

## FRANCHISE DISCLOSURE DOCUMENT



D-BAT ACADEMIES, INC.  
A Texas Corporation  
2101 Midway Road, Suite 300  
Carrollton, Texas 75006  
972-398-1000  
[www.DBAT.net](http://www.DBAT.net)  
[www.dbatinc.com](http://www.dbatinc.com)  
[www.dbatfranchises.com](http://www.dbatfranchises.com)  
[www.facebook.com/dbatsportsinc](https://www.facebook.com/dbatsportsinc)

The franchise offered is for a baseball and softball training academy and retail pro shop (“Facility”) to be operated under the “D-BAT” trademark.

The total investment necessary to begin operation of a D-BAT® Facility ranges from \$536,450 to \$1,031,100. This includes \$106,500 to \$124,000 that must be paid to the franchisor or its affiliate.

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 government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient to you. To discuss the availability of disclosures in different formats, contact Kyle Griffis at 2101 Midway Road, Suite 300, Carrollton, Texas 75006, (972) 398-1000, [Kyle@dbat.net](mailto:Kyle@dbat.net).

The terms of your contract will govern your franchise relationship. Don’t rely on the 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 18, 2023, as amended June 21, 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 or Exhibit H.
<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 F 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 D-BAT 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 D-BAT franchisee?</b>	Item 20 or Exhibit H lists 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 franchise business or may harm your franchise 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 franchise 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 B.

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 and the area development agreement require 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. **Franchisor's Financial Condition.** The franchisor's financial condition as reflected in its financial statements (see Item 21) calls into question the franchisor's financial ability to provide services and support to you.
3. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement, even if 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.
4. **Unopened Franchises.** The Franchisor has signed a significant number of Franchise Agreements with franchisees who have not yet opened their outlets. If other franchisees are experiencing delays in opening their outlets, you may also experience delays in opening your own outlet.

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.

## MICHIGAN NOTICE

The State of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you:

- (a) A prohibition against you joining an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver or estoppel which would deprive you of rights and protections provided under the Michigan Franchise Investment Law. This does not preclude you, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits the franchisor to terminate your franchise prior to the expiration of its term except for good cause. Good cause includes your failure to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits the franchisor to refuse to renew your franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration, of your inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This provision applies only if:
  - (i) The term of the franchise is less than five years; and
  - (ii) You are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or if you do not receive at least six months advance notice of the franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew the franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This provision does not require a renewal provision in the Franchise Agreement or other agreement.
- (f) A provision requiring that arbitration or litigation be conducted outside of Michigan. This does not preclude you from entering into an agreement, at the time of the arbitration, to conduct arbitration at a location outside of Michigan.
- (g) A provision that permits the franchisor to refuse to permit a transfer of ownership of the franchise, except for good cause. This provision does not prevent the franchisor from exercising a right of first refusal to purchase the franchise. Good cause includes, but is not limited to:
  - (i) The failure of the proposed transferee to meet the franchisor's then-current reasonably qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of the franchisor.
  - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.
- (h) A provision that requires you to resell to the franchisor items that are not uniquely identified with the franchisor. This does not prohibit a provision that grants the franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a *bona fide* third party willing and able to purchase

those assets, nor does it prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if you have breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in (c), above.

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to you unless provision has been made for providing the required contractual services.

The fact that there is a notice of this offering on file with the Attorney General does not constitute approval, recommendation, or endorsement by the Attorney General.

Any questions concerning this notice should be directed to the Michigan Department of Attorney General, Consumer Protection Division, Franchise Unit, 525 W. Ottawa Street, G. Mennen Williams Building, 1<sup>st</sup> Floor, Lansing, Michigan 48913, (517) 373-7117.

**FRANCHISE DISCLOSURE DOCUMENT  
TABLE OF CONTENTS**

<b>ITEM</b>	<b>PAGE</b>
ITEM 1	THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES ..... 1
ITEM 2	BUSINESS EXPERIENCE..... 2
ITEM 3	LITIGATION ..... 2
ITEM 4	BANKRUPTCY..... 2
ITEM 5	INITIAL FEES ..... 3
ITEM 6	OTHER FEES ..... 4
ITEM 7	ESTIMATED INITIAL INVESTMENT ..... 8
ITEM 8	RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES..... 11
ITEM 9	FRANCHISEE’S OBLIGATIONS ..... 13
ITEM 10	FINANCING ..... 14
ITEM 11	FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING ..... 14
ITEM 12	TERRITORY..... 20
ITEM 13	TRADEMARKS ..... 21
ITEM 14	PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION..... 22
ITEM 15	OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS ..... 23
ITEM 16	RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL ..... 23
ITEM 17	RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION ..... 25
ITEM 18	PUBLIC FIGURES ..... 32
ITEM 19	FINANCIAL PERFORMANCE REPRESENTATIONS ..... 32
ITEM 20	OUTLETS AND FRANCHISEE INFORMATION ..... 34
ITEM 21	FINANCIAL STATEMENTS ..... 41
ITEM 22	CONTRACTS ..... 41
ITEM 23	RECEIPT..... 42

STATE SPECIFIC ADDENDA

EXHIBITS

EXHIBIT A	Table of Contents of Manual
EXHIBIT B	List of State Administrators
EXHIBIT C	List of Agents for Service of Process
EXHIBIT D	Franchise Agreement
EXHIBIT E	Area Development Agreement
EXHIBIT F	Financial Statements
EXHIBIT G	General Release
EXHIBIT H	List of Current and Former Franchisees
EXHIBIT I	Letter of Intent
EXHIBIT J	Franchisee Compliance Questionnaire
EXHIBIT K	State Effective Dates
EXHIBIT L	Receipt

## **ITEM 1**

### **THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

To simplify the language in this Franchise Disclosure Document, the terms “we” or “us,” refers to D-BAT Academies, Inc., the franchisor. The term “you” refers to the person buying the franchise, the franchisee. If you are a corporation, partnership, limited liability company, or other business entity, the term “you” does not include your principals unless otherwise stated. As used in this Franchise Disclosure Document, the term “principal” means you and your spouse if you operate the business as a sole proprietorship, all partners and spouses of partners in a general partnership, all general and limited partners in a limited partnership, and all persons with an ownership interest in the general partner, all members and managers of a limited liability company and all officers, directors and shareholders of a corporation. If any principal is a business entity, then the term “principal” also includes the principals of the business entity.

#### The Franchisor any Parents, Predecessors and Affiliates

We are a Texas corporation formed on March 4, 1993, under the name CMNS Properties, Inc. On October 29, 2007, we changed our name to D-BAT Academies, Inc., and we currently do business only under our corporate name. Our principal business address is 2101 Midway Road, Suite 300, Carrollton, Texas 75006. Our agents for service of process are identified in Exhibit C to this Franchise Disclosure Document.

We have no predecessors. Our parent, D-BAT Sports, Inc. (“DSI”), a Texas corporation, was formed on July 18, 2001, under the name “Dallas Bat, Inc.” DSI changed its name on August 27, 2007, to D-BAT Sports, Inc. DSI licenses the D-BAT trademarks to us for our use and to sublicense to franchisees. Our other affiliate, D-BAT, Inc. (“DBI”), a Texas corporation formed on April 3, 2001, and is an approved or designated supplier for most pro shop inventory items. Both DSI and DBI maintain a principal business address at 2101 Midway Road, Suite 300, Carrollton, Texas 75006.

We have been offering franchises of the type described in this Franchise Disclosure Document since December 2007, and have never offered franchises or licenses in any other line of business. Neither we nor DSI operate a business of type you will operate.

#### The Franchise Offered

We grant franchises for baseball and softball training facilities and pro shops (“Facility”), that operate under our proprietary business format and system (our “System”) and are identified by the trade name and service mark “D-BAT<sup>®</sup>”, and other trademarks, service marks, logos and taglines that we designate, or in the future may designate, to identify Facilities operating under the System (our “Marks”).

Our System includes distinctive interior and exterior design, décor, color scheme, graphics, fixtures and furnishings, our proprietary products, operation, and customer service standards and procedures, advertising and marketing specifications and requirements, and other standards, specifications, techniques, and procedures that we designate for developing, operating, and managing a D-BAT<sup>®</sup> Facility, all of which we may change, improve, and further develop (collectively, our “Standards”). It also features a proprietary membership program, designed to encourage customer loyalty by offering price discounts and other unique benefits to D-BAT members (“Membership Program”). D-BAT<sup>®</sup> Facilities offer personal training in the areas of pitching, catching, hitting and fielding, in addition to cage rental services, and batting cages, baseball pitching machines, softball pitching machines, climate control and retail pro shop. Some D-BAT<sup>®</sup> Facilities also feature an artificial turf field.

If we award you a franchise, you will operate a D-BAT<sup>®</sup> Facility at an approved location according to the terms and conditions of our standard franchise agreement (“Franchise Agreement”) (see Exhibit D).

In consideration for your right and license to use the Marks and System, you will be required to use best efforts to promote and solicit membership in our Membership Program, and you will designate us as your payment agent for membership fees. We will manage the Membership Program, accept payments on your behalf, and, after deducting appropriate fees, remit the balance to you. Your management and advertising



fees will be based on a percentage of Membership Fees collected. We do not charge a sales-based royalty and, therefore, revenues that you receive from providing private instruction and other services, and from the retail sale of equipment and apparel, are not subject to royalty fee calculations.

If we approve your application to develop multiple Facilities in a defined geographic area, you will sign our standard Area Development Agreement (see Exhibit E). The Area Development Agreement will define your protected area (the “Development Area”), the number of Facilities to be developed, and the development timetable (the “Development Schedule”). Simultaneously with the execution of the Area Development Agreement, you will sign our then-current form of Franchise Agreement for the first Facility to be developed, which may differ from the current form of Franchise Agreement attached as Exhibit D. You will also sign our then-current form of Franchise Agreement for each additional Facility to be developed under and in accordance with the Area Development Agreement, which may differ from the current form of Franchise Agreement attached as Exhibit D.

### Market and Competition

The baseball and softball market ranges from emerging in certain areas to well-developed in others and consists of services and products designed for players of all ages, from children to adults, and includes schools and recreational and select baseball and softball teams and leagues. You will compete with private baseball and softball instructors, other baseball and softball academies, and other commercial, wholesale, and retail operations.

### Industry Specific Regulations

You must comply with all federal, state, and municipal laws and regulations which apply to businesses in general, including for example, employment law and commercial and real estate law which covers commercial and retail locations and retail sales. It is your responsibility to identify and comply with all laws and regulations that apply to your franchised operation. We recommend you consult legal counsel or other professional advisors to help you investigate and understand these laws before you purchase a franchise.

## **ITEM 2 BUSINESS EXPERIENCE**

### CEO: James Cade Griffis

Cade Griffis has served as our Chief Executive Officer since 2007. Cade is also the founder of the D-BAT® concept and, since its inception in April 2001, Cade served as President of DSI.

### President: Kyle Griffis

Kyle Griffis has served as our President since June 2023. Previously, Kyle served as our Executive Vice President from 2007 until June 2023.

## **ITEM 3 LITIGATION**

No litigation is required to be disclosed in this Item.

## **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

## **ITEM 5 INITIAL FEES**

### Earnest Money Payment

Before you sign a franchise agreement or development agreement, if you elect to sign our Letter of Intent, which form is attached to this Disclosure Document as Exhibit I, we will collect an earnest money payment from you in the amount of \$20,000 per location to be developed in exchange for our related costs and expenses, our minimum requirements for a Facility size and location, and our assistance in reviewing proposed Facility locations and accepting or rejecting the same according to our standards. If you execute the contemplated franchise agreement before the date mutually agreed to and set in the Letter of Intent, we will credit all of the earnest money payment to your Initial Franchise Fee. The earnest money payment is non-refundable upon payment.

### Initial Franchise Fee

When you sign the Franchise Agreement, you will pay us in full an Initial Franchise Fee of \$45,000. The Initial Franchise Fee is uniformly applied and considered fully earned and nonrefundable upon payment.

If you qualify for our military veteran's discount, the Initial Franchise Fee for your first Facility purchased will be discounted by \$2,500. This discount is available to veterans who have received a discharge (other than dishonorable) as well as any active duty personnel. If the franchisee is a corporation, limited liability company, or other legal entity, the veteran participant must maintain at least a 51% ownership interest in the entity to qualify for this discount. To apply for the discount, you must provide us with a copy of form DD-214, reflecting your military status, before the Franchise Agreement is signed.

### Initial Term Extension Fee

If you are entering into a Franchise Agreement with us in connection with your purchase of an existing Facility and/or franchise rights from a System franchisee, the initial term, of your Franchise Agreement will equal the time that remained in the current term of the selling franchisee's franchise agreement. If, however, you wish to add one or more additional years to the initial term of your franchise agreement, for a maximum initial term of no more than 10-years, you can pay to us \$4,500 per year (and/or a prorated amount for any partial years) for any such desired addition to your initial term (the "Initial Term Extension Fee"). The Initial Term Extension Fee is considered fully earned and nonrefundable upon payment and imposed uniformly.

### Area Development Agreement

If you are acquiring development rights, upon signing our Area Development Agreement, you will pay to us a Development Fee equal to 100% of the Initial Franchise Fee for the first Facility and 50% of the Initial Franchise Fee for each additional Facility to be developed under the Area Development Agreement.

If you qualify for our military veteran's discount, the total Development Fee due will be discounted by \$2,500.

When you sign the Area Development Agreement, you will also sign a Franchise Agreement for the first Facility to be developed. When you sign the first Franchise Agreement, we will credit a portion of your Development Fee payment to the Initial Franchise Fee due for the first Facility under the Franchise Agreement, so that the Initial Franchise Fee is fully satisfied. When you sign each additional Franchise Agreement, we will credit a portion of your Development Fee payment to satisfy 50% of the Initial Franchise Fee due with respect to such Facility, and you will pay the balance of the Initial Franchise Fee for such Facility at that time. A minimum of two Facilities must be developed under an Area Development Agreement. The Development Fee is nonrefundable upon payment.

### Initial Inventory Package

Shortly after you acquire a site for the Facility, you must purchase from us or from designated or approved suppliers (including DBI), your opening and ongoing inventory of equipment, apparel, and other products to be offered and sold at the pro shop. We estimate the cost of this initial inventory will range from \$33,000 to \$40,000. Wholesale purchase prices are nonrefundable.

### Initial Cage Usage Supplies

Before you open the Facility, you must purchase from us or from designated or approved suppliers (including DBI), the products and supplies needed in order to operate the Facility's batting cages and conduct lessons. These products and supplies include, but are not limited to, your required quantity of baseballs and softballs for pitching machines, baseball and softballs for instructional lessons, batting tees, and home plates. We estimate that the cost of this Initial Case Usage Supplies package will range from \$15,000 to \$23,000. The purchase price for these supplies is nonrefundable.

### Initial Marketing Products

Shortly before you open the Facility for business, you must purchase from us or from designated or approved suppliers (including DBI) between \$5,000 to \$7,500 of giveaway items to be used in the initial marketing and promotion of the Facility. These items will be given to local baseball and softball leagues and coaches, and will primarily consist of T-shirts, personalized fungo bats, gift certificates, and coaching buckets which include baseballs and softballs and baseball and softball-related accessories. The purchase price for these items is nonrefundable.

### Initial Software Fee

You must pay to us \$2,500 as an Initial Software License Fee for the setup of our specifically designed D-BAT® membership tracking and scheduling software, which also functions as your point of sale system. The Initial Software Fee is payable 45 days before the designated Opening Date of your Facility. This fee is also uniform for all franchisees and nonrefundable upon payment.

### Construction Management and On-Site Training Fee

45 days before the designated Opening Date of your Facility, you must pay to us \$6,000 as a Construction Management and On-Site Training Fee for: i) our assistance throughout the construction process including consultation on facility design and layout, facilitating contact with vendors, and project management supervision; and ii) costs incurred in providing on-site training to you, typically provided the week before you open. This Construction Management and On-Site Training Fee is nonrefundable upon payment.

## **ITEM 6 OTHER FEES**

### Franchise Agreement

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Management Fee	40% of Membership Fees or 8% of Gross Revenue	Monthly	We may, at our option, impose either of the monthly Management Fee calculation. See Note 2 for more information. See Note 2 for the definition of "Membership Fees" and "Gross Revenue."

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Advertising and Promotion Fund Contribution	2.5% of Membership Fees	Monthly	See Item 11 for more information about our right to establish an Advertising and Promotion Fund.
Local advertising/ advertising cooperative contribution	2.5% of Membership Fees	Quarterly	See Item 11 for more information about your local advertising requirements and our right to form advertising cooperatives. The rate may be increased by majority vote.
Software License Fees	Currently, \$354	Monthly	When you sign your Franchise Agreement, you will pay us the Initial Software License Fee of \$2,500. Once you begin operations, you will pay this continuing monthly Software License Fee. Our third-party software providers have the right to increase the fees included in the Software License Fee.
Merchant Services Fees	Currently ranging from 2.5% to 4% depending on the type of transaction	As incurred	These are the merchant services fees payable directly to our designated merchant services providers.
Additional training	Not to exceed \$500 per person per day; Not to exceed \$5,000 per Facility per year	Before training	See Item 11 for more information about our initial training program.
Mandatory Training	\$5,000 for up to two individuals we designate	Before training	If, the number of Membership Fees collected by your Facility during a consecutive three month period decreases by more than 35% from the number of Membership Fees collected in any consecutive three-month period during the immediately preceding 18-months, we may impose a \$5,000 Mandatory Training Fee and require that up to two individuals attend additional training at a location we designate, for which you will bear all salary, travel, lodging, and dining costs.

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Interest/late fee	18% per year or the highest interest rate permitted by the jurisdiction in which the Facility is located, whichever is less	Upon demand	Payable only if you fail to make payments by the applicable due date.
Expense we incur in connection with an audit or inspection of your books and records	Cost of audit or inspection	Upon demand	Audit or inspection costs must be reimbursed only if the audit or inspection shows an understatement of 2% or more of any amount required to be reported to us.
Indemnification	An amount equal to the value of all losses and expenses that we incur on account of your operation of the Facility	Upon demand	You must reimburse and pay our attorneys' fees with respect to any and all losses and expenses incurred by us arising or resulting from your operation of the Facility.
Replacement fee for Manual	\$500 per volume	Upon demand	Payable only if the Manual is lost, stolen, damaged, etc.
Supplier Testing Costs	Reimbursement of our actual costs	Upon demand	Payable only if you request approval of a new supplier
Insurance Premium	Reimbursement of premium plus administrative fee not to exceed 10% of annual premium	Upon demand	Payable only if you fail to procure or maintain required insurance coverages, and we procure the insurance on your behalf.
Renewal Fee	\$7,500	Before renewal	See Item 17 for more information about conditions on renewal.
Transfer Fee – (payable if you are an individual transferring to a business entity for convenience of operation)	\$3,000	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.
Transfer Fee – (payable if your Principals are transferring among themselves or transferring a minority ownership interest to one or more third parties)	\$5,000, plus reimbursement of expenses we incur in connection with the transfer	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.

Type of Fee <sup>1</sup>	Amount	Due Date	Remarks
Transfer Fee - (payable if you are assigning your interest in the Franchise Agreement, transferring all or substantially all of the assets of the Facility, or your Principals are transferring a controlling interest)	\$15,000, plus reimbursement of expenses we incur in connection with the transfer	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.
Costs and Attorneys' Fees	Varies with circumstances	On demand	You must reimburse us for our expenses in enforcing or terminating any agreements between us including any Franchise Agreement and/or Area Development Agreement.

Area Development Agreement

Type of Fee	Amount	Due Date	Remarks
Assignment Fee – (Assignment of Franchise Rights)	\$5,000	Before or simultaneously with the execution of a Franchise Agreement	Payable only if you assign your right to enter into a franchise agreement to an Affiliate.
Transfer Fee – (payable if you are an individual transferring to a business entity for convenience of operation)	\$3,000	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.
Transfer Fee – (payable if your Owners are transferring among themselves or transferring a minority ownership interest to one or more third parties)	\$5,000, plus reimbursement of expenses we incur in connection with the transfer	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.
Transfer Fee - (payable if you are assigning your interest in the Area Development Agreement, or your Owners are transferring a controlling interest)	\$15,000, plus reimbursement of expenses we incur in connection with the transfer	Before transfer	See Item 17 for more information about restrictions and conditions of transfer.

Note 1. Unless otherwise indicated, all fees in this Item 6 are imposed by and are payable to us. All fees are nonrefundable. Except for Transfer Fees, all fees are applied uniformly.

Note 2. We may impose either formula for the calculation of the Membership Fees, and may impose either formula only on you, a certain number of franchisees, the System as a whole, and on any basis that we determine (which may be for any or no reason), in our sole discretion

“Membership Fees” means all revenue collected from the sale of memberships, exclusive of sales tax. You must offer and promote participation in all membership programs that we require. These programs currently include “Gold” and “Platinum” memberships. We can change the types of memberships and corresponding benefits at any time. You appoint us to serve as your agent for collection of membership payments, and all membership documentation will direct customers to pay the Membership Fee directly to us. If we incur additional costs or fees as a result of customer payment methods, such as credit card processing fees, you agree to bear these costs. We collect all Membership Fees and, on a monthly basis, deduct from collections all Management Fees and Advertising and Promotion Fund contributions and remit to you the balance via electronic funds transfer or other method we choose. We also have the right to deduct from collections any other amounts that you owe under your Franchise Agreement or which you have failed to pay when due, including interest charges. Currently, it is our policy to require that you only bear 62.5% of the credit card processing fees we incur for payments received from your customers.

