	Longwood	390 Lakeview St, Orlando FL 32804	(407) 333-0148
Florida	The North Lake Group, LLC	Lake Mary	390 Lakeview St, Orlando FL 32804	(407) 333-0148
Florida	The North Lake Group, LLC	Oviedo	390 Lakeview St, Orlando FL 32804	(407) 333-0148
<b>Transfers</b>				
Arizona	Bobbi's Pool Supply LLC	Riggs & McQueen	990 E Riggs Rd, #8 Chandler, AZ 85249	(480) 895-9696
Texas	Childs Capital Investments LLC	Denton	3400 FM 407 E Suite 200-10 Bartonville, Texas 76226	(940) 208 5545
<b>No Contact</b>				
NONE				

**EXHIBIT F**

**TO THE FRANCHISE DISCLOSURE DOCUMENT FORM OF GENERAL RELEASE**

**THIS GENERAL RELEASE (“Release”)** is executed on \_\_\_\_\_ by:

---

(“Franchisee”),

---

(“Guarantors”),

---

(“Transferee”)

as a condition of (1) the transfer of the Franchise Agreement dated [month] [day], [year] between POOLWERX FRANCHISE MANAGEMENT LLC (“Poolwerx”) and Franchisee (“Franchise Agreement”); or (2) the execution of a successor Franchise Agreement by Franchisee and Poolwerx. (If this Release is executed under the conditions set forth in (2) above, all references in this Release to “Transferee” should be ignored.)

**1. Release by Franchisee, Transferee and Guarantors.** Franchisee and Transferee (on behalf of themselves and their parents, subsidiaries, and affiliates and their respective past and present officers, directors, shareholders, managers, members, agents, and employees, in their corporate and individual capacities), and Guarantors (on behalf of themselves and their respective heirs, representatives, successors and assigns) (collectively, the “Releasers”) freely and without any influence forever release (i) Poolwerx, (ii) Poolwerx’s past and present officers, directors, shareholders, managers, members, agents, and employees, in their corporate and individual capacities, and (iii) Poolwerx’s parent, subsidiaries, and affiliates and their respective past and present officers, directors, shareholders, managers, members, agents, and employees, in their corporate and individual capacities (collectively, the “Released Parties”), from any and all claims, debts, demands, liabilities, suits, judgments, and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, “Claims”), which any Releaser ever owned or held, now owns or holds, or may in the future own or hold, including, without limitation, claims arising under federal, state, and local laws, rules, and ordinances and claims arising out of, or relating to, the Franchise Agreement and all other agreements between any Releaser and Poolwerx or Poolwerx’s parent, subsidiaries, or affiliates, arising out of, or relating to any act, omission or event occurring on or before the date of this Release, unless prohibited by applicable law. Notwithstanding the foregoing, (a) this Release shall not act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law and (b) this Release does not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

**2. Risk of Changed Facts.** Franchisee, Transferee, and Guarantors understand that the facts in respect of which the release in Section 1 is given may turn out to be different from the facts now known or believed by them to be true. Franchisee, Transferee, and Guarantors hereby accept and assume the risk of the facts turning out to be different and agree that the release in Section 1 shall nevertheless be effective in all respects and not subject to termination or rescission by virtue of any such difference in facts.

**3. Covenant Not to Sue.** Franchisee, Transferee, and Guarantors (on behalf of Releasers) covenant not to initiate, prosecute, encourage, assist, or (except as required by law) participate in any civil, criminal, or administrative proceeding or investigation in any court, agency, or other forum, either affirmatively or by way of cross-claim, defense, or counterclaim, against any person or entity released under Section 1 with respect to any Claim released under Section 1.

4. **No Prior Assignment and Competency.** Franchisee, Transferee, and Guarantors represent and warrant that: **(i)** the Releasors are the sole owners of all Claims and rights released in Section 1 and that the Releasors have not assigned or transferred, or purported to assign or transfer, to any person or entity, any Claim released under Section 1; **(ii)** each Releasor has full and complete power and authority to execute this Release, and that the execution of this Release shall not violate the terms of any contract or agreement between them or any court order; and **(iii)** this Release has been voluntarily and knowingly executed after each of them has had the opportunity to consult with counsel of their own choice.

5. **Complete Defense.** Franchisee, Transferee, and Guarantors: **(i)** acknowledge that the release in Section 1 shall be a complete defense to any Claim released under Section 1; and **(ii)** consent to the entry of a temporary or permanent injunction to prevent or end the assertion of any such Claim.

6. **Successors and Assigns.** This Release will inure to the benefit of and bind the successors, assigns, heirs, and personal representatives of the Released Parties and each Releasor.

7. **Counterparts.** This Release may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

8. **Capitalized Terms.** Any capitalized terms that are not defined in this Release shall have the meaning given them in the Franchise Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, Franchisee, Transferee, and Guarantors have executed this Release as of the date shown above.