“Gross Revenue” means the aggregate of: (1) all revenue from the sale of products and services, whether made for cash, on credit, or otherwise, without reserve or deduction for inability or failure to collect, that you, in the normal course of your operations would credit or attribute to the operation of a D-BAT® Facility; (2) all monies, trade value or other things of value that you receive from Facility operations, whether at, in, from, or through the Facility; and (3) business interruption insurance proceeds. Gross Revenue does not include: (a) the exchange of merchandise between D-BAT® Facilities (if you operate multiple Facilities) if the exchanges are made solely for the convenient operation of your business and not for the purpose of depriving us of the benefit of a sale that otherwise would have been made at, in, on or from the Facility premises; (b) returns to shippers, vendors, or manufacturers; (c) sales of equipment, fixtures or furniture after being used in the conduct of the Facility; (d) cash or credit refunds for transactions included within Gross Revenue (limited, however, to the selling price of the merchandise or service); (e) the amount of any city, county, state or federal sales, luxury or excise tax on such sales that is both (i) added to the selling price or absorbed therein and (ii) paid to the taxing authority by you. Customer refunds may be deducted from Gross Revenue if the charge was previously included in Gross Revenue.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**  
**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee <sup>1</sup>	\$45,000	Lump sum	When Franchise Agreement is signed	Us
Lease deposit <sup>2</sup>	\$7,000 to \$20,000	As arranged	As arranged	Landlord
Leasehold improvements <sup>3</sup>	\$100,000 to \$375,000	Lump sum	As arranged	Contractors
Facility Build-out <sup>4</sup>	\$213,000 to \$330,000	As arranged	Before opening	Third parties
Construction Management and On-Site Training Fee	\$6,000	Lump sum	When Franchise Agreement is signed	Us

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Computer system(s) <sup>5</sup>	\$15,000 to \$20,000	As arranged	Before opening	Us, third party suppliers
Brochures, press kits and sales collateral <sup>6</sup>	\$2,000 to \$3,000	Lump sum	As arranged	Us, third party suppliers
Signage and graphics (interior and exterior), wall signs and instructional posters <sup>7</sup>	\$17,000 to \$21,000	As arranged	As arranged	Us, third party suppliers
Uniforms <sup>8</sup>	\$250 to \$1,000	Lump sum	As arranged	Us, third party suppliers
Permits and Licenses <sup>9</sup>	\$3,000 to \$5,000	As agency requires	As agency requires	Agency
Insurance <sup>10</sup>	\$500 to \$1,000	As agent requires	Before opening	Insurance Agent
Utility deposits <sup>11</sup>	\$700 to \$1,600	As arranged	Before opening	Utility companies
Travel related expenses during training <sup>12</sup>	\$500 to \$2,000	Lump sum	As incurred	Hotels and restaurants
Initial advertising and marketing products <sup>13</sup>	\$5,000 to \$7,500	Lump sum	As required by media supplier	Us, DBI, third party suppliers
Blue prints, plans and permits <sup>14</sup>	\$8,000 to \$25,000	As arranged	Before opening	Government agencies
Initial pro shop inventory <sup>15</sup>	\$33,000 to \$40,000	As arranged	As arranged	Us, DBI, third party suppliers
Initial cage usage supplies	\$15,000 to \$23,000	Lump sum	Before opening	Us, DBI, third party suppliers
Furniture, fixtures and equipment <sup>16</sup>	\$14,500 to \$25,000	Lump sum	Before opening	Us, third party suppliers
Legal, accounting and professional fees <sup>17</sup>	\$1,000 to \$5,000	As arranged	As arranged	Your accountant, attorney, and other professionals
Additional funds – 3 months <sup>18</sup>	\$50,000 to \$75,000	As incurred	As incurred	Various
<b>TOTAL</b>	\$536,450 to \$1,031,100			

### Notes

**Note 1.** See Item 5 for more information about the initial franchise fee. If you develop two or more Facilities under our Area Development Agreement, you will pay a development fee equaling 100% of the Initial



Franchise Fee for the first Facility and 50% of the Initial Franchise Fee for each additional Facility that you commit to develop. The 50% balance of the Initial Franchise Fee for your second and subsequent locations will be due on your execution of the franchise agreement entered into per the terms of your Area Development Agreement. Lower initial franchise fees or development fees may apply to recipients of our veteran's discount.

Note 2. A typical D-BAT<sup>®</sup> Facility occupies industrial space ranging from 10,000 to 22,000 usable square feet in a suitable industrial building. The low figure in the chart assumes that the Facility occupies 10,000 square feet, and that you either own the location, or the landlord does not require a deposit, and the high figure assumes that the Facility occupies 22,000 square feet and that a deposit is required.

Note 3. Leasehold improvements include interior build-out costs that will change based on the area and the contractor you select. You must engage your own general contractor or construction manager to build out your site according to our standards and specifications and according to applicable building codes and regulations. General contractor fees will vary for each D-BAT<sup>®</sup> Facility build out. The low figure in the chart assumes that you are building out a vanilla box (meaning that the HVAC system and all plumbing and electrical work is in place, that the space otherwise qualifies for a certificate of occupancy, and that it needs only to be customized to our standards and specifications) of which approximately 25% has been reserved for office use and 75% for warehouse use. The high figure in the chart assumes that you are leasing a second generation building with no tenant improvement allowance from the landlord, in which space you will need to remodel restrooms, add an HVAC system, add electrical wiring, and other necessary build out items. The figures in the chart do not reflect any tenant improvement allowance that you may negotiate with your landlord. The figures in the chart represent estimated expenses. Your actual expenses may be less than or may exceed the figures in the chart.

Note 4. The figures in the chart represent the equipping and building out of the Facility including, but not limited to, turf, nets, lights, pitching machines, fencing, slatwall, non-turf flooring, and other related fixtures and equipment.

Note 5. You must purchase and install the computer hardware, point of sale system, software, required dedicated telephone and power lines, and other computer-related accessories, peripherals and equipment that we specify in our Standards or otherwise. You must use our proprietary software, update the software, and upgrade your computer hardware as necessary to run the updated software as we determine necessary. The range in the above chart includes our \$2,500 Initial Software License Fee and the first three months of the Software License Fee payable for your use of our specifically designed software.

Note 6. The figures in the chart reflect the cost of an initial inventory of brochures, press kits, and sales collateral.

Note 7. The figures in the chart represent the estimated cost of interior and exterior signage and graphics.

Note 8. The figures in the chart reflect the cost to purchase uniforms for your staff.

Note 9. The figures in the chart represent the estimated cost of licenses.

Note 10. The figures in the chart reflect one to two months' premium for required insurance coverage. See Item 8 for more information about minimum insurance requirements.

Note 11. The figures in the chart represent the estimated cost of utility deposits.

Note 12. The figures in the chart contemplate hotel (one double occupancy room), meal, and local transportation expenses for two individuals. They do not include airfare or other transportation costs that you may incur. You must pay for your transportation, meals, and other expenses associated with the initial training program.

Note 13. See Item 11 for more information about your grand opening advertising requirements as well as your required purchases for initial marketing and promotional activities, specifically, in connection with giveaways to local leagues and coaches.

Note 14. We will provide you our standards and specifications (including sample plans and drawings) for a Facility and you must engage your own architect and/or space planner to conform the drawings to your particular site. The figures in the chart represent the estimated cost of interior design.

Note 15. The figures in the chart represent the estimated cost of your pro shop opening inventory.

Note 16. The figures in the chart represent the estimated cost of fixtures, furniture, and equipment, including HitTRAX, and include estimated shipping costs from our principal place of business to your facility, as described in Item 5.

Note 17. The low figure in the chart represents the cost of forming a corporation, limited liability company, or other business entity to operate the franchise. The high figure also includes the estimated cost of engaging an attorney to review your franchise contracts and your lease for the Facility premises and engaging an accountant to set up your accounting books.

Note 18. The figures in the chart represent the amount of working capital you will need to open the Facility and to operate it during the first three months. It includes rent payments, advertising expenses and miscellaneous opening costs, as well as payroll costs for your employees. It assumes that you will personally manage the day to day operations of the Facility, but does not include any draw or salary for you. The figures in the chart also do not reflect the cost of capital (i.e., brokerage fees or points), life insurance premiums (a life insurance policy may be necessary as a condition to bank financing), or debt service payments during the initial period. To compile these estimates, we relied on our franchisees' experience in constructing and opening their D-BAT Facilities, however our franchisees have not opened Facilities in every market throughout the country and so you may experience a range of costs that differ from those outlined above should you deviate from recommendations, should your particular geographic area or local market or chosen location present conditions that would lead to higher or different range of expenditures than noted above. You should review these estimates carefully with a business advisor or accountant before making any decision to buy a franchise.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

### Initial and Ongoing Inventory; Promotional Supplies; Brochures and Marketing Materials

You must purchase from us or from designated suppliers (including DBI, in which our officers hold an interest) your requirements of baseball and softball bats, gloves, balls, uniforms, apparel, footwear, and other inventory items to be offered and sold through the pro shop, and must maintain a minimum pro-shop inventory with a wholesale purchase cost of up to \$40,000. Currently, Rawlings/Easton is a designated supplier of pro shop items. You also must purchase from us or from designated suppliers (including DBI) your requirements of promotional materials, marketing materials, brochures, and all D-BAT® branded items. Neither we nor any affiliate is an approved supplier or the only supplier for any other goods or services. Our officers do not own any interest in any other supplier.

### Fixtures, Furniture and Equipment; Computer Systems; Signage

You must purchase, install, and use only fixtures (including token/swipe card operated baseball and softball cages and turf), furnishings, equipment (including pitching machines), computer hardware, and interior and exterior signage and vehicle wraps that meet our standards and specifications, which may include brand requirements. You may purchase products and services for which we have approved or designated suppliers only from our suppliers, unless we permit you to purchase a particular item or service from another source. To request our permission, you must send us a written request for permission, and we will respond within a reasonable time, normally 30 days. We have not adopted formal procedures for issuing and modifying

our supplier approval standards. When evaluating a proposed supplier, we generally apply the following criteria, among others: (1) the supplier's ability to produce the item or service and to meet our quality Standards; (2) the supplier's ability to meet supply commitments; (3) the supplier's integrity of ownership (to assure that its association with us would not be inconsistent with our image or damage our goodwill); (4) the supplier's financial stability; and (5) the negotiation of a mutually satisfactory confidentiality agreement and license to protect our intellectual property. We do not charge a fee for our review in determining the qualifications of a particular supplier; however, we do reserve the right to seek reimbursement from you for any out-of-pocket expenses that we may incur.

We will communicate to you our standards and specifications via the confidential operating manuals ("Manuals") that we will provide to you at or before initial training, or otherwise in writing. We may modify our specifications in writing, and may add new specifications in writing.

#### Facility Lease

We must approve the location of your Facility. See Item 11 for more information about this process. Your lease must contain the terms reflected in Section 3.C. of the Franchise Agreement.

#### Computer Requirements

You must license from us or our designee our required specifically designed software, but you may purchase computer hardware from any supplier that meets our requirements. We reserve the right to charge for any future updates or revisions. We will receive revenues from the sales of software updates and revisions in the future. See Item 11 for more information about our computer hardware and software requirements.

#### Insurance

You must maintain insurance that we determine is necessary or appropriate for liabilities caused by or occurring in connection with the development or operation of the Facility, which must include the following minimum coverages:

(1) Comprehensive general liability insurance including coverage for bodily injury, personal injury, products liability, blanket contractual liability, broad form property damage, non-owned automobiles, completed operations, and property damage on an occurrence basis with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(2) Property Insurance written on an "All Risks" policy for fire and related peril (including floods and earthquakes where applicable) with limits of insurance of not less than the full replacement value of the Facility, and its furniture, fixtures, equipment, inventory, and other tangible property.

(3) Employer's Liability coverage in the amount of \$100,000 per person, \$500,000 in the aggregate and \$100,000 for occupational disease.

(4) Workers' compensation and such other insurance as may be required by statute or rule of the state or locality in which the Facility is located. This coverage shall also be in effect for all of your managerial employees who participate in any of the training programs described in this Agreement.

(5) In connection with any construction, renovation, refurbishment, or remodeling of the Facility, you should maintain Builder's All Risks insurance and in connection with new construction or substantial renovation, refurbishment, or remodeling of the Facility, and also maintain performance and completion bonds in forms and amounts, and written by carrier(s), reasonably satisfactory to us.

We have the right to establish and modify the minimum coverages and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards, or other relevant changes in circumstances. Your liability insurance policies must name as additional named insureds us, our parents, and our affiliates, including D-BAT Academies, Inc., D-BAT Sports, Inc., and D-BAT, Inc., and each company's respective officers, directors, shareholders, partners, members, agents, representatives, independent contractors, servants and employees, and must include a waiver of subrogation in favor of these

individuals and entities

Required Purchases

We and our affiliates will derive revenue from your purchases and leases to the extent that you purchase services or purchase or lease items from us or our affiliates. During our fiscal year ending December 31, 2022 we derived \$0 from franchisee purchases which is 0% of our total revenues of \$10,996,470. During its fiscal year ending December 31, 2022, our affiliate DBI derived \$946,413 in revenue from franchisee purchases or leases.

We estimate that the required purchases described above are up to 80% of the cost to establish a Facility, and up to 50% of the operating expenses.

There currently are no purchasing or distribution cooperatives in existence with respect to the franchise system. We may negotiate purchase arrangements in the future with suppliers for the benefit of our franchisees.

We do not provide you any material benefits (such as renewal rights or the right to acquire additional franchises) based on your purchases from approved or designated suppliers.

**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 franchise disclosure document.**

Obligation	Section in Franchise Agreement	Section in Area Development Agreement	Items in Franchise Disclosure Document
a. Site selection and acquisition/lease	Section 3	Not Applicable	Items 7, 8 and 11
b. Pre-opening purchases/leases	Section 4	Not Applicable	Items 5, 7 and 8
c. Site development and other pre-opening requirements	Sections 3, 4 and 5	Section 4	Items 5 and 7
d. Initial and ongoing training	Sections 2.B.(3) and 8	Not Applicable	Items 7 and 11
e. Opening	Section 5	Section 4.5	Item 11
f. Fees	Sections 2.B, 6, 7.E, 8.A, 9, 11.D., 15, 16.F, and 17.B	Section 3	Items 5 and 6
g. Compliance with standards and policies/Operating Manual	Sections 9, 10, and 11	Not Applicable	Items 8 and 11
h. Trademarks and proprietary information	Sections 9, 11.M., 13, and 14.A.	Section 6	Items 13 and 14
i. Restrictions on products/services offered	Sections 9, 10, 11.B.-11.D.	Not Applicable	Item 16
j. Warranty and customer service requirements	Section 11.C	Not Applicable	Not Applicable

Obligation	Section in Franchise Agreement	Section in Area Development Agreement	Items in Franchise Disclosure Document
k. Territorial development and sales quotas	Section 1.B.	Section 4	Item 12
l. Ongoing product/service purchases	Sections 11.B-11.G.	Not Applicable	Item 8
m. Maintenance, appearance and remodeling requirements	Sections 2.B.(2), 10, and 11.J.	Not Applicable	Item 17
n. Insurance	Section 16	Section 7	Items 7 and 8
o. Advertising	Section 15	Not Applicable	Items 7 and 11
p. Indemnification	Section 20.B.	Section 7	Item 6
q. Owner's participation/management/staffing	Sections 11.A. and 11.K.-11.L.	Section 5	Item 15
r. Records and reports	Section 7	Not Applicable	Not Applicable
s. Inspections and audits	Section 7.E.	Not Applicable	Item 6
t. Transfer	Section 17	Section 8	Items 6 and 17
u. Renewal	Section 2.B.	Not Applicable	Items 6 and 17
v. Post-termination obligations	Section 14, 19 and 20.B.	Section 10.2	Item 17
w. Non-competition covenants	Sections 14.B.-14.G.	Sections 10.1 and 10.2	Item 17
x. Dispute resolution	Section 23	Section 14	Item 17

**ITEM 10  
FINANCING**

We do not offer direct or indirect financing. We do not guaranty your note, lease or obligation.

**ITEM 11  
FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, we are not required to provide you with any assistance.**

**Pre-Opening Obligations**

Before you open the Facility, we will:

1. Approve or disapprove a site for your Facility and notify you of site approval within 30 days after receiving all requested information. (Franchise Agreement, Section 3.B.) Factors considered in selection and approval of a site includes: size, rent, parking, ingress and egress, necessary zoning, general location and neighborhood, demographics, and local competition.
2. Assist you in developing a space plan for your Facility, and provide specifications relating to dimensions, design, image, interior layout, décor, fixtures, equipment, signs, furnishings, storefront, signage, graphics, and color schemes. (Franchise Agreement, Section 4.A.) You are responsible for having prepared all required construction plans and specifications to suit the shape and dimensions of the Facility and for ensuring that the plans and specifications comply with applicable ordinances, building codes, and permit requirements all of which, in turn, must be consistent with lease requirements and restrictions.

3. Review your final plans, specifications, exterior and interior signs for approval or disapproval. We will provide you with the names of designated or approved suppliers of specifications for these items of design, construction furniture, fixtures, equipment, decoration and signage, but we do not deliver or install any of these items. (Franchise Agreement, Section 4.A.)
4. Provide our initial training program for three individuals, including your Designated Principal, General Manager, and Assistant Manager, without charge. (Franchise Agreement, Section 8.A.) Our initial training program is held one to two months prior to opening. The training program consists of one to two days of training at our headquarters in Dallas, Texas, or such other location as we may designate and one to two days of onsite training.
5. Provide consultation and advice to you, as we deem appropriate, with regard to the development and operation of the Facility, building layout, furnishings, fixtures, equipment plans and specifications, purchasing, and inventory control, and such other matters as we deem appropriate. (Franchise Agreement, Section 8.B.)
6. Loan you one copy of the Manuals which contain information and knowledge that is necessary and material to the System. (Franchise Agreement, Section 9.) The table of contents of the Manuals is attached as Exhibit A to this Franchise Disclosure Document.
7. Approve or disapprove any advertising, direct mail, identification, and promotional materials and programs you propose within 10 business days of receipt. (Franchise Agreement, Section 15.A.)

### **Obligations after Opening**

During the operation of the Facility, we will:

1. Periodically, as we deem appropriate, advise and consult with you in connection with the operation of the Facility. (Franchise Agreement, Section 8.C.)
2. Communicate to you our knowledge and expertise regarding the System and pertinent new developments, techniques, and improvements in the areas of management, sales promotion, service concepts and other areas. We may provide these services through on-site visits, through the distribution of printed or filmed material or electronic information, meetings or seminars, telephone communications, email communications, or other communications. (Franchise Agreement, Section 8.C.)
3. Use good faith efforts to approve or disapprove your proposed promotional and marketing materials within 10 business days after we receive them. (Franchise Agreement, Section 15.A.)
4. Supply to you, at our then current published prices, a portion of ongoing inventory of pro shop inventory. (Franchise Agreement, Section 11.D)
5. Administer the Advertising and Promotion Fund and, at your request, provide you an annual statement of contributions and expenses of the Fund upon written request. (Franchise Agreement, Section 15.C.)

### Advertising

Our advertising program for the products and services offered by the D-BAT<sup>®</sup> Facility currently consists of brochures and advertising in local online directories. Our advertising materials currently are created in-house. You may use your own advertising and promotional materials if they conform to our Standards and we have approved them before the first publication or use. You may not, however, establish or maintain a web site or other presence on the World Wide Web portion of the Internet that reflects any of the Marks or our copyrighted works, that includes the term “D-BAT” or any variation of these terms as part of any URL or domain name, that otherwise states or suggests your affiliation with us or our franchise system, or that displays any products manufactured at your D-BAT<sup>®</sup> Facility.

We have the right to establish your retail prices to the extent permitted by law. If we develop and advertise national price promotions or package promotions, you must participate in the promotion.

#### Advertising and Promotion Fund

We administer an Advertising and Promotion Fund for the general benefit of the System. Each month during the Term, you must contribute to the Fund an amount we designate, which will not exceed 2.5% of monthly membership fees. All franchisees currently must contribute to the Fund at the same rate. Although not contractually required to do so, we anticipate that affiliate-owned Facilities will contribute to the Fund on the same basis as our franchisees.

We may use Fund monies to pay for creative development services (including creation and modification of logos, design, graphics, and vehicle wraps), preparing or procuring market studies, providing or obtaining marketing services (including, without limitation, conducting customer surveys, focus groups, and marketing-related mystery shoppers and customer interviews), developing, producing, distributing, and placing advertising (including, without limitation, developing and producing promotional materials); payment of league fees (*i.e.*, payments to Major League Baseball, Minor League Baseball, collegiate leagues and other leagues for sales rights); developing, updating and hosting our website (including development of interior pages featuring franchised and company or affiliate-owned Facilities and developing locator programs) and/or an intranet or extranet system, obtaining sponsorships and endorsements, preparing and conducting sweepstakes and other promotions including development and maintenance of stored value card systems, and providing and procuring public relations services and conducting public relations activities. We also may use Fund monies to reimburse ourselves for our costs of personnel and other administrative and overhead costs associated with providing these services.

Any Fund contributions not spent in the year contributed typically will be spent in the following year.

We will have sole control over the creative concepts, content, form, and media placement of all advertising and promotional materials developed with Fund monies, and the allocations of Fund monies to production, placement, and other costs. We are not obligated to expend any Fund monies for placement of advertising in your trading area, or to ensure that your Facility benefits directly or *pro rata* from Fund expenditures. We will not use Fund monies for creating or placing any advertisement that is principally a solicitation for new franchisees, but we may include in all advertising prepared using Fund monies (including Internet advertising) information concerning franchise opportunities, and a portion of Fund monies may be used to create and maintain one or more pages on our web site devoted to advertising franchise opportunities and identifying and screening inquiries and applications submitted by franchise candidates.

There is no requirement that the Fund be audited. Upon your reasonable request, we will provide you an annual statement of Fund contributions and expenditures. The following is a percentage breakdown of the use of the Fund for our 2022 fiscal year:

Production	15%
Media Placement	75%
<u>Administrative Expenses</u>	<u>10%</u>
TOTAL	100%

We intend the Advertising and Promotion Fund to be of perpetual duration, but we may terminate it at any time in our sole discretion after Fund contributions are spent for their intended purpose.

#### Local Advertising Requirements

Each calendar quarter you must spend an amount equal to at least 2.5% of your quarterly Membership Fees on local advertising that conforms to our standards and specifications.

Initial Advertising and Promotion

We require that you spend an amount ranging from \$5,000 to \$7,500 on initial advertising, marketing, and promotional activities with regard to the Facility. This includes the required \$3,000 to \$5,000 we or our affiliate DBI will invoice and collect from you in connection with your purchase of promotional and marketing items to be used by you as giveaways to local baseball and softball leagues and coaches in order build goodwill and brand presence in your community.

Our Right to Form Advertising Cooperatives

We may form local or regional advertising cooperatives (“Advertising Cooperative”) to pay for the development, placement, and distribution of advertising for the benefit of Facilities located in the geographic region served by the Advertising Cooperative. Any Advertising Cooperative that we establish will be operated solely as a conduit for the collection and expenditure of Advertising Cooperative fees for these purposes. If we form an Advertising Cooperative for the region in which your Facility is located, you agree to participate in the Advertising Cooperative. By majority vote, Advertising Cooperative members can increase required contribution above our minimum local advertising requirements. Any amounts contributed to an Advertising Cooperative will be credited toward satisfaction of your local advertising expenditure requirement, described above.

We have the exclusive right to create, dissolve, and merge each Advertising Cooperative created, in our discretion, and to create and amend the organizational and governing documents related thereto; provided that such documents shall: (1) operate by majority vote, with each Facility (including Facilities owned by us or our affiliates) entitled to one vote, (2) entitle us to cast one vote (in addition to any votes it may be entitled to on account of our operation of in the area served by the Advertising Cooperative, (3) permit the members of the Advertising Cooperative, by majority vote, to determine the amount of required contributions, and (4) provide that any funds left in the Cooperative at the time of dissolution shall be returned to the members in proportion to their contributions during the 12-month period immediately preceding termination. No Advertising Cooperatives have yet been formed. Governing documents have not yet been created and, therefore, are not available for your review.

Gift Certificates and Stored Value Cards

To the extent that we develop or authorize the sale of gift certificates and/or stored value cards, you must acquire and use all computer software and hardware necessary to process their sale and to process purchases made using them. All proceeds from the sale of all gift certificates and stored value cards belong exclusively to us, and you shall remit the proceeds of such sales to us according to the procedures that we prescribe periodically. We shall reimburse or credit you (at our option) the redeemed value of gift cards and stored value cards accepted by you as payment for products and services sold by the Facility.

Training

We do not maintain a formal training staff. Training is offered on an as needed basis under the supervision of Cade Griffis, whose experience in the industry dates back to July 1995, and whose experience with us dates back to our inception in November 1997. The following is a summary of our initial training program:

**TRAINING PROGRAM**

<b>Subject<sup>(a)</sup></b>	<b>Hours of Classroom Training</b>	<b>Hours of on the Job Training</b>	<b>Location</b>
POS / Scheduling	2 hours	2 hours	Dallas, Texas or other location designated by us
Instructor management	1 hour	-	Dallas, Texas or other location designated by us



<b>Subject<sup>(a)</sup></b>	<b>Hours of Classroom Training</b>	<b>Hours of on the Job Training</b>	<b>Location</b>
Pro Shop / Ordering Process	1.5 hours	2 hours	Dallas, Texas or other location designated by us
Membership Software	1.5 hours	-	Dallas, Texas or other location designated by us
Membership Selling	1.5 hours	1 hour	Dallas, Texas or other location designated by us
Advertising / Marketing	2 hours	-	Dallas, Texas or other location designated by us
Product Training	1.5 hours	1 hour	Dallas, Texas or other location designated by us
Camp Training	1.5 hours	-	Dallas, Texas or other location designated by us
Role Playing	1 hour	-	Dallas, Texas or other location designated by us
Equipment maintenance	-	1 hour	Dallas, Texas or other location designated by us
<b>TOTAL</b>	<b>12.5 hours</b>	<b>7 hours</b>	

(a) Note: Instruction Materials consist of Manuals, software and forms with instruction by and under the supervision of Cade Griffis and Kyle Griffis. Kyle Griffis' experience in the industry and with us dates back to November 1997.

Generally, no later than one to two months before the opening of your D-BAT<sup>®</sup> Facility, we will provide initial training that your Designated Principal, General Manager, and Assistant Manager must attend and complete to our satisfaction.

There is no charge for the first two individuals to attend the initial training program. At your request, we may permit additional individuals to attend the same training program, subject to space availability and payment of reasonable tuition. You are responsible for all expenses related to initial training program including salary, travel, lodging and meals.

Your Designated Principal, General Manager, and Assistant Manager must attend the entire training program and successfully complete the operations and training courses and programs that we require. If we develop an internal certification program, we can require each of these trainees to maintain certification (which may include periodic training and testing) and to administer the program to your instructors according to program requirements. Should you replace your General Manager or Assistant Manager, your replacement General Manager or Assistant Manager must attend and successfully complete the operations and training courses and programs that we require. There is no fee to send your replacement General Manager or Assistant Manager to us for initial training, however, you will bear all salary, travel, lodging, and dining costs.

You are responsible for all costs and expenses of complying with our training and certification requirements including tuition and registration costs and salary, travel, lodging, and dining costs for all of your attendees who participate in the training.

We may also impose a \$5,000 Mandatory Training Fee and require that up to two individuals attend additional required training at a location we designate if the number of Membership Fees collected by your Facility during any consecutive three-month period decreases by more than 35% from the number of Membership Fees collected in any consecutive three-month period during the immediately preceding 18-month period. If we require this training, you will bear all salary, travel, lodging, and dining costs.

### Computer and Cash Register Requirements

Before your Facility opens, you must acquire and use all computer systems that we prescribe for use by our franchisees, and may not use any computer system or components or software applications that do not conform to the Standards or that we have not approved in writing. The approximate cost to purchase the required computer system hardware and software ranges from \$15,000 to \$20,000.

You must use our specifically designed scheduling and point of sale software, for which we currently charge an Initial Software License Fee of \$2,500 for the setup of the software, and an ongoing Software License Fee when you begin operating, which is currently \$354 per month. You run the software, you will need a computer processor. You also will need a cash drawer, a printer, and a bar code scanner (which is optional, but recommended). In addition to our specially designed software, you must acquire and use QuickBooks as your accounting software (we prefer, but do not require, QuickBooks Premier).

Except for the specifically designed software (which you must license from us or our designee), you may purchase computer hardware from any supplier that meets our requirements. We reserve the right to charge for any future updates or revisions. We will receive revenues from the sales of software updates and revisions in the future.

We also may require you to hook up to remote servers, off-site electronic repositories, and Internet connections. We may require you to update or upgrade computer hardware components and/or software applications as we deem necessary, but not more than three times per calendar year. You must enter into all software license agreements and software maintenance agreements, in the form and manner we prescribe, and pay all fees charged by third party software and software service providers. At our request, you must sign or consent to a “terms of use” agreement with respect to all software applications that we designate. We may independently access from a remote location, at any time, all information input to, and compiled by, your computer system, or an off-site server, including information concerning sales, purchase orders, inventory, and expenditures. There are no contractual limitations on our right to access the information.

### Site Selection and Opening

When you sign the Franchise Agreement, we will agree on a “Site Selection Area” within which you may locate the Facility. You must acquire an acceptable site for the Facility within this area within 180 days from the effective date of the Franchise Agreement. We will approve or disapprove your proposed site within 30 business days after receiving all requested information. The criteria that we use to evaluate the selected site include size, rent, parking, ingress and egress, necessary zoning, general location and neighborhood, demographics, and local competition. Finding and securing a site could take between 30 days and one year or more. The Facility should open between approximately 90 and 120 days after securing the site. We anticipate that most D-BAT<sup>®</sup> Facilities will open one year after the franchise agreement is signed. Factors affecting this range include availability of real estate, the time it takes to obtain a variance or zoning change request, if needed, any conditional or special use permits required in the applicable municipality, obtaining a certificate of occupancy, lease or purchase negotiations, and construction time or delays. We can terminate the Franchise Agreement if you fail to acquire an acceptable site for the Facility within 180 days of the date we sign the Franchise Agreement. For this reason, if real estate is expected to be particularly challenging to secure, franchisees typically enter into our Letter of Intent prior to entering into a Franchise Agreement with us. Once a site is identified, the parties will mutually agree on an opening date (“Opening Date”), which will be no later than 180 days from the date you take possession of the site, and the summary pages to the Franchise Agreement (“Summary Pages”) will be amended to reflect the Opening Date. We also can terminate the Franchise Agreement if you fail to open the Facility for business by the Opening Date. Typically, we do not lease premises that we own to a franchisee.

When you sign an Area Development Agreement, we will mutually agree on the Development Schedule, which will include a Franchise Agreement Execution Date for each Facility to be developed thereunder.

For any additional Facilities opened pursuant to an Area Development Agreement with us we will use our then-current criteria to evaluate proposed sites for these additional locations.

## **ITEM 12 TERRITORY**

### Franchise Agreement

You will operate one Facility at a location that we have approved. Once you have identified a site for the Facility, we will identify an area surrounding the D-BAT<sup>®</sup> Facility, which will be your Territory.

While there are no restrictions to accepting customers and members that reside or are located outside of your Territory, you may not directly solicit business outside the Territory, without D-BAT's prior written permission, which includes, without limitation, making sales calls to schools outside the Territory, sponsoring or participating as a vendor in tournaments at any location outside the Territory, and establishing wall signage and displays at schools or other locations outside your Territory.

During the franchise term, if you are fully compliant with the Franchise Agreement and all other agreements between us, we will neither operate nor grant others the right to operate another Facility in the Territory. We retain for ourselves all other rights including the right to engage in the following activities: (a) the right to engage in any type of business outside the Territory, regardless of its proximity to the Territory or economic impact on your Facility; (b) the right to offer and sell products and services, including merchandise (such as baseball and softball equipment and apparel), bearing the Marks, in and outside the Territory through alternate channels of distribution (such as third party pro shops and retailers, mail order, catalog sales, and/or the Internet); and (c) the right to offer, grant and support franchises in similar and different lines of business under any proprietary marks other than the Marks in and outside the Territory. You are not entitled to compensation for any sales made in the 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.

You may relocate the Facility within the Territory only with our prior written consent, which we will not unreasonably withhold. If your lease expires or terminates through no fault of yours, or if the Facility premises are destroyed or materially damaged by fire, flood, or other natural catastrophe, you may relocate the Facility to another location within the Territory.

The Franchise Agreement does not provide any options or rights of first refusal to establish additional Facilities in the Territory or in contiguous areas. If you wish to obtain an additional location, you must enter into a new Franchise Agreement and meet all our current requirements for franchisees for that location. We cannot modify or alter the boundaries of your Territory without your consent. Your territorial protection does not depend on your achieving a minimum sales quota or other performance criteria.

### Area Development Agreement

Under the Area Development Agreement, we grant you the right to develop and operate a specified number of D-BAT<sup>®</sup> Facilities at sites in a specified Development Area. The Development Area will be identified on Attachment B to the Area Development Agreement, and may be described in terms of cities, counties, states, or some other designation. For each Facility you develop pursuant to your Area Development Agreement, we will approve the location of future units and any Territory for those units using our then-current site criteria.

During the term of the Area Development Agreement, we will not own or operate, or grant others the right to own or operate, a D-BAT<sup>®</sup> Facility under the "D-BAT" trademark within the Development Area, except if we purchase, merge, acquire, or affiliate with another business, we may continue to operate, franchise, or license the acquired business anywhere, including in the Development Area, under the Marks or a different trademark.

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.

We reserve for ourselves all other rights, including the right (a) to own and operate and grant others the right to own and operate D-BAT® Facilities outside the Development Area, regardless of their proximity to the Development Area; and (b) the right to offer and sell products and services, including merchandise (such as baseball and softball equipment and apparel), bearing the Marks, in and outside the Development Area through alternate channels of distribution (such as third party pro shops and retailers, mail order, catalog sales, and/or the Internet).

If you fail to meet any of your obligations under the Area Development Agreement, including the development obligations, we may (a) terminate or modify any territorial protections granted to you; (b) reduce the size of the Development Area; or (c) reduce the number of Facilities which you may establish under the Development Schedule. After the expiration of the term of your Area Development Agreement, we may own, operate, franchise or license others to operate additional D-BAT® Facilities anywhere, without restriction, including in your Area Development Area, subject to the rights granted to you in the Territory established under any then-existing Franchise Agreement.

### ITEM 13 TRADEMARKS

Our parent, D-BAT Sports, Inc. (“DSI”) owns and has registered the following Marks on the Principal Register of the U.S. Patent Trademark Office (“USPTO”):

Mark	Registration No.	Registration Date	IC Class(es)
D-BAT (standard character mark)	5284760	September 12, 2017	035, 041
D-BAT (standard character mark)	3170787	November 14, 2006	028, 025
D-BAT (logo)	2739839	July 22, 2003	028
D-BAT (standard character mark)	4550060	June 17, 2014	036, 041
D-BAT (logo)	4554243	June 24, 2014	036, 041

All required affidavits and renewals have been filed, and there is no currently effective material determination of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceeding or any pending material litigation involving the Marks. There are no agreements currently in effect, which significantly limit our rights to use or license the use of the Marks in any manner material to the franchise. We are not aware of any superior prior rights or infringing uses that could materially affect your use of the Marks in any state.

DSI owns and has granted us a perpetual, royalty-free license to use and to sublicense to you the Marks under license agreement dated December 28, 2012 (the “License Agreement”). The License Agreement gives DSI the right to terminate the license, after a 30-day cure period, in the event we breach the terms of the License Agreement and do not cure within 30 days after receiving notice of the default. The License Agreement may also be terminated if we become insolvent, make an assignment for the benefit of the creditors, file for bankruptcy protection, are a party to a merger, consolidation, or conversion where we are not a surviving entity, or if we dissolve or wind-up our business. Upon termination of the License Agreement, DSI or its assignee will assume all of the obligations under the franchise agreements. Except for this agreement, there are no agreements in effect that limit our rights to use or license the use of our Marks.

You must use the Marks in full compliance with provisions of the Franchise Agreement and according to the rules we periodically prescribe. You may not use any Mark as a part of your corporate name or with any prefix, suffix or other modifying words, terms, designs, or symbols (other than logos licensed by us to

you). You may not use any name or mark associated with the sale of any unauthorized product or services in any other manner not explicitly authorized in writing by us. You also may not establish or maintain any recognizable portion of the Marks, or terms that may suggest an affiliation with us, including “D-BAT,” for use or display as all or part of an e-mail address, Internet domain name, URL, or meta-tag, or in connection with any Internet home page, website, or any other Internet-related activity without our express written consent, and then only in accordance with our procedures, standards, and specifications. This prohibition also includes the use or registration of the Marks, or any derivative of the Marks, as a part of any user name, account name, or in any other way that may suggest an affiliation with us or the franchise system, on any gaming, blogging, user review, video sharing, or social networking website, or as a part of any unauthorized email address.

We have the right to control any administrative proceedings or litigation involving a trademark licensed by us to you. If there is any infringement of, or challenge to, your use of any name, mark, or symbol, you must immediately notify us, and we may take any such action that we deem appropriate, in our sole discretion. The Franchise Agreement does not require us to take affirmative action if notified of the claim. We or our affiliate has the right to control all administrative proceedings or litigation involving your use of the Marks. The Franchise Agreement also does not require us to participate in your defense or to indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding based on your use of the Marks, or if the proceeding is resolved unfavorably to you. If it becomes advisable at any time, in our sole discretion, to modify or discontinue the use of any name or mark and/or use one or more additional or substitute names or marks, you must pay for the tangible costs (such as replacing signs and materials) associated with such a change.

You may not contest, directly or indirectly, our ownership, title, right, or interest in the name or marks, trade secrets, methods, procedures, and advertising techniques which are part of the System or contest our sole right to register, use, or license others to use such names, marks, trade secrets, methods, procedures, or techniques.

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

There are no patents or registered copyrights material to the franchise, but we claim copyright protection in many elements of the System including the Manual and the design elements of the Marks, our product packaging and advertising and promotional materials, and the content and design of our web site (the “Copyrighted Works”).

The Manual remains our sole property and must be kept in a secure place on the Facility premises. We may revise the contents of the Manual and you must comply with each new or changed standard. You must keep the Manual current at all times. We claim trade secret protection in all of our confidential information, which includes any and all information, know-how, techniques, and materials used in or related to the System that we provide to you.

There are no agreements currently in effect which significantly limit your right to use any of our copyrights. Also there are no currently effective determinations of the USPTO, the U. S. Copyright Office (Library of Congress), or any court pertaining to our affecting any of our copyrights discussed above. As of the date of this Franchise Disclosure Document, we are unaware of any infringing uses of or superior previous rights to any of our copyrights which could materially affect your use of them in any state.

Your and our obligations to protect your rights to use our copyrights are the same as the obligations for Marks described in Item 13 of this Franchise Disclosure Document.

You and your principals and employees also must maintain the confidentiality of all trade secrets, the Standards, and other elements of the System; all customer information; all information contained in the Manuals; our proprietary recipes and techniques for product preparation; and any other information that we designate as “Confidential Information.” Any of your principals who do not sign the Guaranty and Personal

Undertaking Agreement attached to the Franchise Agreement as Attachment C, and all employees and independent contractors with access to Confidential Information, must sign a confidentiality and noncompete agreement substantially in the form that we designate.

You must promptly notify us of any apparent infringement of, or challenge to, your use of any of the Copyrighted Works or Confidential Information. We are not required to take affirmative action when notified of a claim, or to participate in your defense or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving any of the Copyrighted Works or Confidential Information, or if the proceeding is resolved unfavorably to you, but will take whatever action we determine to be appropriate under the circumstances. We have the right to control all administrative proceedings or litigation involving the Copyrighted Works, and we will control administrative proceedings or litigation involving Confidential Information. If we or our affiliate undertakes the defense or prosecution of any litigation pertaining to any of the Copyrighted Works or Confidential Information, you must sign all documents and perform such acts and things as may, in the opinion of our counsel, be necessary to carry out the defense or prosecution.

If you or any principal develops any new concept, product, sales technique, or improvement in the operation or promotion of a Facility (including any computer software enhancements) you must promptly notify us and provide to us all necessary related information. By signing the Franchise Agreement, you and each principal assign your respective rights in and to the concept, product, sales technique, or improvement and permit us to use or disclose the information to other System franchisees as we determine appropriate, without providing you any compensation.

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

You must appoint an individual to personally exert best efforts in supervising the day-to-day operation of the Facility (your "Operating Principal"). The Operating Principal will be our primary contact with you, must hold some equity interest in the franchise entity, must successfully complete our initial training program, and be current in all training and internal certification requirements.

If the franchisee is a business entity, each of your Principals must sign a Guaranty and Personal Undertaking substantially in the form of Attachment C to the Franchise Agreement and Attachment D to the Area Development Agreement. The Guaranty and Personal Undertaking means that each of your Principals personally guarantees to us that you will perform all obligations under the Franchise Agreement in a timely manner according to the terms of the Franchise Agreement.

Any person, including your General Manager and Assistant Manager, with access to confidential information and who is not required to sign a Guaranty and Personal Undertaking must sign a Confidentiality/Non-Competition Agreement substantially in the form of Attachment D to the Franchise Agreement. You must furnish us with copies of all signed Confidentiality/Non-Competition Agreements no later than ten days following their execution. The term "Principal" means each individual or entity holding a beneficial ownership in the franchisee. It includes all shareholders of a corporation, all members of a limited liability company, all general and limited partners of a limited partnership, and the grantor and the trustee of the trust.

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

You must offer and sell all products and services that we require, and may offer and sell only products and services that we approve. We may add, eliminate, or modify authorized goods and services, in our sole discretion. There are no contractual limitations on our rights to make these changes. You may not use our Marks for any other business, nor conduct any business other than the business contemplated by the Franchise Agreement without our previous written consent.

You may advertise the Facility only within the Territory or in publications with a circulation base that includes all or a part of the Territory. You may not directly solicit business outside the Territory, without our prior written permission. Direct solicitation includes making sales calls to schools outside the Territory, sponsoring or participating as a vendor in tournaments at any location outside your Territory, and establishing wall signage and displays at schools or other locations outside your Territory.

You may neither establish a “D-BAT<sup>®</sup> team” or any other team identified by the Marks or associated with the Franchised Business, nor permit any team to use or display the D-BAT<sup>®</sup> name or any other Mark without our prior written consent, which we may grant or withhold in our sole discretion.

You must operate the Facility on the days and during the hours that we designate, subject to applicable lease and/or local law or licensing limitations. Our mandatory hours of operation will be communicated to you via the Manual or otherwise in writing.

The Facility’s pro shop must offer for retail sale the type of inventory that we require (which may include Brand requirements), and must maintain the mix of inventory that we require. We have the right to require that the pro shop dedicate minimum floor or wall space dedicated to the offer or promotion of certain inventory items. You may not offer baseball and softball equipment or apparel for wholesale.

You must offer and promote participation in all membership programs that we require. These programs currently include “Gold” “and “Platinum” memberships. We can change the types of memberships and corresponding benefits at any time. You appoint us to serve as your agent for collection of membership payments, and all membership documentation will instruct customers to direct membership payments to us, or authorize us to accept appropriate credit card payments. You must honor the terms of all membership programs, which includes providing appropriate discounts to all members.

You must participate in and offer to your customers: (1) all customer loyalty and reward programs; (2) all contests, sweepstakes and other prize promotions; and (3) gift card or stored value programs or sales promotions which we may develop periodically. We will provide you the details of each program and promotion, and you must promptly display all point-of-sale advertising and promotion-related information at such places within the Facility as we may designate. You must purchase and distribute all coupons and other collateral merchandise (and only the coupons and collateral merchandise) that we designate for use in connection with each such program.

You also must display at the Facility all promotional literature and information as we may reasonably require from time to time. This may include, among other things, establishing a bulletin board for posting local school and community events and displaying signage or other literature containing information about the D-BAT<sup>®</sup> franchise offering.

Subject to applicable law, you are not permitted to offer any pricing programs or structures that differ from those we implement, such as package pricing, membership structures, recurring payments, or daily or weekly access passes. We reserve the right to establish and promote retail prices to the extent the law will allow.