ATTEST:

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

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

FRANCHISEE:

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

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

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

Date: \_\_\_\_\_

ATTEST:

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

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

TRANSFEREE:

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

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

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

Date: \_\_\_\_\_

WITNESS:

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

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

GUARANTOR:

\_\_\_\_\_

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

Date: \_\_\_\_\_

**EXHIBIT G**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**  
**FORM OF NONDISCLOSURE AND NONCOMPETITION AGREEMENT FOR FRANCHISEES’**  
**EMPLOYEES AND INDEPENDENT CONTRACTORS**  
**FOR FRANCHISEES’ EMPLOYEES AND INDEPENDENT CONTRACTORS**

This Agreement is dated [DATE]. The parties are [NAME OF FRANCHISEE] (referred to as “we”, “us”, and “our”), located at [ADDRESS], and [NAME OF EMPLOYEE OR INDEPENDENT CONTRACTOR] (referred to as “you” and “your”). You are signing this Agreement in consideration of, and as a condition to, your association with us and the compensation, dividends, or other payments and benefits you will receive from us.

**BACKGROUND**

We are a franchisee of POOLWERX FRANCHISE MANAGEMENT LLC (“Poolwerx”) under a POOLWERX FRANCHISE MANAGEMENT LLC Franchise Agreement dated [DATE] (the “Franchise Agreement”). We have a license to use the certain trademarks designated by Poolwerx (the “Marks”), certain policies and procedures used in Poolwerx businesses (the “System”), and the Confidential Information developed and owned by Poolwerx in our Franchised Business (the “Franchise”). Poolwerx recognizes that, in order for us to effectively operate our business, our employees and independent contractors whom we retain must have access to certain confidential information and trade secrets owned by Poolwerx. Disclosure of this confidential information and trade secrets to unauthorized persons, or its use for any purpose other than the operation of our business, would harm Poolwerx, other franchise owners, and us. Accordingly, Poolwerx requires us to have you to sign this Agreement.

**AGREEMENT**

**1. Confidential Information.** As used in this Agreement, “Confidential Information” means all manuals, trade secrets, know-how, methods, training materials, information, management procedures, and marketing and pricing techniques relating to the Franchise, the Poolwerx System, or Poolwerx’s business. In addition, Confidential Information includes all marketing plans, advertising plans, business plans, financial information, member information, employee information, independent contractor information and other confidential information of Poolwerx, Poolwerx’s affiliates, or us (collectively, the “Interested Parties”) that you obtain during your association with us.

**2. Nondisclosure.** You agree not to use or disclose, or permit anyone else to use or disclose, any Confidential Information to anyone outside of our organization (other than the Interested Parties) and not to use any Confidential Information for any purpose except to carry out your duties as our employee or as an independent contractor to us. You also agree not to claim any ownership in or rights to Confidential Information and not to challenge or contest our, Poolwerx’s, or Poolwerx’s affiliates’ ownership of it. These obligations apply both during and after your association with us.

**3. Return of Confidential Information.** If your association with us ends for any reason, you must return to us all records described in Paragraph 1, all other Confidential Information, and any authorized or unauthorized copies of Confidential Information that you may have in your possession or control. You may not retain any Confidential Information after your association with us ends.

(a) **Non-compete During Association.** You may not, during your association with us, without our prior written consent: own, manage, engage in, be employed by, advise, make loans to, or have any other interest in any business that offers a pool cleaning or pool supply program at any location in the United States or Canada (a “Competitive Business”);

(b) divert or attempt to divert any business or customer or potential business or customer of the Franchise to any Competitive Business, by direct or indirect inducement or otherwise;

(c) perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the System; or

(d) directly or indirectly solicit for employment any person who at any time within the immediate past 12 months has been employed by (i) us, (ii) Poolwerx, (iii) our or Poolwerx's affiliates, or (iv) any Poolwerx franchisees.

**4. Non-compete After Association Ends.** For two years after your association with us ends for any reason, you may not, without our prior written consent:

(a) directly or indirectly own, manage, engage in, be employed by, advise, make loans to, or have any other interest in any Competitive Business that is (or is intended to be) located within a 20-mile radius of the Marketing Area granted to use by Poolwerx, which Marketing Area has been disclosed to you; or

(b) directly or indirectly solicit for employment any person who at any time within the immediate past 12 months has been employed by (i) us, (ii) Poolwerx, (iii) our or Poolwerx's affiliates, or (iv) any Poolwerx franchisees.

**5. Remedies.** If you breach or threaten to breach this Agreement, you agree that we will be entitled to injunctive relief (without posting bond) as well as a suit for damages.

**6. Severability.** If any part of this Agreement is declared invalid for any reason, the invalidity will not affect the remaining provisions of this Agreement. If a court finds any provision of this Agreement to be unreasonable or unenforceable as written, you agree that the court can modify the provision to make it enforceable and that you will abide by the provision as modified.

**7. Independent Agreement.** The Agreement is independent of any other obligations between you and us. This means that it is enforceable even if you claim that we breached any other agreement, understanding, commitment or promise.