You may not permit to be installed at the Facility premises any juke box, game machine, gum machine, ride, gambling or lottery device, coin or token operated machine, or any other music, film, or video device not authorized by us.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the Franchise Agreement, the Area Development Agreement, and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.**

Franchise Agreement

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 2.A.	The earlier of: (i) 10 years from the Opening Date; and (ii) 11 years from the Effective Date of the Franchise Agreement.
b. Renewal or extension of the term	Section 2.B.	If you are in good standing and meet other conditions, you may renew for two additional five year terms.
c. Requirements for franchisee to renew or extend	Section 2.B.	Provide notice; may not be in default of Franchise Agreement or any other agreement; must renovate and modernize the Facility to conform to our then-current image; your Principals, including your Designated Principal, your General Manager, and Assistant Manager must be in compliance with our then-current training requirements; you must have the right to possess the Facility premises or have secured a substitute location; you and all guarantors must sign a release; must have operated substantially in accordance with the Franchise Agreement throughout the term; and must pay a renewal fee. If we permit you to renew, you must sign our then-current form of franchise agreement, which may be materially different from your original agreement, and may reflect different Management Fees and advertising obligations.
d. Termination by franchisee	No provision	These provisions are subject to state law.
e. Termination by franchisor without cause	No provision	Not applicable.
f. Termination by franchisor with cause	Section 18	We can only terminate if you are in default.



Provision	Section in Franchise Agreement	Summary
g. “Cause” defined – defaults which can be cured	Section 18.C.	Your failure to pay monies owed to us or to our affiliates; misuse of the Marks or our copyrighted works or other intellectual property not cured within five days after delivery of written notice; Facility is cited for violation of health, sanitation, or safety laws or regulations not cured within five days after receipt of citation; failure to comply with any other provision of the Franchise Agreement not cured within 30 days, except as described in 17.h., below.
h. “Cause” defined – non-curable defaults	Section 18.A.  Section 18.B.	The Franchise Agreement will terminate automatically without notice and without an opportunity to cure upon the happening of certain bankruptcy or insolvency-related events, or in the event of foreclosure or lien against the assets of the Facility.  We may terminate the Franchise Agreement without providing you an opportunity to cure if you fail to identify a site for the Facility or to open the Facility when required; you abandon the Facility; you have made any false or misleading representations in your franchise application; you or your principal is convicted or pleads no contest to certain types of crimes; you or any principal violates confidentiality or noncompete obligations; the Facility fails a quality assurance inspection; termination of any other franchise agreement between you or your affiliates and us; we deliver to you three or more notices of defaults during any rolling 24-month period, whether or not the defaults described in the notices ultimately are cured.
i. Franchisee’s obligations on termination/nonrenewal	Section 19	Obligations include ceasing to hold yourself out as a franchisee or former franchisee; canceling fictitious or assumed name; transferring to us the Facility’s telephone number; at our option, assign to us your interest in the lease for the Facility premises; sell to us any of the Facility’s assets that we elect to purchase; and comply with post term obligations. (Also see Provision “r” below.)
j. Assignment of contract by franchisor	Section 17.A.	No restriction on our right to assign our interest in the Franchise Agreement or to transfer any of our assets.
k. “Transfer” by franchisee – defined	Section 17.B.	Includes transfer of Franchise Agreement, transfer of the assets of the Facility, and ownership changes.
l. Franchisor approval of transfer by franchisee	Section 17.B.	We have the right to approve all transfers but will not unreasonably withhold approval.

Provision	Section in Franchise Agreement	Summary
m. Conditions for franchisor approval of transfer	Section 17.B.	We may condition our approval on satisfaction of the following: all monetary obligations must be satisfied; you must be in full compliance with the Franchise Agreement and all other agreements; you and each Principal must sign a release; the transferee must meet our criteria for new franchisees; at our election, the transferee either must assume your obligations under the Franchise Agreement or sign our then-current form of franchise agreement for the remainder of the franchise term left on your agreement; the transferee must agree to refurbish the Facility; you must agree to remain liable for all pre-transfer obligations; the transferee must comply with our then-current training requirements; the economic terms of the transfer may not, in our opinion, materially and adversely affect the post transfer viability of the Facility. You also must pay the applicable transfer fee.
n. Franchisor's right of first refusal to acquire franchisee's business	Section 17.E.	We may match any bona fide offer to purchase your business
o. Our option to purchase franchisee's business	No provision	Not applicable.
p. Franchisee's death or disability	Section 17.F.	If your Operating Principal dies or becomes incapacitated, you must appoint a new Operating Principal and transfer the Operating Principal's interest in the franchise or in the franchisee entity, if any, to an approved third party within six months after death or disability occurs.
q. Non-competition covenants during the term of the franchise	Section 14	During the term, neither you nor any principal may be involved in any business that provides baseball or softball instruction or in which the sale of baseball or softball equipment and apparel comprises more than 10% of gross sales. Non-competition provisions are subject to state law.
r. Non-competition covenants after the franchise is terminated or expires	Section 14	For a two-year period following termination or expiration of the franchise, neither you nor any principal may be involved in any business that provides baseball and softball instruction or in which the sale of baseball and softball equipment and apparel comprises more than 10% of gross sales and which is located (1) at the former Facility location, (2) 15 miles from your former Facility, or (3) within 15 miles from any D-BAT® Facility currently open or in development. Non-competition provisions are subject to state law.

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
s. Modification of the agreement	Section 22.B.	The Franchise Agreement may be modified only by a written document signed by both parties.
t. Integration/merger clause	Section 22.A.	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to applicable state law). No other representations or promises will be binding.  Nothing in the Franchise Agreement or in any other related written agreement is intended to disclaim representations made in the franchise disclosure document.
u. Dispute resolution by arbitration or mediation	Section 23.B.	Claims, controversies or disputes from or relating to the Franchise Agreement must be mediated, except for actions seeking injunctive relief and actions we bring which are related to or based on our Marks or Confidential Information or your breach of your noncompetition covenants.
v. Choice of forum	Section 23.C.	Mediation at the AAA offices in the city in which we maintain our principal business address, currently Carrollton, Texas.  Venue for any other proceeding is exclusively the courts located in the county in which we maintain our principal business address, currently Dallas County, Texas (subject to applicable state law). See the State Specific Addenda attached to this disclosure document.
w. Choice of law	Section 23.A.	Texas law applies (subject to applicable state law).

#### Area Development Agreement

<b>Provision</b>	<b>Section in Area Development Agreement</b>	<b>Summary</b>
a. Length of the Agreement term	Section 2.1	The period beginning on the effective date and ending on the earlier of: (i) the date on which you have completed your development obligations, or (ii) 12:00 midnight CST on the last day specified in the development schedule set forth in <u>Attachment B</u> of the Area Development Agreement.
b. Renewal or extension of the term	Section 4.4	Unless we consent in writing, you may not open more than the total number of Facilities comprising your development obligation. You do not have the right to renew your Area Development Agreement.
c. Requirements for Developer to renew or extend	No provision	Not applicable
d. Termination by Developer	No provision	These provisions are subject to state law.

Provision	Section in Area Development Agreement	Summary
e. Termination by D-BAT without cause	No provision	Not applicable
f. Termination by D-BAT with “cause”	Sections 9.1, 9.2., 9.3, 9.4, and 9.5	We can terminate if you materially default under your Area Development Agreement (including, without limitation, if you fail to meet the Development Schedule), an individual Franchise Agreement, or any other agreement between you or your Affiliate and us or our Affiliates. In the event of the death or permanent incapacity of an Owner, we may terminate if you fail to adhere to the applicable transfer requirements.
g. “Cause” defined - curable defaults	Sections 9.3, 9.4 and 9.5	You have 10 days to cure a failure to pay fees and 30 days to cure any other default, and, in the case of a breach or default in the performance of your obligations under any Franchise Agreement or other agreement between you and us, the notice and cure provisions of the Franchise Agreement or other agreement will control. You have six months to transfer the interest of an Owner in the event of death or permanent incapacity.
h. “Cause” defined – non-curable defaults	Sections 9.1, 9.2 and 9.6	<p>Non-curable defaults: unapproved transfers; failure to meet development obligation; any breach of confidentiality or unfair competition described in Section 10; cross defaults, bankruptcy, foreclosure, insolvency, conviction of a felony, unapproved transfers, misrepresentations in your application, and/or repeated defaults, even if cured.</p> <p>Any default under any agreement between you and us or our affiliates (including any Franchise Agreement), which you fail to cure within any applicable cure period, will be considered a default under your Area Development Agreement and provide an independent basis for termination.</p>
i. Developer’s obligation on termination/non-renewal	Sections 2.2 and 10.2	You will have no further right to develop or operate additional D-BAT® Facilities which are not, at the time of termination, the subject of a then-existing Franchise Agreement between you and us. You may continue to own and operate all D-BAT® Facilities under then-existing Franchise Agreements provided such Franchise Agreements have not been terminated; if you have no existing Facilities at the time of termination or non-renewal, you must honor all post-termination obligations.
j. Assignment of contract by D-BAT	Section 8.1	There are no restrictions on our right to assign.
k. “Transfer” by Developer – defined	Sections 8.2, 8.3, and 8.4	Includes transfer of the Area Development Agreement, changes in ownership of the entity that is a party to the agreement and transfers of assets. No shares of a Developer that is a Business Entity may be offered for sale through the public offering of securities. Shares

Provision	Section in Area Development Agreement	Summary
		may be offered by private offering with our prior written consent.
l. D-BAT approval of Transfer by Developer	Sections 8.2, 8.3, and 8.4	Transfers require our prior written consent, which may be withheld for any reason, in our sole subjective judgment. However, transfers that do not result in a change of control of you may, subject to certain conditions described in the Area Development Agreement, be completed without our prior written consent.
m. Conditions for D-BAT's approval of transfer	Sections 8.4 and 8.5	<p>We may condition our approval of a transfer on any or all of the following: 30 days' notice prior to transfer; our approval of the economic terms of the transfer; transferee meets our then-current qualifications; you have met all outstanding monetary obligations to us, our Affiliates, and your suppliers; the Facility is refurbished so that it meets our then-current requirements; you and each Owner have executed a general release; you pay the transfer fee; transferee signs our then-current form of Area Development Agreement; transferee's Owners sign the Guaranty and Personal Undertaking; transferee complies with all training requirements; and if we introduced the buyer to you, all related fees have been paid.</p> <p>You may not transfer any Franchise Agreement signed under the Area Development Agreement except with our written consent and a simultaneous assignment of the Area Development Agreement and all of the Franchise Agreements signed under the Area Development Agreement to the same assignee. You must pay the applicable transfer fee and sign a general release.</p>
n. D-BAT's right of first refusal to acquire Developer's business	Section 8.9	We may match any offer to purchase your business.
o. D-BAT's option to purchase Developer's business	No provision	Not applicable
p. Death or disability of Developer	Section 8.10	Same requirements as for a transfer in "m" above. If your interest is not transferred within six months following your (or a major member, partner or shareholder's) death or legal incapacity, your Area Development Agreement may be terminated.
q. Non-competition covenants during the term of the Agreement	Section 10.1	Neither you nor your Owner(s) may have any involvement in a business that specializes in baseball and softball training or the sale of baseball and softball equipment (other than a D-BAT® Facility operated under a valid Franchise Agreement with us) located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which we or our Affiliates have used,

Provision	Section in Area Development Agreement	Summary
		sought registration of or registered the Marks or similar marks or operate or license others to operate a business under the Marks or similar marks. Non-competition provisions are subject to state law.
r. Non-competition covenants after the Agreement is terminated or expires	Section 10.2	Neither you nor your Owners may have any involvement in a business that specializes in baseball and softball training or the sale of baseball and softball equipment, other than a D-BAT® Facility operated under a valid Franchise Agreement with us, within the Facility Development Area for two years following expiration or termination. Non-competition provisions are subject to state law.
s. Modification of the Franchise Agreement	Sections 13.1 and 13.2	The Area Development Agreement can only be modified or amended by written agreement of all of the parties.
t. Integration/merger clause	Section 13.1	Only the terms of the Area Development Agreement and other related written agreements are binding (subject to applicable state law). No other representations or promises will be binding. Nothing in the Area Development Agreement or in any other related written agreement is intended to disclaim representations made in the franchise disclosure document.
u. Dispute resolution by arbitration or mediation	Section 14.2	Claims, controversies or disputes from or relating to the Area Development Agreement must be mediated, except for actions seeking injunctive relief and actions we bring which are related to or based on our Marks or Confidential Information or your breach of your noncompetition covenants.
v. Choice of forum	Sections 14.2 and 14.3	Mediation at the AAA offices in the city in which we maintain our principal business address, currently Carrollton, Texas. Venue for any other proceeding is exclusively the courts located in the county in which we maintain our principal business address, currently Dallas County, Texas (subject to applicable state law). See the State Specific Addenda attached to this disclosure document.
w. Choice of law	Section 14.1	Subject to applicable state law, the Area Development Agreement is to be interpreted and construed under Texas law (without giving effect to any conflict of laws) except that any law regulating the offer or sale of franchises, business opportunities or similar interests or governing the relationship between us and you will not apply unless its jurisdictional requirements are met independently. See the State Specific Addenda attached to this disclosure document

See the state addenda to the Franchise Agreement, Area Development Agreement, and this Franchise Disclosure Document (if any) for special state disclosures.

**ITEM 18  
PUBLIC FIGURES**

We do not currently use any public figure to promote the franchise.

**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 performance 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.

**2022 FRANCHISEE AVERAGE GROSS REVENUE PER REVENUE STREAM**

This financial performance representation includes historic financial information based on the past performance of existing Facilities. The financial information included in the table below includes all 113 franchised D-BAT Facilities that were open during the full 2022 calendar year, regardless of whether any of these locations experienced a transfer. There were no corporate-owned locations during the 2022 calendar year.

<b>Revenue Streams</b>	<b>Under 15,500 sq. ft.</b>	<b>Over 15,500 to 19,500 sq. ft.</b>	<b>Greater than 19,500 sq. ft.</b>
<b>No. of Facilities</b>	<b>33</b>	<b>30</b>	<b>50</b>
<b>Lessons</b>	\$192,260 High: \$376,781 /Low: \$30,099 No. that Met or Surpassed Avg.: 10 Median: \$172,378	\$356,266 High: \$679,207 /Low: \$44,186 No. that Met or Surpassed Avg.: 10 Median: \$302,926	\$386,880 High: \$826,728 /Low: \$65,520 No. that Met or Surpassed Avg.: 16 Median: \$336,862
<b>Cage Rentals<sup>3</sup></b>	\$54,313 High: \$142,054 /Low: \$2,768 No. that Met or Surpassed Avg.: 11 Median: \$43,887	\$82,563 High: \$165,718 /Low: \$28,590 No. that Met or Surpassed Avg.: 14 Median: \$78,651	\$126,436 High: \$270,219 /Low: \$22,178 No. that Met or Surpassed Avg.: 22 Median: \$118,758
<b>Camps/Clinics</b>	\$58,184 High: \$150,590 /Low: \$6,008 No. that Met or Surpassed Avg.: 15 Median: \$51,740	\$92,124 High: \$194,395 /Low: \$12,992 No. that Met or Surpassed Avg.: 10 Median: \$82,100	\$85,265 High: \$222,646 /Low: \$8,083 No. that Met or Surpassed Avg.: 16 Median: \$78,262
<b>Retail Pro Shop</b>	\$77,293 High: \$280,279 /Low: \$9,665 No. that Met or Surpassed Avg.: 14 Median: \$56,438	\$115,948 High: \$422,917 /Low: \$16,399 No. that Met or Surpassed Avg.: 11 Median: \$103,356	\$122,538 High: \$310,122 /Low: \$11,149 No. that Met or Surpassed Avg.: 20 Median: \$101,817

Revenue Streams	Under 15,500 sq. ft.	Over 15,500 to 19,500 sq. ft.	Greater than 19,500 sq. ft.
<b>No. of Facilities</b>	<b>33</b>	<b>30</b>	<b>50</b>
<b>Memberships</b>	\$112,985 High: \$351,715 /Low: \$48,806 No. that Met or Surpassed Avg.: 16 Median: \$101,312	\$196,188 High: \$377,846 /Low: \$91,835 No. that Met or Surpassed Avg.: 13 Median: \$191,105	\$205,445 High: \$471,092 /Low: \$88,116 No. that Met or Surpassed Avg.: 27 Median: \$198,354
<b>Credit Sales<sup>3</sup></b>	\$46,122 High: \$99,366 /Low: \$5,995 No. that Met or Surpassed Avg.: 12 Median: \$42,131	\$73,690 High: \$150,249 /Low: \$28,241 No. that Met or Surpassed Avg.: 13 Median: \$69,747	\$81,739 High: \$234,644 /Low: \$8,313 No. that Met or Surpassed Avg.: 21 Median: \$75,403
<b>Other<sup>4</sup></b>	\$15,596 High: \$33,700 /Low: \$152 No. that Met or Surpassed Avg.: 10 Median: \$11,900	\$11,516 High: \$39,740 /Low: \$2,770 No. that Met or Surpassed Avg.: 7 Median: \$9,213	\$48,895 High: \$451,149 /Low: \$963 No. that Met or Surpassed Avg.: 8 Median: \$26,552

Notes:

Note 1. The above “Revenue Stream” amounts are average Gross Revenue per revenue stream specified per year reported by D-BAT Franchisees. The amounts have not been independently verified or audited. The term “Gross Revenue” has the same meaning as given in Item 6 and is as follows:

“Gross Revenue” means the aggregate of: (1) all revenue from the sale of products and services, whether made for cash, on credit, or otherwise, without reserve or deduction for inability or failure to collect, that you, in the normal course of your operations would credit or attribute to the operation of a D-BAT<sup>®</sup> Facility; (2) all monies, trade value or other things of value that you receive from Facility operations, whether at, in, from, or through the Facility; and (3) business interruption insurance proceeds. Gross Revenue does not include: (a) the exchange of merchandise between D-BAT<sup>®</sup> Facilities (if you operate multiple Facilities) if the exchanges are made solely for the convenient operation of your business and not for the purpose of depriving us of the benefit of a sale that otherwise would have been made at, in, on or from the Facility premises; (b) returns to shippers, vendors, or manufacturers; (c) sales of equipment, fixtures or furniture after being used in the conduct of the Facility; (d) cash or credit refunds for transactions included within Gross Revenue (limited, however, to the selling price of the merchandise or service); (e) the amount of any city, county, state or federal sales, luxury or excise tax on such sales that is both (i) added to the selling price or absorbed therein and (ii) paid to the taxing authority by you. Customer refunds may be deducted from Gross Revenue if the charge was previously included in Gross Revenue.

Note 2. The above are the different revenue streams for D-BAT required services to be provided by each Facility. All revenue amounts are after discount and after sales.

Note 3. The term “Credit Sales” means credits purchased for the use of batting/pitching machines, and the average Gross Revenue for the Facilities in each category is derived from the sale and purchase of those credits. The term “Cage Rentals” means the rental, for a short period of time, of a training cage, for example, for the use of practicing pitching, batting, or fielding skills, and the average Gross Revenue for the Facilities in each category is derived from the amount paid for cage time rental. Cage time rental does not include a batting/pitching machine, however, the purchase of credits for use of the batting/pitching machine does not require cage time rental.



Note 4. The “Other” category includes Gross Revenues from any other business activities that do not fall under the other listed revenue streams. Examples of the types of “Other” business activities whose Gross Revenues were taken into account in calculating the above averages include vending machine, tournament, and athletic training revenues. Not all Facilities will generate the same types of “Other” revenue, or any at all, and all proposed business activities outside of the standard D-BAT Academy designated offerings must be approved by us in advance.

Note 5. The characteristics of the Facilities whose information was used to prepare the above chart are substantially similar to the Facilities described in this disclosure document. The data used in the financial performance representation was obtained directly from franchisees and point of sale software and was not independently audited or verified.

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

Written substantiation for the financial performance representation will be made available to prospective franchisees upon request.

Other than the above, we do not make any representations about a franchisee’s future financial performance or the past financial performance of company-owned or franchised Facilities. We also do not authorize our employees or representative to make any such representations either orally or in writing. If you are purchasing an existing Facility, however, we may provide you with the actual records of that Facility. 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 our CEO, Cade Griffis, 2101 Midway Road, Suite 300, Carrollton, Texas 75006, 972-398-1000, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1**

**SYSTEMWIDE OUTLET SUMMARY  
FOR YEARS 2020 TO 2022**

<b>Outlet 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	82	100	+18
	2021	100	113	+13
	2022	113	128	+15
Company-Owned	2020	0	0	0
	2021	0	0	0
	2022	0	0	0
Total Facilities	2020	82	100	+18
	2021	100	113	+13
	2022	113	128	+15

**Table No. 2**  
**TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS**  
**(OTHER THAN THE FRANCHISOR)**  
**FOR YEARS 2020 TO 2022**

State	Year	Number of Transfers
Arizona	2020	1
	2021	1
	2022	2
Arkansas	2020	0
	2021	1
	2022	1
Colorado	2020	0
	2021	1
	2022	0
Florida	2020	0
	2021	0
	2022	1
Iowa	2020	0
	2021	1
	2022	0
Louisiana	2020	0
	2021	1
	2022	0
Michigan	2020	0
	2021	0
	2022	1
North Carolina	2020	0
	2021	1
	2022	0
Oklahoma	2020	1
	2021	0
	2022	1
Texas	2020	4
	2021	5
	2022	2
Totals	2020	6
	2021	11
	2022	8

**Table No. 3**  
**STATUS OF FRANCHISED OUTLETS**  
**FOR YEARS 2020 TO 2022**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Alabama	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Arizona	2020	4	1	0	0	0	0	5
	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Arkansas	2020	3	0	0	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	1	0	0	0	0	4
California	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
Colorado	2020	1	0	0	0	0	0	1
	2021	1	1	0	0	0	0	2
	2022	2	1	0	0	0	0	3
Connecticut	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	0	3
Delaware	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Florida	2020	3	1	0	0	0	0	4
	2021	4	1	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Georgia	2020	7	1	0	0	0	0	8
	2021	8	0	0	0	0	0	8
	2022	8	2	0	0	0	0	10

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Idaho	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Illinois	2020	1	1	0	0	0	0	2
	2021	2	2	0	0	0	0	4
	2022	4	0	0	0	0	0	4
Indiana	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	1	0	0	0	0	2
Iowa	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Kansas	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Kentucky	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2022	1	1	0	0	0	0	2
Louisiana	2020	3	1	0	0	0	0	4
	2021	4	1	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Maryland	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Michigan	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
Minnesota	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
Mississippi	2020	1	1	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Montana	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Nebraska	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
New Jersey	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
North Carolina	2020	2	0	0	0	0	0	2
	2021	2	1	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Ohio	2020	3	1	0	0	0	0	4
	2021	4	1	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Oklahoma	2020	3	0	0	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Oregon	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
Pennsylvania	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
South Carolina	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
South Dakota	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Tennessee	2020	1	1	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	0	3

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Texas	2020	33	6	0	0	0	0	39
	2021	39	3	0	0	0	0	42
	2022	42	4	0	0	0	0	46
Utah	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Virginia	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Washington	2020	2	0	0	0	0	0	2
	2021	2	1	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Totals	2020	82	18	0	0	0	0	100
	2021	100	13	0	0	0	0	113
	2022	113	15	0	0	0	0	128

**Table No. 4**  
**STATUS OF COMPANY-OWNED 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
Texas	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
Totals	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0

**Table No. 5**  
**PROJECTED OPENINGS**  
**AS OF DECEMBER 31, 2022**

State	Franchise Agreements Signed But Facility Not Open	Projected New Franchised Facilities in the Next Fiscal Year	Projected New Company- owned Facilities in the Next Fiscal Year
Alabama	7	3	0
Alaska	1	0	0
California	5	2	0
Colorado	2	1	0
Delaware	1	0	0
Florida	5	3	0
Georgia	1	1	0
Idaho	1	0	0
Illinois	4	1	0
Indiana	4	2	0
Iowa	1	0	0
Kansas	2	1	0
Kentucky	1	1	0
Louisiana	3	1	0
Maryland	1	0	0
Michigan	1	0	0
Minnesota	3	2	0
Mississippi	1	0	0
Missouri	2	2	0
Nebraska	1	0	0
Nevada	1	0	0
New Jersey	1	0	0
New Mexico	1	0	0
New York	1	0	0
North Carolina	3	1	0
Ohio	1	1	0
Oklahoma	2	0	0
Oregon	2	0	0
Pennsylvania	2	0	0
South Carolina	1	1	0
Tennessee	2	1	0
Texas	14	7	0

State	Franchise Agreements Signed But Facility Not Open	Projected New Franchised Facilities in the Next Fiscal Year	Projected New Company-owned Facilities in the Next Fiscal Year
Utah	3	0	0
Virginia	1	1	0
Washington	4	1	0
Wisconsin	2	2	0
Totals	88	35	0

See Exhibit H for a list of the names, current addresses, and telephone numbers of all our current franchisees. Exhibit H also includes the names, addresses, and current business telephone number (or if unknown, the last known home telephone number) of any former franchisees who terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during our most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this Franchise Disclosure Document. If you buy a franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three fiscal years, we have not signed any confidentiality clauses with any current or former franchisees. There is no trademark-specific franchisee organization associated with this franchise.

## ITEM 21 FINANCIAL STATEMENTS

Attached to this Franchise Disclosure Document as Exhibit F, are the following financial statements:

1. Our unaudited balance sheet as of March 31, 2023 and our statement of profit and loss for the period beginning January 1, 2023 through March 31, 2023. 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; and

2. Our audited balance sheets as of December 31, 2021 and December 31, 2022, and the related statements of operations, stockholders' equity and cash flows for our past three fiscal years.

Our fiscal year end is December 31.

## ITEM 22 CONTRACTS

Attached as Exhibit D to this Franchise Disclosure Document is a copy of the Franchise Agreement and the following attachments to the Franchise Agreement:

### State Specific Addenda

- Attachment A Glossary of Additional Terms
- Attachment B Statement of Ownership Interests
- Attachment C Guaranty and Personal Undertaking
- Attachment D Confidentiality and Nondisclosure Agreement
- Attachment E Electronic Debit and Credit Authorization
- Attachment F Telephone Number Assignment Agreement
- Attachment G Renewal Addendum
- Attachment H Release Amendment to Subsequent Franchise Agreement



Attached as Exhibit E to this Franchise Disclosure Document is a copy of the Area Development Agreement and the following attachments to the Area Development Agreement:

- Attachment A Glossary of Additional Terms
- Attachment B Development Area and Schedule
- Attachment C Entity Information
- Attachment D Guaranty and Personal Undertaking
- Attachment E Form of Franchise Agreement

Attached as Exhibit G is our current form of General Release agreement.

### **ITEM 23 RECEIPT**

The last two pages of this Franchise Disclosure Document are detachable duplicate Receipts. Please sign and date both copies of the Receipt. Keep one signed copy of the Receipt for your file and return to us the other signed copy. See the Receipt Page for the name of the person who will be selling our franchises.

## STATE SPECIFIC ADDENDA TO DISCLOSURE DOCUMENT

### **FOR THE STATE OF CALIFORNIA**

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

THE ANTITRUST LAW SECTION OF THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL VIEWS CERTAIN MAXIMUM AND MINIMUM PRICE AGREEMENTS AS PER SE VIOLATIONS OF THE CARTWRIGHT ACT.

The California Corporations Code, Section 31125, requires that we give you a disclosure document, approved by the Department of Financial Protection and Innovation, prior to solicitation of a proposed material modification of your Franchise Agreement.

Item 3 of the Disclosure Document is supplemented by the following:

Neither the franchisor nor any person identified in Item 2 of the 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.

Item 17 of the Disclosure Document is supplemented by the following:

California Business and Professions Code, Section 20000 through 20043 provides rights to the franchisee concerning termination or nonrenewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

You must sign a release if you renew or transfer your franchise. California Corporations Code voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code 20000 through 20043).

The Franchise Agreement contains a covenant not to compete that extends beyond expiration or termination of the agreement. This provision may not be enforceable under California law.

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

The Franchise Agreement requires binding arbitration. The arbitration will occur in the county where Franchisor maintains its principal business address at the time of arbitration and each party to the arbitration is responsible for their own costs and expenses of arbitration, including legal and filing fees. Currently, the Franchisor's principal business is located in Dallas, County Texas. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

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

OUR WEBSITE CAN BE FOUND AT [www.DBAT.net](http://www.DBAT.net). OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [www.dbo.ca.gov](http://www.dbo.ca.gov).

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

### ***FOR THE STATE OF ILLINOIS***

1. Item 5 is supplemented by the following:

Based on our current financial condition, the Illinois Attorney General's Office has imposed a financial assurance requirement that requires us to defer your obligation to pay the Initial Franchise Fee due to us under the Franchise Agreement until we have completed all of our pre-opening obligations to you and you have commenced doing business.

2. Item 17 is supplemented by the following:

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Illinois law shall apply to and govern the Franchise Agreement.

The conditions under which your franchise can be terminated and your rights on renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

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

### ***FOR THE STATE OF INDIANA***

1. Item 17, Additional Disclosures. The following statements are added to Item 17:

The Indiana Deceptive Franchise Practices Law (Indiana Code 23-2-2.7 et seq.) in general governs the relationship between the franchisor and the franchisee by forbidding certain provisions in the Franchise Agreement and related documents and by preventing the franchisor from engaging in certain acts and practices which could be considered coercive or oppressive to the master licensee. If any of the provisions of the Franchise Agreement conflict with this law, this law will control.

Any provisions requiring you to sign a general release of claims against us, including upon execution of the Franchise Agreement or a successor Franchise Agreement or transfer, does not release any claim you may have under the Indiana Deceptive Franchise Practices Law.

The Franchise Agreement provides that suit must be brought in Texas. These provisions may not be enforceable under Indiana law.

Indiana franchise laws will govern the Franchise Agreement and any and all other related documents.

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

Each provision of these Additional Disclosures shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Indiana Deceptive Franchise Practices Law are met independently without reference to these Additional Disclosures. The Additional Disclosures shall have no force or effect if such jurisdictional requirements are not met.

**FOR THE STATE OF MARYLAND**

1. Page Entitled “Special Risks to Consider About *This Franchise*”. Additional Disclosures. The following statements are added to the page entitled “Special Risks to Consider About *This Franchise*”:
2. **Management Fee.** We have absolute discretion to calculate the management fee you will pay, and you do not know when you enter into this franchise agreement how we will calculate that fee. The management fee could be either 40% of Membership Fees or 8% of Gross Revenue. We also can change how we calculate the management fee you will pay at any point, and what you pay could be different than what other franchisees in the System pay.
3. Item 5, Additional Disclosures. The following statements are added to Item 5:  
Based upon the franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement and the outlet is opened. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.
4. Item 17, Additional Disclosures. The following statements are added to Item 17:  
Any provision in the Franchise Agreement that provides for termination upon bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).  
Pursuant to COMAR 02.02.08.16L, any provisions requiring you to sign a general release as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.  
Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.  
A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.
5. Item 19, Additional Disclosures. The following statement is added to Item 19:  
We have not made, and do not intend to make, changes to our business model to adapt the business to consumer demands post-COVID-19.

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

Each provision of these Additional Disclosures shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to these Additional Disclosures.

**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 B 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 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.

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

#### ***FOR THE STATE OF NORTH DAKOTA***

Item 17 of the Disclosure Document is supplemented by the following:

Item 17(c) and Item 17(m) are amended to state that any release executed will not apply to the extent prohibited by applicable law with respect to claims arising under the North Dakota Franchise Investment Law.

Item 17(r) is amended to state that any covenants not to compete such as those mentioned herein are generally considered unenforceable in the State of North Dakota.

Item 17(v) is amended to state that except to the extent prohibited by North Dakota Franchise Investment Law.

Item 17(w) is amended to state that except to the extent required by North Dakota Franchise Investment Law.

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

#### ***FOR THE STATE OF VIRGINIA***

The following is added to the Disclosure Document for Virginia residents:

##### FTC Cover Page, Special Risks to Consider About This Franchise

Estimated Initial Investment. The franchisee will be required to make an estimated initial investment ranging from \$536,450 to \$1,031,100. This amount exceeds the franchisor’s stockholders’ negative equity as of December 31, 2022, which is (\$2,646,062).

##### Item 5, Additional Disclosures

The Virginia State Corporation Commission’s Division of Securities and retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

Item 17.h., Additional Disclosures

Pursuant to 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.

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

The provision of this Additional Disclosure shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Virginia Retail Franchising Act are met independently without reference to these Additional Disclosures.

***FOR THE STATE OF WASHINGTON***

The following is added to the Disclosure Document for Washington residents:

Item 5, Additional Disclosures

Based on our current financial condition, the Washington Department of Financial Institutions Securities Division has imposed a financial assurance requirement. Therefore, as a condition to becoming registered to offer and sell franchises in the State of Washington, we have agreed to defer your obligation to pay the Initial Franchise Fee, Earnest Money Payment, Development Fee and Construction Management and On-Site Training Fee payable to us until we have met our material pre-opening obligations and you have begun operating a D-BAT® Facility. Because we have material pre-opening obligations with respect to each Facility you open under the Area Development Agreement, if applicable, payment of the Development Fee will be released proportionally with respect to each Facility opened and is deferred until we have met all our pre-opening obligations under the Area Development Agreement and you are open for business with respect to each such location.

Item 17, Additional Disclosures

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 release or waiver of rights executed by a franchisee may not include rights under the Washington

Franchise Investment Protection Act 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.

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

These provisions shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act are met independently without reference to these Additional Disclosures. The Additional Disclosures shall have no force or effect if such jurisdictional requirements are not met.



**EXHIBIT A**  
**TABLE OF CONTENTS OF MANUAL**

# Table of Contents

<b>Overview</b> .....	4
-----------------------	---

## **Section 1: Real Estate & Construction**

1.1	Real Estate.....	6
1.2	Contractors.....	6
1.3	The Building .....	6
1.4	Building Details.....	7
1.5	Finish Out Requirements.....	9

## **Section 2: Daily Systems and Procedures**

2.1	The D-BAT Standard.....	17
2.2	Training.....	17
2.3	Staffing Your Facility.....	20
2.4	Staff Responsibilities.....	20
2.5	Logo Spelling and General Use Guidelines.....	25
2.6	D-BAT Logo Requests.....	25

## **Section 3: Marketing**

3.1	Marketing Overview.....	27
3.2	Marketing Guidelines.....	32
3.3	Marketing Materials.....	33
3.4	Website.....	34
	Pre Opening Social Media Requirements.....	35

## **Section 4: Business Operations**

4.1	GM, Asst. GM.....	39
4.2	Operational Overview.....	39
4.3	Memberships.....	40
4.4	Lessons.....	48
4.5	Camps and Clinics.....	53
4.6	Pro Shop.....	58
4.7	Pitching Machines.....	59
4.8	Cage Rentals.....	60

## **Section 5: Bookkeeping, Accounting and Personnel**

5.1	Bookkeeping and Accounting.....	62
-----	---------------------------------	----

<b>Appendix</b> .....	63
-----------------------	----

Exhibit A: Sample Application and Background Check.....	64
Exhibit B: Sample Independent Contractor Agreement.....	66
Exhibit C: Confidentiality and Non Competition Agreement.....	74
Exhibit D: Great Instructors: Distinguishing the Good from the Bad.....	77
Exhibit E: Protecting Your Business.....	79
Exhibit F: Sample D-BAT Release.....	80
Exhibit G: Sample Camps and Clinics P&L.....	83
Exhibit H: Best Practices Test Ideas w/Answers.....	85
Exhibit I: D-BAT Logo Spelling and General Use Guidelines.....	93
Exhibit J: D-BAT Logo Request Form.....	95

**EXHIBIT B**  
**LIST OF STATE ADMINISTRATORS**

## LIST OF STATE ADMINISTRATORS

### California

Department of Financial Protection and Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013  
(866) 275 -2677

### Hawaii

Commissioner of Securities of the State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street  
Honolulu, Hawaii 96813  
(808) 586-2722

### Illinois

Office of Attorney General  
500 S. Second Street  
Springfield, Illinois 62706  
(217) 782-4465

### Indiana

Franchise Section  
Securities Division  
302 W. Washington St., Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

### Maryland

Office of Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-6360

### Michigan

Michigan Department of Attorney General  
Consumer Protection Division  
Attention: Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Bldg., 1<sup>st</sup> Floor  
Lansing, Michigan 48909  
(517) 373-7117

### Minnesota

Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
Saint Paul, Minnesota 55101  
(651) 539-1600

### New York

NYS Department of Law  
Investor Protection Bureau  
28 Liberty St. 21st Fl  
New York, NY 10005  
(212) 416-8222

### North Dakota

North Dakota Securities Department  
600 East Blvd. Ave., Fifth Floor Dept 414  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

### Oregon

Division of Consumer and Business Services  
Finance and Corporate Securities  
350 Winter Street N.E.  
Labor and Industries Building, Room 21  
Salem, Oregon 97310  
(503) 378-4387

### Rhode Island

Securities Division  
Department of Business Regulation  
1511 Pontiac Avenue, Building 69-1  
Cranston, Rhode Island 02920  
(401) 462-9500

### South Dakota

Department of Labor and Regulation  
Division of Securities  
124 S. Euclid, 2<sup>nd</sup> Floor  
Pierre, South Dakota 57501  
(605) 773-3563

### Virginia

State Corporation Commission  
Division of Securities and Retail Franchising  
1300 East Main Street, 9<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9051

### Washington

Director of Department of Financial Institutions  
Securities Division - 3rd Floor  
150 Israel Road, S.W.  
Tumwater, Washington 98501

### Wisconsin

Division of Securities  
Department of Financial Institutions  
201 W. Washington, Suite 300  
Madison, Wisconsin 53703  
(608) 266-8559

**EXHIBIT C**  
**LIST OF AGENTS FOR SERVICE OF PROCESS**

## LIST OF AGENTS FOR SERVICE OF PROCESS

### **California**

Commissioner of Financial Protection and  
Innovation  
Department of Financial Protection and  
Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013

### **Illinois**

Illinois Attorney General  
500 South Second Street  
Springfield, IL 62706

### **Indiana**

Secretary of State  
Administrative Offices of the  
Secretary of State  
201 State House  
Indianapolis, IN 46204

### **Maryland**

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, Maryland 21202-2020

### **Michigan**

Michigan Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Bldg., 1<sup>st</sup> Floor  
Lansing, Michigan 48913

### **Minnesota**

Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
Saint Paul, Minnesota 55101

### **New York**

Secretary of State  
99 Washington Avenue  
Albany, New York 12231

### **North Dakota**

North Dakota Securities Commissioner  
600 East Boulevard Avenue, Fifth Floor  
Bismarck, North Dakota 58505

### **Texas**

Craig Penfold  
D-BAT Academies, Inc.  
5950 Sherry Lane, Suite 220  
Dallas, Texas 75225

### **Virginia**

Clerk of the State Corporation Commission  
1300 East Main Street  
9th Floor  
Richmond, VA 23219

### **Washington**

Director of Department of Financial Institutions  
Securities Division - 3rd Floor  
150 Israel Road, S.W.  
Tumwater, Washington 98501  
(360) 902-8760

**EXHIBIT D**  
**FRANCHISE AGREEMENT**



**D-BAT ACADEMIES, INC.  
FRANCHISE AGREEMENT**



**SUMMARY PAGES**

**EFFECTIVE DATE:** \_\_\_\_\_

**OPENING DATE:** \_\_\_\_\_

**EXPIRATION DATE:** Midnight on the earlier of: (i) the 10<sup>th</sup> anniversary of the Opening Date and (ii) the 11<sup>th</sup> anniversary of the Effective Date.

**FRANCHISEE(S):** \_\_\_\_\_

**ADDRESS OF FRANCHISEE(S):** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**FACSIMILE NUMBER:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

**OPERATING PRINCIPAL:** \_\_\_\_\_

**SITE SELECTION AREA:** \_\_\_\_\_

\_\_\_\_\_

**APPROVED LOCATION:** \_\_\_\_\_

**TERRITORY:** \_\_\_\_\_

**INITIAL FRANCHISE FEE:**  \$45,000; or

\$42,500 Military Discount for First Facility; or

Not Applicable as Transfer Fee Applies

**INITIAL TERM EXTENSION FEE:**  The Effective Date and Expiration Date of this Agreement reflect an additional \_\_\_\_ years added to this Agreement at Franchisee’s election, in exchange for an Initial Term Extension Fee of \$\_\_\_\_\_ (calculated as \$4,500 per year added).

**INITIAL SOFTWARE LICENSE FEE:** \$2,500

**CONTINUING SOFTWARE LICENS FEE:** Currently, \$354 per month

**CONSTRUCTION MANAGEMENT AND ON-SITE TRAINING FEE:** \$6,000

**MANAGEMENT FEE:** 40% of monthly Membership Fees or 8% of Gross Revenue, as determined in our sole discretion

**ADVERTISING AND PROMOTION CONTRIBUTION:** 2.5% of monthly Membership Fees

**MINIMUM LOCAL ADVERTISING EXPENDITURE:** 2.5% of quarterly Membership Fees

**RENEWAL FEE:** \$7,500

\_\_\_\_\_  
D-BAT Initials

\_\_\_\_\_  
Franchisee Initials

**TRANSFER FEE:**

\$3,000 (Convenience of Ownership, refer to Section 17.B(1)),

\$5,000, plus reimbursements of D-BAT's costs in facilitating the transfer (including reasonable attorneys' fees) (Non-controlling Interest, refer to Section 17.B(2)),

\$15,000, plus reimbursements of D-BAT's costs in facilitating the transfer (including reasonable attorneys' fees) (Transfer of Agreement, and/or Controlling Interest, refer to Section 17.B(3))

**D-BAT ACADEMIES, INC.  
COMPANY ADDRESS FOR NOTICE  
PURPOSES:**

2101 Midway Road, Suite 300  
Carrollton, Texas 75006  
Facsimile: 972-398-1001  
Attention: Chief Executive Officer

\_\_\_\_\_  
D-BAT Initials

\_\_\_\_\_  
Franchisee Initials

## TABLE OF CONTENTS

1.	GRANT OF FRANCHISE, TERRITORIAL PROTECTION.....	1
	A. <u>Grant</u> .....	1
	B. <u>Territory</u> .....	2
2.	TERM AND RENEWAL .....	2
	A. <u>Initial Term</u> .....	2
	B. <u>Renewal Term</u> .....	2
3.	DEVELOPMENT PROCEDURES .....	3
	A. <u>Site Selection</u> .....	3
	B. <u>Franchise Site Application</u> .....	3
	C. <u>Lease Terms</u> .....	4
	D. <u>Relocation</u> .....	5
4.	FACILITY DRAWINGS, CONSTRUCTION AND RENOVATION .....	5
	A. <u>Specifications and Drawings</u> .....	5
	B. <u>Commencement and Completion of Construction and Build Out</u> .....	5
	C. <u>Acquisition of Necessary Furnishings, Fixtures, Supplies and Equipment</u> .....	6
	D. <u>Inspection, Cooperation</u> .....	6
	E. <u>Final Inspection and Opening Date</u> .....	6
5.	FACILITY OPENING .....	7
6.	FEES .....	7
	A. <u>Initial Franchise Fee</u> .....	7
	B. <u>Initial Software License Fee; Continuing Software License Fee</u> .....	7
	C. <u>Construction Management and On-Site Training Fee</u> .....	8
	D. <u>Management Fee</u> .....	8
	E. <u>Advertising Fees</u> .....	8
	F. <u>Appointment of D-BAT as Agent for Collection; Payment of Fees</u> .....	8
	G. <u>Interest</u> .....	9
	H. <u>Partial Payments</u> .....	9
	I. <u>Collection Costs and Expenses</u> .....	9
7.	RECORDKEEPING AND REPORTS .....	9
	A. <u>Recordkeeping</u> .....	9
	B. <u>Periodic Reports</u> .....	10
	C. <u>Annual Reports</u> .....	10
	D. <u>Other Reports</u> .....	10
	E. <u>Audit Rights</u> .....	10
8.	TRAINING, CERTIFICATION, AND ASSISTANCE .....	10
	A. <u>Initial Training Program</u> .....	10
	B. <u>Pre-Opening Assistance</u> .....	11
	C. <u>Ongoing Assistance</u> .....	11
	E. <u>General Manager and Assistant Manager</u> .....	11
9.	MANUAL .....	12
10.	MODIFICATIONS OF THE SYSTEM .....	12
11.	PERFORMANCE REQUIREMENTS .....	13
	A. <u>Operating Principals</u> .....	13
	B. <u>Membership Program</u> .....	13
	C. <u>Standards, Specifications and Procedures</u> .....	14
	D. <u>Approved Products, Distributors and Suppliers</u> .....	14
	E. <u>Authorized Products and Services</u> .....	15
	F. <u>Computer Systems and Intranet/Extranet Systems</u> .....	15
	G. <u>Non-Cash Payment Systems; Data Security and PCI Compliance</u> .....	16
	H. <u>Loyalty Programs, Prize Promotions; Promotional Literature and Pricing</u> .....	16
	I. <u>D-BAT Inspections</u> .....	17