**8. Third Party Right of Enforcement.** You are signing this Agreement not only for our benefit, but also for the benefit of Poolwerx and Poolwerx's affiliates. We, Poolwerx, and Poolwerx's affiliates have the right to enforce this Agreement directly against you.

**9. Not An Employment Agreement.** This is not an employment agreement. Nothing in this Agreement creates or should be taken as evidence of an agreement or understanding by us, express or implied, to continue your association with us for any specified period.

**10. Modification and Waiver.** Your obligations under this Agreement cannot be waived or modified except in writing.

**11. Governing Law.** This Agreement is governed by the laws of the state in which our principal office is located.

**12. Attorney's Fees.** If we have to take legal action to enforce this Agreement, we will be entitled to recover from you all of our costs, including reasonable attorney's fees, to the extent that we prevail on the merits.

**13. Representation.** You certify that you have read and fully understood this Agreement, and that you entered into it willingly.

## EMPLOYEE/INDEPENDENT CONTRACTOR

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

\_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT H**

**TO THE FRANCHISE DISCLOSURE DOCUMENT LEASE ADDENDUM**

THIS LEASE ADDENDUM TO THAT CERTAIN LEASE BETWEEN \_\_\_\_\_ (“Landlord”), \_\_\_\_\_ (“the Franchisee”) and Franchised Business Management, LLC (“Poolwerx”) is executed as of the \_\_ day of \_\_, 20\_\_ and relates to that certain Lease between Landlord and Franchisee, dated \_\_\_\_\_ relating to leased premises located at \_\_\_\_\_ (the “Lease”).

The parties agree as follows:

1. Landlord shall give notice of any defaults (including without limitation failure to timely pay rent or any other amount due from the Franchisee) under the Lease simultaneously with the giving notice of notice of default to the Franchisee.
2. Poolwerx shall have the same cure rights as the Franchisee under the Lease.
3. If the Franchisee fails to cure any default, the Franchisee, if Poolwerx so requests, shall assign its interest in the Lease to Poolwerx and Poolwerx shall have the right to assume the Franchisee’s rights and obligations under the Lease; provided, however, that Poolwerx shall only be required to assume rights and obligations arising from and after the date of assignment, but Poolwerx must pay all past due rent and other financial obligations owing by the Franchisee under the Lease in order to assume the Lease. The Landlord hereby consents to any such assignment.
4. The property subject to the Lease, while the Lease is in effect, shall only be used to operate a pool supply business.

IN WITNESS WHEREOF, the parties have duly executed this Lease Addendum as of the day and year first above written.

**POOLWERX FRANCHISE MANAGEMENT  
LLC, a Delaware limited liability company**

**LANDLORD:**

\_\_\_\_\_

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**  
**STATE EFFECTIVE DATES AND RECIEPTS**

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

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

<b>State</b>	<b>Effective Date</b>
California	Pending
Hawaii	Pending
Illinois	Pending
Indiana	Pending
Maryland	Pending
Michigan	May 22, 2023
Minnesota	Pending
New York	Pending
North Dakota	Pending
Rhode Island	Pending
South Dakota	Pending
Virginia	Pending
Washington	Pending
Wisconsin	May 23, 2023



## RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If POOLWERX FRANCHISE MANAGEMENT, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If POOLWERX FRANCHISE MANAGEMENT LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the state agency listed on Exhibit A.

The name, principal business address and telephone number of each franchise seller offering the franchise:

\_\_\_\_\_

\_\_\_\_\_

Issuance date: May 22, 2023

Exhibit A:	Franchise Agreement and State-Required Addenda
Exhibit B:	Financial Statements
Exhibit C:	State Administrators and Agents for Process of Service
Exhibit D:	Manual Table of Contents
Exhibit E:	Current Franchisees and Former Franchisees
Exhibit F:	Form of General Release
Exhibit G:	Form of Nondisclosure and Noncompetition Agreement fro Franchisees' Employees and Independent Contractors
Exhibit H:	Lease Addendum
Exhibit I:	State Effective Dates and Receipts

POOLWERX FRANCHISE MANAGEMENT, LLC authorizes the respective state agencies identified on Exhibit A to receive service of process for it in the particular state.

I received a disclosure document dated May 22, 2023, that included the following Exhibits:

Date: \_\_\_\_\_

(Do not leave blank)

Proposed Location: \_\_\_\_\_

(city/state)

Signature of Prospective Franchisee \_\_\_\_\_

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

*Please retain this copy for your records.*

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Date: \_\_\_\_\_  
(Do not leave blank)

Signature of Prospective Franchisee \_\_\_\_\_

Proposed Location: \_\_\_\_\_  
(city/state)

\_\_\_\_\_

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

You may return this signed receipt either by signing, dating, and mailing it to POOLWERX FRANCHISE MANAGEMENT LLC, To discuss the availability of disclosures in different formats, contact the Vice President – Franchise Development at 4801 Spring Valley Road, Suite 103A, Farmers Branch, TX 75244 (Tel. (480) 854 2782) or at [Franchising@poolwerx.com](mailto:Franchising@poolwerx.com).