J.	<u>Upkeep of the Facility; Modifications and Upgrades</u> .....	17
K.	<u>Facility Operations</u> .....	18
L.	<u>Management and Personnel</u> .....	18
M.	<u>Signs and Logos</u> .....	18
N.	<u>Entertainment Equipment</u> .....	18
O.	<u>Compliance with Laws and Good Business Practices</u> .....	18
P.	<u>Payment of Taxes and Other Indebtedness</u> .....	19
12.	ORGANIZATION OF THE FRANCHISEE.....	19
A.	<u>Representations</u> .....	19
B.	<u>Governing Documents</u> .....	19
C.	<u>Ownership Interests</u> .....	19
D.	<u>Restrictive Legend</u> .....	20
E.	<u>Guarantees</u> .....	20
13.	MARKS AND COPYRIGHTED WORKS.....	20
A.	<u>Acknowledgments</u> .....	20
B.	<u>Modification of the Marks and Copyrighted Works</u> .....	20
C.	<u>Use of the Marks and Copyrighted Works</u> .....	21
D.	<u>Assignment of Copyrighted Works</u> .....	21
E.	<u>Infringement; Notice of Claims</u> .....	21
F.	<u>Remedies and Enforcement</u> .....	22
14.	CONFIDENTIALITY OBLIGATIONS AND RESTRICTIVE COVENANTS.....	22
A.	<u>Confidential Information</u> .....	22
B.	<u>Covenants of the Franchisee</u> .....	22
C.	<u>Covenants of the Franchisee’s Principals</u> .....	22
D.	<u>Reformation and Reduction of Scope of Covenants</u> .....	23
E.	<u>Acknowledgments</u> .....	23
F.	<u>No Undue Hardship</u> .....	23
G.	<u>Injunctive Relief</u> .....	23
15.	ADVERTISING.....	23
A.	<u>General Requirements</u> .....	23
D.	<u>Local Advertising Expenditure</u> .....	25
E.	<u>Advertising Cooperatives</u> .....	25
F.	<u>Restriction Against Internet Advertising</u> .....	25
G.	<u>Team Restrictions</u> .....	25
16.	INSURANCE.....	25
A.	<u>Obligation to Maintain Insurance</u> .....	25
B.	<u>Minimum Insurance Coverage</u> .....	26
C.	<u>Insurance Policy Requirements</u> .....	26
D.	<u>Delivery of Certificate</u> .....	27
E.	<u>Minimum Insurance Requirements Not a Representation of Adequacy</u> .....	27
F.	<u>D-BAT’s Right to Procure Insurance</u> .....	27
17.	TRANSFER.....	27
A.	<u>Transfer by D-BAT</u> .....	27
B.	<u>Transfer by Franchisee</u> .....	27
C.	<u>Security Interest</u> .....	29
D.	<u>Public and Private Offerings</u> .....	29
E.	<u>Right of First Refusal</u> .....	29
F.	<u>Transfer Upon Death or Mental Incapacity</u> .....	30
G.	<u>Non-Waiver of Claims</u> .....	30
H.	<u>Step-In Rights</u> .....	30
18.	DEFAULT AND TERMINATION.....	30
A.	<u>Automatic Termination</u> .....	30
B.	<u>Termination without Opportunity to Cure</u> .....	30
C.	<u>Termination with Opportunity to Cure</u> .....	31

	D. <u>Other Remedies</u> .....	31
19.	OBLIGATIONS UPON EXPIRATION OR TERMINATION.....	32
	A. <u>Expiration or Termination of Franchise</u> .....	32
	B. <u>D-BAT’s Option to Assume Lease and Purchase Assets</u> .....	32
	C. <u>Compliance with Post Term Obligations</u> .....	33
20.	INDEPENDENT CONTRACTOR AND INDEMNIFICATION .....	33
	A. <u>Independent Contractor</u> .....	33
	B. <u>Indemnification</u> .....	33
21.	NOTICES.....	34
22.	SEVERABILITY AND CONSTRUCTION .....	34
	A. <u>Entire Agreement</u> .....	34
	B. <u>Modification</u> .....	34
	C. <u>Written Consent</u> .....	34
	D. <u>No Waiver</u> .....	34
	E. <u>Severability</u> .....	34
	F. <u>Captions and Headings; References to Gender; Counterparts</u> .....	35
	G. <u>Persons Bound</u> .....	35
	H. <u>Electronic Signature</u> .....	35
23.	GOVERNING LAW AND FORUM SELECTION .....	35
	A. <u>Governing Law</u> .....	35
	B. <u>Mediation</u> .....	35
	C. <u>Jurisdiction and Venue</u> .....	36
	D. <u>Remedy</u> .....	36
	E. <u>Waiver of Jury Trial</u> .....	36
	F. <u>Contractual Limitations Period</u> .....	36
	G. <u>Waiver of Punitive Damages</u> .....	36
24.	ACKNOWLEDGMENTS .....	37
	A. <u>Receipt of Franchise Disclosure Document</u> .....	37
	B. <u>Receipt of Agreement</u> .....	37
	C. <u>Independent Investigation</u> .....	37
	D. <u>No Representations; No Reliance</u> .....	37

## STATE SPECIFIC AMENDMENTS

Attachment A	Glossary of Additional Terms
Attachment B	Statement of Ownership Interests
Attachment C	Guaranty and Personal Undertaking
Attachment D	Confidentiality and Nondisclosure Agreement
Attachment E	Electronic Debit and Credit Authorization
Attachment F	Telephone Number Assignment Agreement
Attachment G	Renewal Addendum
Attachment H	Release Amendment to Subsequent Franchise Agreement

**D-BAT ACADEMIES, INC.  
FRANCHISE AGREEMENT**

**THIS AGREEMENT** is made and entered into on the Effective Date, by and between D-BAT Academies, Inc. (“**D-BAT**” or “**Franchisor**”) and the franchisee identified on the Summary Pages to this Agreement (referred to in this Agreement as “**you**”).

**BACKGROUND**

- A. D-BAT has acquired a license to use and to sublicense the use of a proprietary business format and system (“**System**”) for operating a baseball and softball training academy and retail pro shop (“**Facility**”).
- B. The System includes a distinctive interior and exterior design, décor, color scheme, graphics, fixtures and furnishings, a proprietary membership program designed to encourage customer loyalty through the offer of price discounts and other unique benefits to D-BAT<sup>®</sup> Facility members (“**Membership Program**”), the offer and sale of proprietary merchandise (e.g., baseball and softball bats, gloves, balls, uniforms, apparel, footwear and other inventory items) bearing the Marks (“**Proprietary Products**”), baseball and softball instruction standards and techniques; operation, and customer service standards and procedures, advertising and marketing specifications and requirements, and other standards, specifications, techniques, and procedures designated for developing, operating, and managing a Facility, all of which may be changed, improved and/or further developed (collectively, the “**Standards**”).
- C. The System is identified by a distinctive trade dress, the trade name, and service mark D-BAT<sup>®</sup> and logo, and other trademarks, service marks, logos, tag lines, slogans, and other indicia of origin that D-BAT designates to identify facilities operating under the System (collectively, the “**Marks**”).
- D. You have applied for the right to operate a Facility using the System and Marks (the “**Franchised Business**”), and D-BAT has approved your application in reliance on the representations contained therein, including those concerning your financial resources, your business experience and interests, and the manner in which the Facility will be owned and operated.

**AGREEMENT**

In consideration of the mutual premises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. GRANT OF FRANCHISE, TERRITORIAL PROTECTION**

A. Grant.

Subject to the provisions of this Agreement, D-BAT hereby grants you the nonexclusive right (“**Franchise**”) to continuously operate a D-BAT<sup>®</sup> Facility at the Approved Location identified (or to be identified in accordance with Section 3.A.) in the Summary Pages and to use the Marks in the operation and promotion of the Franchised Business. You hereby undertake the obligation and agree to operate the Franchised Business strictly according to the terms and conditions of this Agreement.

This Agreement grants you the right and license to use the Marks and System, and to advertise and promote the Facility, only within the Territory described in Section 1.B., below. Consistent with this license, you may advertise the Facility only within the Territory or in publications with a circulation base that includes all or a part of the Territory. You may not directly solicit business outside the Territory, without D-BAT’s prior written permission. For purposes of this Section 1.A., “directly solicit” includes, without limitation, making sales calls to schools outside the Territory, sponsoring or participating as a vendor in tournaments at any location outside the Territory, and establishing wall signage and displays at schools or other locations outside your Territory.

This Agreement does not grant you the right to use or permit the use of the D-BAT® name or any other Marks in connection with any team. You may neither establish a “D-BAT® team” or any other team identified by the Marks or associated with the Franchised Business, nor permit any team to use or display the D-BAT® name or any other Mark without D-BAT’s prior written consent, which D-BAT may grant or withhold in its sole discretion.

B. Territory.

During the initial term and all renewal terms, and provided that you are in full compliance with this Agreement and all other agreements between you and D-BAT, D-BAT shall neither operate nor grant others the right to operate another Facility in the Territory. D-BAT retains for itself all other rights including, without limitation, the right to engage in the following activities regardless of the economic effect or adverse impact that the activity may have on the Franchised Business: (1) the right to engage and grant others the right to engage in any type of business outside the Territory; and (2) the right to offer and sell Proprietary Products anywhere inside or outside the Territory through any channel of distribution other than D-BAT® Facilities, including through department stores, retail stores, and via the Internet; and (3) the right to offer, grant, and support franchises in similar and different lines of business under any proprietary marks other than the Marks.

## 2. TERM AND RENEWAL

A. Initial Term.

The initial term of this Agreement (“**Initial Term**”) shall begin on the Effective Date and shall expire on the Expiration Date, unless this Agreement is terminated at an earlier date pursuant to Section 18.

B. Renewal Term.

At the expiration of the Initial Term, you will have an option to remain a franchisee at the Approved Location for two additional five-year renewal terms. You must give D-BAT written notice of whether or not you intend to exercise your renewal option no less than eight months, nor more than 12 months, before expiration of the then-current term. Failure to timely provide the required written notice constitutes a waiver of your option to remain a franchisee beyond the expiration of the then-current term.

If you desire to exercise your renewal options, described above, you must comply with all of the following conditions prior to and at the end of the then-current term:

(1) You may not be in default under this Agreement or any other agreement between you and D-BAT or its Affiliates; you may not be in default beyond the applicable cure period of any real estate lease, equipment lease, or financing instrument relating to the Franchised Business or Facility; you may not be in default beyond the applicable cure period with any vendor or supplier to the Franchised Business or Facility; and, for the 12 months before the date of your notice and the 12 months before the expiration of the then-current term, you may not have been in default beyond the applicable cure period under this Agreement or any other agreements between you and D-BAT or its Affiliates.

(2) You must renovate and upgrade the Facility premises and all fixtures, furniture, equipment, signage, and graphics, at your expense, to reflect the then-current image of a D-BAT® Facility, which renovations may include structural changes, remodeling, redecoration, and modifications to existing improvements.

(3) Your Principals, including the Designated Principal, your General Manager, and your Assistant Manager must each be in compliance with D-BAT’s then-current training requirements.

(4) You must have the right to remain in possession of the Facility premises, or have secured other premises acceptable to D-BAT, for the renewal term, and all monetary obligations owed to your landlord, if any, must be current.

(5) You, and all individuals who have executed this Agreement and all guarantors of your obligations under this Agreement shall have executed a general release and a covenant not to sue, in a form satisfactory to D-BAT, of any and all claims against D-BAT and its Affiliates and their respective past and present officers, directors, shareholder, agents, and employees, in their corporate and individual capacity, including, without limitation, claims arising under federal, state, and local laws, rules, and ordinances, and claims arising out of, or relating to, this Agreement, any other agreements between you and D-BAT or its Affiliates, your operation of the Franchised Business and Facility, and the offer and grant of the D-BAT® franchise opportunity; provided, however, that any release will not be inconsistent with any state statute regulating franchising.

(6) As determined by D-BAT in its sole discretion, you have operated the Franchised Business and the Facility in accordance with this Agreement and with the System (as set forth in the Manual or otherwise and as revised from time to time by D-BAT) and that you have operated any other D-BAT® Facility franchises in which you have an interest in accordance with the applicable franchise agreement and with the System.

Once D-BAT has received written notice of your desire to renew, D-BAT shall advise you whether or not you are entitled to remain a franchisee for the renewal term. If D-BAT intends to permit you to remain a franchisee for the renewal term, D-BAT's notice will contain preliminary information regarding the required renovations and modernizations described in subsection (2), above. If D-BAT chooses not to permit you to remain a franchisee for the renewal term, it shall have the right to unilaterally extend the then-current term of this Agreement as necessary to comply with applicable laws.

If you will remain a franchisee for the renewal term, D-BAT will deliver to you for execution a new franchise agreement. The form of the renewal franchise agreement shall be the form then in general use by D-BAT for new Facilities (or, if D-BAT is not then granting franchises for Facilities, that form of agreement as specified by D-BAT) and likely will differ from this Agreement and may reflect, among other things, different management fees and advertising obligations.

You must execute the franchise agreement for the renewal term and return the signed agreement to D-BAT, along with the Renewal Fee in the amount reflected in the Summary Pages, prior to expiration of the then-current term. Failure to sign the franchise agreement and to return it to D-BAT (along with payment of the Renewal Fee) within this time shall be deemed your election not to renew the franchise and shall result in termination of this Agreement and the franchise granted by this Agreement at the expiration of the then-current term. Provided you have timely complied with all of the conditions set forth in this Section 2.B., D-BAT shall execute the renewal franchise agreement and promptly return a fully executed copy to you.

### **3. DEVELOPMENT PROCEDURES**

#### **A. Site Selection.**

You must identify and acquire a site for the Facility within 180 days after the Effective Date of this Agreement. The site must be located within the Site Selection Area identified in the Summary Pages, must meet D-BAT Standards for Facility size and location, and must otherwise be mutually acceptable to you and to D-BAT. Once a site is identified, the parties will mutually agree on an opening date (“**Opening Date**”), which will be no later than 180 days from the date you take possession of the site, and the Summary Pages will be amended to reflect the Opening Date.

#### **B. Franchise Site Application.**

For each proposed site that you identify, you must submit to D-BAT a Franchise Site Application including such information about the site as D-BAT may reasonably request to perform its evaluation. This information may include, among other things, a description of the proposed site, demographic characteristics, traffic patterns, parking, character of the neighborhood, competition from other businesses



in the area, the proximity to other businesses, the nature of other businesses in proximity to the site and other commercial characteristics (including the purchase price, rental obligations, and other lease terms for the proposed site) and the size, appearance, other physical characteristics, and a site plan of the premises. D-BAT will approve or refuse to approve a proposed site within 30 days after the receipt of these documents and any additional information as D-BAT may reasonably require. D-BAT's failure to provide notification within this time period shall not be considered either approval or disapproval.

**The parties acknowledge and agree that D-BAT's site approval is not an assurance that the Facility will achieve a certain sales volume or level of profitability; it means only that the proposed site meets D-BAT's minimum criteria for Facilities. D-BAT assumes no liability or responsibility for: (1) evaluation of the Facility location's soil for hazardous substances; (2) inspection of any structure on the Facility location for asbestos or other toxic or hazardous materials; (3) compliance with the Americans With Disabilities Act ("ADA"); or (4) compliance with any other applicable law. It is your sole responsibility to obtain satisfactory evidence and/or assurances that the Facility location (and any structures thereon) is free from environmental contamination and is in compliance with the requirements of the ADA and other applicable laws.**

C. Lease Terms.

If you propose to lease or sublease the Facility location pursuant to a lease, the lease or sublease may not prevent you from performing your obligations under the Franchise Agreement. Unless waived in writing by D-BAT, any lease, sublease, letter of intent, or lease memorandum for the Facility location shall contain provisions that satisfy the following requirements during the entire term of the lease, including any renewal terms:

(1) The landlord consents to your use of the proprietary signs, distinctive exterior and interior designs, and layouts, the Marks prescribed by D-BAT, and upon termination or the earlier expiration of the lease, consents to permit you, at your expense, to remove all such items and other trade fixtures, so long as you make repairs to the building caused by such removal.

(2) The landlord agrees to provide D-BAT (at the same time sent to you) a copy of all amendments and assignments and notices of default pertaining to the lease and the leased premises.

(3) D-BAT shall have the right to enter the leased premises to make any modifications or alterations necessary to protect the System and the Marks and to cure, within the time periods provided by the lease, any default under the lease, all without being guilty of trespass or other tort and to charge you for these costs.

(4) The landlord agrees that you shall be solely responsible for all obligations, debts, and payments under the lease.

(5) The landlord agrees that, following the termination or earlier expiration of this Agreement, you shall have the right to make those alterations and modifications to the premises as may be necessary to clearly distinguish to the public the premises from a D-BAT<sup>®</sup> Facility and also make those specific additional changes as D-BAT reasonably may request for that purpose. The landlord also agrees that, if you fail to promptly make these alterations and modifications, D-BAT shall have the right to do so without being guilty of trespass or other tort so long as D-BAT makes repairs to the building caused by such removal.

(6) The landlord agrees not to amend or otherwise modify the lease in any manner that would affect any of the foregoing requirements without D-BAT's prior written consent, which consent shall not be unreasonably withheld.

(7) You may assign the lease to D-BAT or its designee with the landlord's consent (which consent will not unreasonably be withheld) and without payment of any assignment fee or similar charge or increase in any rentals payable to the landlord.

(8) The landlord agrees to consent to your collaterally assigning the lease to D-BAT or its designee, granting D-BAT the option, but not the obligation, to assume the lease from the date D-BAT takes possession of the leased premises, without payment of any assignment fee or similar charge or increase in any rentals payable to the landlord.

You must submit a copy of the proposed lease to D-BAT before signing it, and D-BAT will approve or refuse to approve the lease within 14 days after receiving it. D-BAT's failure to provide notification within this time period shall not be considered either approval or disapproval. You must provide to D-BAT a copy of the fully executed lease and all lease riders and addenda within five business days after the lease is signed by all parties.

**The parties acknowledge and agree that D-BAT's approval of a lease does not mean that the economic terms of the lease are favorable; it means only that the lease contains the lease terms that D-BAT requires.**

D. Relocation.

You may relocate the Facility within the Territory, only with D-BAT's prior written consent. D-BAT will grant its consent if your lease expires or terminates through no fault of yours, or if the Facility premises is destroyed or materially damaged by fire, flood, or other natural catastrophe (an "**Innocent Loss or Casualty**") and you are not in default of this Agreement or any other agreement between you and D-BAT. Selection of the relocation site and Facility construction, renovation, and opening shall be governed by Sections 3, 4, and 5 of this Agreement; provided that if the relocation occurred as a result of the loss of an Innocent Loss or Casualty, the Facility must be open for business at the new location within 180 days of closing at the previous location and if the relocation occurred for any other reason, the Facility must be open for business at the new location within five days of closing at the previous location. You are solely responsible for all relocation costs and expenses.

#### 4. FACILITY DRAWINGS, CONSTRUCTION AND RENOVATION

A. Specifications and Drawings.

You assume all cost, liability, and expense for developing, constructing and equipping the Facility. D-BAT will assist you in developing a space plan for your Facility, and provide specifications relating to dimensions, design, image, interior layout, décor, fixtures, equipment, signs, furnishings, storefront, signage, graphics, and color schemes. It is your responsibility to have prepared all required construction plans and specifications to suit the shape and dimensions of the Facility and you must ensure that these plans and specifications comply with applicable ordinances, building codes, and permit requirements and with lease requirements and restrictions. You shall use only registered architects, registered engineers, and professional and licensed contractors.

You shall submit proposed construction plans, specifications, and drawings for the Facility ("**Plans**") to D-BAT and shall, upon D-BAT's request, submit all revised or "as built" Plans during the course of such construction. D-BAT will approve or refuse to approve the Plans and notify you within 30 days after D-BAT receives the Plans. Once D-BAT has approved the Plans, no substantial change shall be made to the Plans without D-BAT's prior written approval, which shall not unreasonably be withheld. D-BAT shall approve or disapprove Plan changes within 10 business days after receipt.

You may not begin site preparation or construction before D-BAT has approved the Plans. All construction must be in accordance with Plans approved by D-BAT and must comply in all respects with the Standards and with applicable laws, ordinances, and local rules and regulations.

B. Commencement and Completion of Construction and Build Out.

Construction shall be performed or supervised by a general contractor or construction manager of your choice, subject to the requirements of 4.A., above. Once construction has commenced, it shall continue uninterrupted (except for interruption by reason of events constituting Force Majeure until completed.

**Force Majeure** means any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, fire or other catastrophe, act of any government, or other third party, and any other cause not within the control of the party affected thereby.) If events constituting Force Majeure cause a delay in the commencement of the construction or build out of the Facility, D-BAT shall proportionately extend the Opening Date for the Facility. Notwithstanding the occurrence of any events, except events constituting Force Majeure, construction shall be completed and the Facility shall be furnished, equipped, and shall otherwise be ready to open for business in accordance with this Agreement no later than the Opening Date specified in the Summary Pages (“**Opening Date**”).

You agree, at your sole expense, to do or cause to be done the following, by the Opening Date:

- (1) Obtain and maintain all required building, utility, sign, health, sanitation, business, and other permits and licenses applicable to the Franchised Business.
- (2) Make all required improvements to the Facility location and decorate the exterior and interior of the Facility in compliance with the Plans approved by D-BAT.
- (3) Purchase or lease and install all specified and required fixtures, equipment, furnishings, and interior and exterior signs required for the Facility.
- (4) Purchase an opening inventory for the Facility and initial supplies of authorized and approved products, of the type and mix that D-BAT specifies (including Proprietary Products), and other materials and supplies as D-BAT designates.

C. Acquisition of Necessary Furnishings, Fixtures, Supplies and Equipment.

You agree to use in the development and operation of the Facility only the fixtures, furnishings, equipment, supplies, and signs that D-BAT has approved for D-BAT Facilities as meeting its specifications and Standards for quality, design, appearance, function, and performance. You further agree to place or display at the Facility location (interior and exterior) only those signs, emblems, lettering, logos, and display materials that D-BAT approved in writing from time to time.

You shall purchase or lease approved brands, types, or models of fixtures, furnishings, equipment, supplies, and signs only from suppliers designated or approved by D-BAT, which may include D-BAT. If you propose to purchase, lease or otherwise use any fixtures, furnishings, equipment, supplies, or signs which have not been approved by D-BAT, you shall first notify D-BAT in writing and shall, at your sole expense, submit to D-BAT upon its request sufficient specifications, photographs, drawings, and/or other information or samples for a determination as to whether those fixtures, furnishings, equipment, supplies, and/or signs comply with D-BAT specifications and Standards. D-BAT will, in its sole discretion, approve or disapprove the items and notify you within 30 days after D-BAT receives the request.

D. Inspection, Cooperation.

During the course of construction and/or renovation, you shall (and shall cause your architect, engineer, contractors, and subcontractors to) cooperate fully with D-BAT and its designees for the purpose of permitting D-BAT and its designees to inspect the Facility location and the course of construction or renovation in order to determine whether construction or renovation is proceeding according to the Plans.

E. Final Inspection and Opening Date.

You shall notify D-BAT in writing at least 10 days prior to the date you expect construction and/or renovation to be completed and a certificate of occupancy to be issued. If requested by D-BAT, you shall submit a copy of the certificate of occupancy to D-BAT. D-BAT reserves the right, after receiving your notice, to conduct a final inspection of the Facility and its premises to determine your compliance with this Agreement. You shall open the Facility for business no later than the Opening Date, but you may not open unless you have satisfied the conditions set forth in Section 5, below.

## 5. FACILITY OPENING

D-BAT will not authorize the opening of the Facility unless all of the following conditions have been met:

(1) You are not in material default under this Agreement or any other agreements with D-BAT; you are not in default beyond the applicable cure period under any real estate lease, equipment lease, or financing instrument relating to the Facility; and you are not in default beyond the applicable cure period with any vendor or supplier of the Facility.

(2) You are current on all obligations due D-BAT.

(3) D-BAT is satisfied that the Facility was constructed and/or renovated substantially in accordance with the Plans approved by D-BAT and applicable federal, state, and local laws, regulations and codes.

(4) If the Facility location is leased, D-BAT has received a copy of the fully executed lease.

(5) You have obtained a certificate of occupancy and any other required health, safety, or fire department certificates.

(6) You have certified to D-BAT in writing that the installation of all items of furnishings, fixtures, equipment, signs, computer terminals, and related equipment, supplies, and other items has been completed.

(7) Your Designated Principal, General Manager, and Assistant Manager has attended and successfully completed D-BAT's initial training program and all required training programs.

(8) D-BAT has determined that the Facility has been constructed and/or renovated and equipped substantially in accordance with the requirements of this Agreement, and you have hired and trained personnel in accordance with the requirements of this Agreement.

(9) D-BAT has been furnished copies of all insurance policies required by Section 16, and all such insurance is in full force and effect.

## 6. FEES

### A. Initial Franchise Fee; Initial Term Extension Fee.

When you sign this Agreement, you must pay to D-BAT the Initial Franchise Fee in the amount specified in the Summary Pages. You acknowledge and agree that the Initial Franchise Fee is fully earned by D-BAT when paid and is not refundable.

If you are entering into this Agreement in order to memorialize the purchase of franchise rights from a System franchisee, and you have elected to add one or more years to the rights purchased, up to a maximum Initial Term of 10 years, you must pay to D-BAT the Initial Term Extension Fee in the amount specified on the Summary Pages on your execution of this Agreement. You acknowledge that the Initial Term Extension Fee is fully earned by D-BAT when paid and is not refundable.

### B. Initial Software License Fee; Continuing Software License Fee.

At least 45 days before your Opening Date, you must pay to D-BAT the Initial Software License Fee in the amount specified in the Summary Pages. The Initial Software License Fee is for the setup of D-BAT's specially designed software. Once you begin operations, you are required to pay to D-BAT its then-current software license fee as frequently and by such payment method as D-BAT designates. If your first month of operation is a partial month, it is nonetheless accounted for as your first month of use of D-BAT's specially designed software. D-BAT reserves the right to periodically increase the continuing software license fee on notice to you. The Initial Software License Fee is fully earned when paid and is not refundable.

C. Construction Management and On-Site Training Fee.

At least 45 days before your Opening Date, you must pay to D-BAT the Construction Management and On-Site Training Fee in the amount specified in the Summary Pages. The Construction Management and On-Site Training Fee is for the assistance we render to you throughout your D-BAT Facility's construction process as well as the on-site training provided, typically around your Opening Date, is fully earned when paid, and is not refundable.

D. Management Fee.

In addition to all other amounts to be paid to D-BAT, you shall pay D-BAT a nonrefundable and continuing Management Fee in the amount specified in the Summary Pages for the right to use the System and the Marks as provided by this Agreement. D-BAT reserves the right to impose either formula for the calculation of the Membership Fees as specified in the Summary Pages. The Management Fee calculation imposed may be imposed only on you, a certain number of franchisees, the System as a whole, or on any basis that we determine, which may be for any or no reason, in our sole discretion.

If any taxes, fees, or assessments are imposed on such payments by reason of D-BAT's acting as franchisor or licensing the Marks under this Agreement, you shall reimburse D-BAT the amount of the taxes, fees, or assessments within 30 days after receipt of an invoice from D-BAT.

E. Advertising Fees.

You also shall spend minimum amounts for local advertising and shall contribute to D-BAT's Advertising and Promotion Fund, as described in Section 15 of this Agreement.

F. Appointment of D-BAT as Agent for Collection; Payment of Fees.

As described in Section 11.B., D-BAT has developed a Membership Program, pursuant to which customers pay a monthly fee ("**Membership Fee**") in consideration for the right to receive discounts and other customer loyalty rewards according to the programs developed by D-BAT from time to time. As further described in Section 11.B., you will offer for sale membership in such membership programs, as they exist from time to time. You appoint D-BAT or its designated service provider to serve as your agent for collection of Membership Fees, and all membership documentation will instruct customers to direct Membership Fee payments to D-BAT or its designated service provider, or authorize D-BAT or its designated service provider to accept appropriate credit card payments, bank drafts, or other similar forms of payment. You agree to bear all costs and fees associated with such payment methods, such as credit card processing fees, and D-BAT will deduct such associated costs and fees from collections. D-BAT or its designated service provider shall collect all Membership Fees and, on a monthly basis, deduct from collections of your payment of Management Fees (described in Section 6.D., above) and Advertising and Promotion Fund contributions (described in Section 15.C., below) and remit to you the balance. D-BAT also has the right to deduct from collections any other amounts that you owe pursuant to this Agreement or that you have failed to pay when due, including interest charges.

At D-BAT's request, you must participate in D-BAT's then-current electronic funds transfer program authorizing D-BAT to utilize a pre-authorized bank draft system. In connection with any payment by electronic funds transfer, you shall: **(1)** comply with procedures specified by D-BAT in the Manual or otherwise in writing; **(2)** perform those acts and sign and deliver those documents as may be necessary to accomplish payment by electronic funds transfer as described in this Section 6.F. (see Attachment E to this Agreement); **(3)** give D-BAT an authorization in the form designated by D-BAT to initiate debit entries and/or credit entries to the account for payments of the Management Fee and other amounts payable under this Agreement, including any interest charges; and **(4)** make sufficient funds available in the account for withdrawal by electronic funds transfer no later than the due date for payment thereof.

You shall not be entitled to set off, deduct or otherwise withhold any Management Fees, Advertising and Promotion Fund contributions, interest charges, or other monies payable to D-BAT under

this Agreement on grounds of any alleged nonperformance by D-BAT of any of its obligations or for any other reason.

You agree to dispute any amounts you owe to D-BAT or its Affiliates, whether under this Agreement or otherwise, within six months of the date that such amount came due (regardless of whether such amount is, was, or was not paid). If you fail to dispute, in writing, any amounts owed within the requisite six month period, you hereby waive the right to dispute the same at a later date, and all such amounts will be seen accepted by you, indisputably deemed as correct, and due and payable by you per the applicable payment terms.

G. Interest.

Any payments not received by D-BAT by the due date will accrue interest at the rate of 18% per annum or the highest lawful interest rate permitted by the jurisdiction in which the Facility operates whichever is less.

H. Partial Payments.

No payment by you or acceptance by D-BAT of any monies under this Agreement for a lesser amount than due shall be treated as anything other than a partial payment on account. Your payments of a lesser amount than due with an endorsement, statement, or accompanying letter to the effect that payment of the lesser amount constitutes full payment shall be given no effect and D-BAT may accept the partial payments without prejudice to any rights or remedies it may have against you. Acceptance of payments by D-BAT other than as set forth in this Agreement or a waiver by D-BAT of any other remedies or rights available to it pursuant to this Agreement shall not constitute a waiver of D-BAT's right to demand payment in accordance with the requirements of this Agreement or a waiver by D-BAT of any other remedies or rights available to it pursuant to this Agreement or under applicable law. Notwithstanding any designation by you, D-BAT shall have the right, in its sole discretion, to apply your payments to any amounts due D-BAT or its Affiliates including, without limitations, past due contributions, to the Advertising and Promotion Fund, past due balances for purchases from D-BAT or its Affiliates, interest or any other indebtedness. D-BAT has the right to accept payment from any other entity as payment by you. Acceptance of that payment by D-BAT will not result in that other entity being substituted as franchisee under this Agreement.

I. Collection Costs and Expenses.

You agree to pay D-BAT on demand any and all costs and expenses incurred by D-BAT in enforcing the terms of this Agreement including, without limitation, collecting any monies that you owe to D-BAT. These costs and expenses include, without limitation, costs, commissions due a collection agency, reasonable attorneys' fees and costs incurred in creating or replicating reports demonstrating Membership Fees for the Facility, court costs, expert witness fees, discovery costs, and reasonable attorneys' fees and costs on appeal, together with interest charges on all of the foregoing.

## **7. RECORDKEEPING AND REPORTS**

A. Recordkeeping.

You agree to use computerized cash and data capture and retrieval systems that meet D-BAT's specifications and to record Facility sales electronically or on tape for all sales at or from the Facility premises. You shall keep and maintain, in accordance with any procedures set forth in the Manual, complete and accurate books and records pertaining to the Franchised Business sufficient to fully report to D-BAT. Your books and records shall be kept and maintained using charts of account meeting D-BAT's standards and specifications and generally accepted accounting principles ("GAAP"). You shall preserve all of your books, records, and state and federal tax returns for at least five years after the later of preparation or filing (or such longer period as may be required by any governmental entity) and make them available and provide duplicate copies to D-BAT within five days after D-BAT's written request.

B. Periodic Reports.

You shall, at your expense, submit to D-BAT, in the form prescribed by D-BAT, a quarterly profit and loss statement and balance sheet (both of which may be unaudited) within 30 days after the end of each fiscal quarter. D-BAT shall have the right, to be exercised in its sole discretion, to require that you provide D-BAT profit and loss statements and balance sheets at other times requested by D-BAT. Each statement and balance sheet shall be signed by you or by your treasurer or chief financial officer attesting that it is true, correct, and complete and uses accounting principles applied on a consistent basis which accurately and completely reflects the financial condition of the Franchised Business.

C. Annual Reports.

You shall, at your expense, provide to D-BAT a profit and loss statement and balance sheet reviewed by a certified public accountant within 60 days after your fiscal year end. The statement and balance sheet shall be signed by you or by your treasurer or chief financial officer attesting that the financial statements present fairly your financial position and the results of operations of the Franchised Business during the period covered.

D. Other Reports.

You shall submit to D-BAT, for review or auditing, such other forms, reports, records, information and data as D-BAT may reasonably designate, in the form and at times and places reasonably required by D-BAT, upon request and as specified from time to time in the Manual or otherwise in writing.

E. Audit Rights.

D-BAT or its designee shall have the right at all reasonable times, both during and after the term of this Agreement, to inspect, copy, and audit your books, records, and federal, state, and local tax returns, and such other forms, reports, information and data as D-BAT reasonably may designate, applicable to the operation of the Franchised Business. If an inspection or audit discloses an understatement of Membership Fees, you shall pay D-BAT, within 10 days after receipt of the inspection or audit report, the deficiency in the Management Fees and Advertising and Promotion Fund contributions plus interest (at the rate and on the terms provided in Section 6.G from the date originally due until the date of payment. If an inspection or audit is made necessary by your failure to furnish reports or supporting records as required under this Agreement, or to furnish such reports, records, or information on a timely basis, or if an understatement of Membership Fees for the period of any inspection or audit is determined to be greater than 2%, you also shall reimburse D-BAT for the reasonable cost of the inspection or audit including, without limitation, the charges of attorneys and independent accountants, and the travel expenses, room, board, and compensation of D-BAT employees or designees involved in the inspection or audit. The foregoing remedies shall be in addition to all other remedies and rights available to D-BAT under this Agreement and applicable law.

## **8. TRAINING, CERTIFICATION, AND ASSISTANCE**

A. Initial Training Program.

D-BAT will provide its initial training program, at its headquarters or such other location as D-BAT may designate, for three individuals, including your Designated Principal, your General Manager, and your Assistant Manager. Each of these trainees must attend and successfully complete the initial training program before the Facility may open for business. There is no charge for the first three individuals to attend the initial training program. At your request, D-BAT may permit additional individuals to attend the same training program, subject to space availability and payment of a reasonable tuition. You are responsible, however, for the salary, travel, lodging, and dining costs for all individuals who participate in the initial training program.

B. Pre-Opening Assistance.

D-BAT shall provide consultation and advice to you, as D-BAT deems appropriate, with regard to the development and operation of the Facility, building layout, furnishings, fixtures, equipment plans and specifications, purchasing, and inventory control, and such other matters as D-BAT deems appropriate.

C. Ongoing Assistance.

D-BAT periodically, as it deems appropriate, shall advise and consult with you in connection with the operation of the Facility. D-BAT, as it deems appropriate, shall communicate to you its knowledge and expertise regarding the System and pertinent new developments, techniques, and improvements in the areas of management, sales promotion, service concepts, and other areas. D-BAT may provide these services through visits by D-BAT representatives to the Facility, the distribution of printed or filmed material or electronic information, meetings or seminars, telephone communications, email communications, or other communications.

D. Mandatory Training and Certification

Your General Manager, Assistant Manager, and any Principals we designate shall attend and successfully complete all other operations and training courses and programs that D-BAT requires from time to time. D-BAT also has the right to develop an internal certification program and to require your General Manager and Assistant Manager to maintain certification, which may include periodic training and testing at D-BAT's headquarters or other designated location. You must cause your General Manager and Assistant Manager to comply with all certification requirements. D-BAT may charge a reasonable tuition for all courses and programs that it provides, provided, however, that such tuition shall not exceed \$5,000 per year per Facility (excluding, expressly, training fees for any new or replacement General Manager or Assistant Manager). You are responsible for all costs and expenses of complying with D-BAT training and certification requirements including, without limitation, tuition and registration costs, salary, travel, lodging, and dining costs for all attendees who participate in the training. Your General Manager and Assistant Manager shall be responsible for training your employees and independent contractors in all aspects of Facility operations.

If the number of Membership Fees collected by your Facility during any consecutive three month period decreases by more than 35% from the number of Membership Fees collected in any consecutive three-month period during the immediately preceding 18-month period, D-BAT has the right to impose an immediate \$5,000 Mandatory Training Fee and require that up to two individuals, as designated by D-BAT, attend additional required training at a location and for such time as determined by D-BAT. You will bear all salary, travel, lodging, and dining costs related to the designated individuals' attendance at this mandatory training. The Mandatory Training Fee is excluded from the \$5,000 per year tuition cap described in the first paragraph of this Section.

E. General Manager and Assistant Manager.

You agree to engage or employ, at all times, at least one General Manager and one Assistant Manager to operate the Facility. Both the General Manager and Assistant Manager must successfully complete our initial training program and, while D-BAT does not charge a fee for this training, you are responsible for all costs and expenses related to their attendance, including salary, travel, lodging, and dining costs. If your General Manager or Assistant Manager, ceases to manage your Facility, you must engage or hire a replacement and ensure that this individual successfully completes our initial training program. The replacement General Manager or Assistant Manager must have completed training and be assisting in Facility operations by no later than 60 days after your initial General Manager or Assistant Manager ceases to manage your Facility.



If you do not send your replacement General Manager or Assistant Manager to our initial training program within the requisite time, we may send our trainer to you to provide this training on-site, and for which you agree to pay all associated travel costs as well as our per diem training fee.

## **9. MANUAL**

D-BAT will provide you on loan a copy of D-BAT's confidential and proprietary Manual which contains information and knowledge that is necessary and material to the System. (As used in this Agreement, the term "**Manual**" also includes other publications, materials, drawings, memoranda, videotapes, CDs, DVDs, MP3s, and other electronic media that D-BAT from time to time may loan to you.) The Manual may be supplemented or amended from time to time by letter, electronic mail, bulletin, videotape, CD, DVD, MP3, or other communications concerning the System to reflect changes in the image, specifications, and standards relating to developing, equipping, furnishing, and operating a D-BAT Facility. You shall keep your copy of the Manual current and up to date with all additions and deletions provided by or on behalf of D-BAT and shall purchase whatever equipment and related services (including, without limitation, a video cassette recorder, CD/DVD player and/or MP3 player, computer system, internet service, dedicated phone line, facsimile machine, etc.) as may be necessary to receive these communications. If a dispute relating to the contents of the Manual develops, the master copy maintained by D-BAT at its principal offices shall control.

The Manual contains detailed standards, specifications, instructions, requirements, methods, and procedures for management and operation of the Franchised Business, including the Facility. The Manual also may contain information relating to management training requirements; marketing, advertising, and sales promotions; maintenance and repair of the Facility premises; employee dress attire and appearance standards; and accounting, bookkeeping, records retention, and other business systems, procedures, and operations. You agree at all times to operate the Franchised Business, including the Facility, in strict conformity with the Manual, to maintain the Manual at the Facility, to not reproduce the Manual or any part of it, and to treat the Manual as confidential and proprietary; and to disclose the contents of the Manual only to those employees who have a need to know.

Upon termination or expiration of this Agreement, you shall immediately return the Manual without retaining any copies thereof. If you lose or misplace the Manuals, D-BAT may impose a replacement fee which will not exceed Five Hundred Dollars (\$500) for each volume of the replacement Manual.

## **10. MODIFICATIONS OF THE SYSTEM**

D-BAT, in its sole discretion, shall be entitled from time to time to change or modify the System, including modifications to the Manual, the required equipment, the signage, the building and premises of the Facility (including the trade dress, décor, and color schemes), the presentation of the Marks, the adoption of new administrative forms and methods of report and of payment of any monies owed by D-BAT (including electronic means of reporting and payment) and the adoption and use of new or modified Marks or copyrighted materials. You shall accept and use or display at the Facility any such changes or modifications in the System as if they were a part of the System at the time this Agreement was executed, and you shall make such expenditures as the changes or modifications in the System reasonably require.

Within 10 days after receipt of written notice from D-BAT, you shall begin selling any newly authorized products and services and cease selling any products and services that are no longer authorized. All merchandise items authorized for sale at the Facility shall be offered for sale under the specific name designated by D-BAT. D-BAT shall have the right to establish such retail prices, including minimum and maximum retail prices, to the greatest extent permitted by law. If D-BAT develops and advertises national price promotions or package promotions, you shall participate in such promotion while retaining the right to offer products and services to consumers at more favorable prices.

If you develop any new concepts, processes, or improvements relating to the System, whether or not pursuant to a D-BAT authorized test, you promptly shall notify D-BAT and provide D-BAT with all

information regarding the new concept, process, or improvement, all of which shall become the property of D-BAT and its Affiliates and which may be incorporated into the System without any payment to you. You, at your expense, promptly shall take all actions deemed necessary or desirable by D-BAT to vest in D-BAT ownership of such concepts, processes, or improvements.

## 11. PERFORMANCE REQUIREMENTS

### A. Operating Principals.

You shall designate and retain an individual to serve as your Operating Principal. The Operating Principal must at all times hold an equity interest in the franchisee, and must otherwise meet Franchisor's criteria for the position of Operating Principals. The Operating Principal as of the date of this Agreement is identified in the Summary Pages. Unless waived in writing by Franchisor, the Operating Principal shall meet all of the following qualifications:

(1) The Operating Principal shall execute the Guaranty and Personal Undertaking, Attachment C;

(2) The Operating Principal, at all times, shall have full control over the day-to-day activities, including operations of the Franchised Business;

(3) The Operating Principal shall devote best efforts to supervising the operation of the Franchised Business.

(4) The Operating Principal shall successfully complete the initial training program and any additional training required by Franchisor; and

(5) Franchisor shall have approved the Operating Principal as meeting its then-current Standards for such position, and not have later withdrawn such approval.

If the Operating Principal ceases to serve in, or no longer qualifies for, such position, you shall designate another qualified person to serve as your Operating Principal within 30 days after the date the prior Operating Principal ceases to serve or to qualify to serve. Your proposed replacement Operating Principal must successfully complete the initial training program and execute the Guaranty and Personal Undertaking before assuming Operating Principal responsibilities.

### B. Membership Program.

D-BAT has established a proprietary Membership Program, designed to encourage customer loyalty by offering price discounts and by offering price discounts and other benefits to D-BAT members ("**Membership Program**"). In consideration for your right and license to use the Marks and System, you shall use best efforts to promote and solicit membership in the Membership Program. D-BAT may periodically establish the terms and conditions of each Membership Program (including the amount of the Membership Fee and maximum number of Promotional Memberships you may grant, where the term "**Promotional Memberships**" means Memberships granted for free, for a reduced price, in connection with any promotion, and any other non-standard Membership), and you shall adhere to all terms and conditions, all to the extent permitted by applicable law. You shall honor the terms and conditions of all memberships sold by other D-BAT<sup>®</sup> Facilities, which includes providing appropriate discounts to members who visit your Facility.

You shall adhere to all of D-BAT's pricing requirements. You shall designate D-BAT or its designee as your collection agent for Membership Fees in accordance with Section 6.F.

You are not permitted to offer any pricing programs or structures that differ from those we implement, including, without limitation, package pricing, membership structures, recurring payments, or daily or weekly access passes.

C. Standards, Specifications and Procedures.

You acknowledge that each and every detail of the appearance, layout, décor, services, and operation of the Facility is important to D-BAT and the other D-BAT® Facilities. You agree to cooperate with D-BAT by maintaining these standards in the operation of the Facility. You further agree to comply with all System specifications, standards, and operating procedures (whether contained in the Manual or any other written communication) relating to the appearance, function, cleanliness, and operation of a D-BAT® Facility including, without limitation **(1)** sales and marketing procedures and customer service; **(2)** advertising and promotional programs; **(3)** layout, décor, and color scheme of the Facility; **(4)** appearance and dress of employees; **(5)** safety, maintenance, appearance, cleanliness, sanitation, standards of service, and operation of the Facility; **(6)** submission of requests for approval of brands of products, supplies, and suppliers; **(7)** use and illumination of signs, posters, displays, standard formats, and similar items; **(8)** use of audio equipment and type and decibel levels of music; **(9)** use of video equipment and type and decibel level of television broadcasts (including closed captioning requirements); **(10)** types of fixtures, furnishings, equipment, inventory, inventory levels and inventory mix; and **(11)** the make, type, location, and decibel level of any game, entertainment, or vending machine. Mandatory specifications, standards, and operating procedures, including upgraded or additional equipment, that D-BAT prescribes from time to time in the Manual or otherwise communicates to you shall constitute provisions of this Agreement as if fully set forth in this Agreement.

D. Approved Products, Distributors and Suppliers.

D-BAT, its Affiliates, or designated supplier will supply to you, at then-current published wholesale prices, an initial inventory of Proprietary Products and other merchandise to be offered for sale at the Facility pro shop; you agree to purchase your initial inventory and your requirements for additional and ongoing inventory only from D-BAT or suppliers designated by D-BAT (“**Designated Suppliers**”). Throughout the term of the Agreement, you must maintain a minimum pro-shop inventory with a wholesale purchase cost of \$50,000. You also agree to purchase from designated or approved suppliers: **(1)** signage, packaging, supplies, and printed materials bearing the Marks; and **(2)** any other furniture, fixtures, equipment, supplies, products, and services used in connection with the operation of the Franchised Business. You further agree that you will purchase from manufacturers, distributors, vendors, and suppliers approved by D-BAT (collectively, “**Approved Suppliers**”) all other products, beverages, merchandise, advertising materials, furniture, fixtures, equipment, supplies, and stationery that meets D-BAT’s standards and specifications, as promulgated from time to time. D-BAT has the right to require that you use only certain brands of products and materials (“**Approved Brands**”), and to the extent that Approved Brands have been identified, you may purchase and use only the Approved Brands. D-BAT may from time to time modify the list of Approved Suppliers and/or Approved Brands. You shall promptly comply with all such modifications.

D-BAT may approve one or more suppliers for any products or services and may approve a supplier only as to certain products or services. D-BAT may concentrate purchases with one or more suppliers to obtain lower prices and/or the best advertising support, and/or product consistency, and/or services for any group of D-BAT® Facilities or any other group of Facilities franchised or operated by D-BAT or its Affiliates. Approval of a supplier may be conditioned on requirements relating to product quality, brand appeal, the frequency of delivery, reporting capabilities, standards of service (including prompt attention to complaints), or other criteria, and concentration of purchases, as set forth above, and may be temporary pending a further evaluation of such supplier by D-BAT. D-BAT may establish commissaries and distribution facilities owned and operated by D-BAT or an affiliate that D-BAT may designate as an approved supplier.

If you propose to purchase any products or services (that you are not required to purchase from D-BAT, an Affiliate of D-BAT, or a designated supplier) from a supplier that D-BAT has not previously approved, you shall submit to D-BAT a written request for such approval, or shall request the supplier to

submit a written request on its own behalf. D-BAT has the right to require, as a condition of its approval, that its representatives be permitted to inspect the supplier's facilities, and that such information, specifications, and samples be delivered to D-BAT and/or to an independent, certified laboratory designated by D-BAT for testing prior to granting approval. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by you. D-BAT will notify you within 60 days of your request as to whether you are authorized to purchase such products from that supplier. D-BAT reserves the right, at its option, to re-inspect the facilities and products of any such approved supplier and to revoke its approval of any supplier upon the suppliers' failure to meet D-BAT criteria for quality and reliability.

You shall at all times maintain an inventory of Proprietary Products and other inventory items that D-BAT designates in sufficient quantities to meet customer demand, and of the type and mix that D-BAT prescribes. D-BAT may, from time to time, conduct market research and testing to determine consumer trends and the salability of new products and services. You agree to cooperate in these efforts by participating in the D-BAT customer surveys and market research programs if requested by D-BAT. All customer surveys and market research programs will be at D-BAT's sole cost and expense, unless you have volunteered to participate in the survey or market research and to share your proportionate cost. You shall not have the right to test any new product or service without D-BAT's prior written consent.

E. Authorized Products and Services.

You shall cause the Facility to offer and sell all products and services that D-BAT requires, and only products and services that D-BAT approves for sale by D-BAT® Facilities. D-BAT has the right to add, modify, and discontinue authorized products and services at any time, in its sole discretion. The Facility shall begin offering for sale additional or modified products, and cease offering discontinued products, within 10 days of the date you receive written notice of the addition, modification, or discontinuance. All products or services offered for sale in connection with the Franchised Business shall meet D-BAT® Standards.

You shall offer and sell all product offerings that D-BAT requires for such periods and at such times as D-BAT requires.

F. Computer Systems and Intranet/Extranet Systems.

You shall acquire and use all cash registers and computer hardware and related accessories and peripheral equipment (collectively, "**Computer Systems**") that D-BAT prescribes for use by Facilities, and may not use any cash registers or computer hardware, accessories, or peripheral equipment that D-BAT has not approved for use by D-BAT Facilities. Requirements may include, among other things, connection to remote servers, off-site electronic repositories, and high speed Internet connections.

You shall: **(1)** use any proprietary or specially designed software programs, system documentation manuals, and other proprietary materials provided to you by D-BAT in connection with the operation of the Franchised Business; **(2)** input and maintain in your computer such data and information as D-BAT prescribes in the Manual, software programs, documentation, or otherwise; and **(3)** purchase new or upgraded software programs, system documentation manuals, and other proprietary materials at then-current prices whenever D-BAT adopts such new or upgraded programs, manuals and materials system-wide. You shall enter into all software license agreements, "terms of use" agreements, and software maintenance agreements, in the form and manner D-BAT prescribes, and pay all fees charged by third party software and software service providers thereunder.

You acknowledge that D-BAT may independently access from a remote location, at any time, all information input to, and compiled by, your Computer System or an off-site server, including information concerning the Membership Program.

You acknowledge that technology is ever changing and that, as technology or software is developed in the future, D-BAT may, in its sole discretion, require you to: **(1)** add to your Computer System memory,

ports, and other hardware or peripheral equipment or additional, new, or substitute software; and (2) replace or upgrade your Computer System and software as D-BAT prescribes.

To ensure full operational efficiency, you agree to keep your Computer System in good maintenance and repair and to make additions, changes, modifications, substitutions, and replacements to your computer hardware, accessories and peripherals, software, telephone and power lines, high speed Internet connections, and other computer-related facilities as directed by D-BAT. Upon termination or expiration of this Agreement, all computer software, disks, tapes, and other magnetic storage media shall be returned to D-BAT in good operating condition, excepting normal wear and tear.

D-BAT may, at its option, establish and maintain an intranet or extranet system through which members of the D-BAT® franchise network may communicate and through which D-BAT may disseminate updates to the Manual and other Confidential Information. D-BAT will have no obligation to establish or to maintain the intranet indefinitely, and may dismantle it at any time without liability to you. D-BAT may establish policies and procedures for the intranet's use. D-BAT expects to adopt and adhere to a reasonable privacy policy. However, you acknowledge that, as administrator of the intranet, D-BAT can technically access and view any communication that anyone posts on the intranet. You further acknowledge that the intranet facility and all communications that are posted to it will become D-BAT property, free of any claims of privacy or privilege that you or any other individual may assert. If you fail to pay when due any amount payable to D-BAT under this Agreement, or if you fail to comply with any policy or procedure governing the intranet, D-BAT may temporarily suspend your access to any chat room, bulletin board, listserv, or similar feature the intranet includes until such time as you fully cure the breach.

G. Non-Cash Payment Systems; Data Security and PCI Compliance.

Within a reasonable period of time following D-BAT's request, you shall accept debit cards, credit cards, stored value cards, or other non-cash systems specified by D-BAT to enable customers to purchase authorized products and you shall obtain all necessary hardware and/or software used in connection with these non-cash systems. The parties acknowledge and agree that protection of customer privacy and credit card information is necessary to protect the goodwill of businesses operating under the Marks and System. Accordingly you agree that you shall cause the Facility to meet or exceed, at all times, all applicable security standards developed by the Payment Card Industry Standards Council or its successor and other regulations and industry standards applicable to the protection of customer privacy and credit card information. You are solely responsible for educating yourself as to these regulations and standards, and for achieving and maintaining applicable compliance certifications. You shall defend, indemnify, and hold D-BAT harmless from and against all claims arising out of or related to your violation of the provisions of this Section 11.G. You further agree to provide D-BAT with any information we require concerning your compliance with the requirements in this Section, and to demonstrate your compliance on reasonable request, which may include undergoing an independent third party audit. In the event you are unable to demonstrate full compliance, D-BAT may require that you engage the services of an approved vendor to assist you on an ongoing basis and to abide by such vendor's recommendations.

H. Loyalty Programs, Prize Promotions; Promotional Literature and Pricing

You shall participate in and offer to your customers: (1) all customer loyalty and reward programs (including, without limitation, participation in the Membership Program) and (2) all contests, sweepstakes, and other prize promotions. D-BAT will communicate to you in writing the details of each such program or promotion, and you shall promptly display all point-of-sale advertising and promotion-related information at such places within the Facility as D-BAT may designate. You shall purchase and distribute all coupons and other collateral merchandise (and only the coupons and collateral merchandise) designated by D-BAT for use in connection with each such program or promotion.

You also shall display at the Facility all promotional literature and information as D-BAT may reasonably require from time to time. This may include, among other things, establishing a bulletin board

for posting local school and community events and displaying signage or other literature containing information about the D-BAT franchise offering.

D-BAT has the right to establish retail prices for products and services offered by the Facility, and may promote such prices through national or regional price promotions. You shall comply with all such pricing requirements and programs. This provision is subject to applicable law.

I. D-BAT Inspections.

D-BAT or its designees shall have the right at any reasonable time and without prior notice to you to: **(1)** inspect the Facility premises; **(2)** observe, photograph, and record the operation of the Facility for such consecutive or intermittent periods as D-BAT deems necessary **(3)** remove samples of any product or material for testing and analysis; **(4)** interview Facility personnel; **(5)** interview customers; and **(6)** inspect and copy any books, records, and documents relating to the operation of the Franchised Business or, upon request of D-BAT or its designee, require you to send copies thereof to D-BAT or its designee. You shall present to your customers those evaluation forms as are periodically prescribed by D-BAT and shall participate and/or ask your customers to participate in any surveys performed by or on behalf of D-BAT as D-BAT may direct.

You agree to cooperate fully with D-BAT or its designee in connection with any such inspection, observations, recordings, product removal, and interviews. You shall take all necessary steps to immediately correct any deficiencies detected during these inspections including, without limitation, ceasing further sales of unauthorized products or services and ceasing further use of any inventory, equipment, advertising materials or supplies that do not conform with the standards and requirements promulgated by D-BAT from time to time. D-BAT shall have the right to develop and implement a grading system for inspections and, to the extent such a system is implemented, if the Facility fails to achieve a passing score on any inspection, D-BAT may require your General Manager, Assistant Manager, and other Facility personnel to attend and participate in such additional training as D-BAT deems appropriate. If the Facility fails to achieve a passing score on any two consecutive inspections or if the Facility fails to achieve a passing score three or more times in any 12-month period, D-BAT may terminate this Agreement in accordance with Section 18.

J. Upkeep of the Facility; Modifications and Upgrades.

You shall continuously operate the Facility and shall maintain in excellent condition (subject to normal wear and tear) and in good working order all furniture, fixtures, equipment, furnishings, floor coverings, interior and exterior signage, interior and exterior finishes, and interior and exterior lighting, in accordance with the requirements of the System. You shall promptly and diligently perform all necessary maintenance, repairs, and replacements to the Facility premises as D-BAT may prescribe from time to time including periodic interior painting and replacement of obsolete or worn out signage, floor coverings, furnishings, equipment, and décor.

At D-BAT's request, but not more often than once every 60 months (and in addition to any work which you may undertake pursuant to other Sections of this Agreement), you shall refurbish the Facility, at your own expense, to conform to the building design, trade dress, color schemes, and presentation of the Marks in a manner consistent with the then-current public image for new or remodeled D-BAT® Facility in the System, including, without limitation, replacement, addition, or renovation of equipment, remodeling, redecoration, and modifications to existing improvements and reasonable structural changes that D-BAT may reasonably require or that may be required by law.

You shall purchase and install, at your expense, all fixtures, furnishings, equipment, decor, signs, and other items as D-BAT may reasonably direct from time to time in the Manual or otherwise in writing in accordance with D-BAT's standards and specifications; and shall refrain from installing or permitting to be installed on or about the Facility, any fixtures, furnishings, equipment, decor, signs, vending or game

machines or other items not previously approved in writing as meeting Franchisor's standards and specifications.

K. Facility Operations.

You shall cause the Facility to be open and operating on the days and during the hours that D-BAT designates, subject to applicable lease and/or local law or licensing limitations. You shall operate and maintain the Franchised Business in conformity with the highest ethical standards and sound business practices and in a manner which will enhance the goodwill associated with the Marks.

L. Management and Personnel.

You will be exclusively responsible for the terms of your employees' employment including their compensation, and for the proper training of such employees in the operation of the Facility, in human resources, and customer relations. To maintain our brand standards, you shall employ only suitable individuals of good character and reputation who will at all times conduct themselves in a competent and courteous manner in accordance with the image and reputation of the D-BAT System and, while on duty, each employee shall comply with the dress attire, personal appearance, and hygiene standards set forth in the Manual. You shall use best efforts to ensure that your employees maintain a neat and clean appearance and render competent and courteous service to all customers and are courteous and respectful to fellow employees.

D-BAT does not participate in the hiring, disciplining, or discharging of your employees or in setting and paying wages and benefits to your employees, and you acknowledge that we have no power, responsibility, or liability with respect to the hiring, disciplining, or discharging of employees or in setting or paying their wages. You will have sole authority and control over the day-to-day operations of the Facility and its employees. At no time will you, your employees, or your independent contractors be deemed to be our or our affiliates' employees.

M. Signs and Logos.

Subject to local ordinances, you shall prominently display at the Facility premises such interior and exterior signs, logos, and advertising of such nature, form, color, number, location, and size, and containing the content and information that D-BAT may from time to time direct. You shall not display in or about the Facility premises or otherwise in connection with the Marks any unauthorized sign, logo, or advertising media of any kind.

N. Entertainment Equipment.

You shall not permit to be installed at the Facility premises any juke box, gum machine, game, ride, gambling or lottery device, coin or token operated machine, or any other music, film, or video device not authorized by D-BAT.

O. Compliance with Laws and Good Business Practices.

You shall secure and maintain in full force in your name all required licenses, permits, and certifications relating to the operation of the Franchised Business. You shall operate the Franchised Business in full compliance with all applicable laws, ordinances, and regulations including, without limitation, all laws or regulations governing or relating to immigration and discrimination, occupational hazards, employment laws (including, without limitation, workers' compensation insurance, unemployment insurance, and the withholding and payment of federal and state income taxes, social security taxes) and the payment of sales taxes. All advertising and promotion for the Facility shall be completely factual and shall conform to the highest standards of ethical advertising. In all dealings with the Facility's customers, suppliers, and the public, you shall adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct. You shall refrain from any business or advertising practices that may be injurious to the good will associated with the Marks or to the business of D-BAT or its Affiliates, the System, or other System franchisees.

You shall notify D-BAT in writing within five days after the commencement of: **(1)** any action, suit, or proceeding, or the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation of the Facility or your financial condition; or **(2)** any notice of violation of any law, ordinance, or regulation relating to health or sanitation at the Facility.

P. Payment of Taxes and Other Indebtedness.

You shall promptly pay, when due, all taxes levied or assessed by any federal, state, or local tax authority and any and all other indebtedness incurred by you in the operation of the Franchised Business. In the event of any bona fide dispute as to liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; provided, however, in no event shall you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Franchised Business or any improvements thereon.

## 12. ORGANIZATION OF THE FRANCHISEE

A. Representations.

If you are a Business Entity, you make the following representations and warranties: **(1)** the Business Entity is duly organized and validly existing under the laws of the state of its formation; **(2)** it is qualified to do business in the state or states in which the Facility is located; **(3)** execution of this Agreement and the development and operation of the Facility is permitted by its governing documents; and **(4)** unless waived in writing by D-BAT, its charter documents and its governing documents shall at all times provide that the activities of the Business Entity are limited exclusively to the development and operation of the D-BAT® Facility.

If you are an individual, or a partnership comprised solely of individuals, you make the following additional representations and warranties: **(1)** each individual has executed this Agreement; **(2)** each individual shall be jointly and severally bound by, and personally liable for the timely and complete performance and a breach of, each and every provision of this Agreement; and **(3)** notwithstanding any transfer for convenience of ownership pursuant to Section 17, each individual shall continue to be jointly and severally bound by, and personally liable for the timely and complete performance and a breach of, each and every provision of this Agreement.

B. Governing Documents.

If you are a corporation, copies of your Articles of Incorporation, bylaws, other governing documents and any amendments, including the resolution of the Board of Directors authorizing entry into and performance of this Agreement, and all shareholder agreements, including buy/sell agreements, have been furnished to D-BAT. If you are a limited liability company, copies of your Articles of Organization, operating agreement, other governing documents and any amendments, including the resolution of the Managers authorizing entry into and performance of this Agreement, and all agreements, including buy/sell agreements, among the members have been furnished to D-BAT. If you are a general or limited partnership, copies of your written partnership agreement, other governing documents and any amendments, as well as all agreements, including buy/sell agreements, among the partners have been furnished to D-BAT, in addition to evidence of consent or approval of the entry into and performance of this Agreement by the requisite number or percentage of partners, if that approval or consent is required by your written partnership agreement or applicable law. When any of these governing documents are modified or changed, you promptly shall provide copies of the modifying documents to D-BAT.

C. Ownership Interests.

If you are a Business Entity, you represent and warrant that all of your equity interests are owned as set forth on Attachment B. In addition, if you are a corporation, you shall maintain a current list of all



owners of record and all beneficial owners of any class of voting securities of the corporation (and the number of shares owned by each). If you are a limited liability company, you shall maintain a current list of all members (and the percentage membership interest of each member). If you are a partnership, you shall maintain a current list of all owners of an interest in the partnership (and the percentage ownership interest of each general and limited partner). You shall comply with Section 17 prior to any change in ownership interests and shall execute addenda to Attachment B as changes occur in order to ensure the information contained in Attachment B is true, accurate, and complete at all times.

D. Restrictive Legend.

If you are a corporation, you shall maintain stop-transfer instructions against the transfer on your records of any voting securities, and each stock certificate of the corporation shall have conspicuously endorsed upon its face the following statement: “Any assignment or transfer of this stock is subject to the restrictions imposed on assignment by the D-BAT Academies, Inc. Franchise Agreement(s) to which the corporation is a party.” If you are a limited liability company, each membership or management certificate or other evidence of interest in the limited liability company shall have conspicuously endorsed upon its face the following statement: “Any assignment or transfer of an interest in this limited liability company is subject to the restrictions imposed on assignment by the D-BAT Academies, Inc. Franchise Agreement(s) to which the limited liability company is a party.” If you are a partnership, your written partnership agreement shall provide that ownership of an interest in the partnership is held subject to, and that further assignment or transfer is subject to, all restrictions imposed on assignment by this Agreement.

E. Guarantees.

If you are a Business Entity, each of your Principals (and if you are a limited partnership, each of your general partner’s Principals) shall execute the Guaranty and Personal Undertaking attached as Attachment C.

### 13. MARKS AND COPYRIGHTED WORKS

A. Acknowledgments.

You expressly understand and acknowledge that: **(1)** As between you and D-BAT, D-BAT is the exclusive owner of all right, title, and interest in and to the Marks (and all goodwill symbolized by them) and the Copyrighted Works; **(2)** The Marks are valid and serve to identify the System and those who are licensed to operate a Franchised Business in accordance with the System; **(3)** Your use of the Marks and Copyrighted Works pursuant to this Agreement does not give you any ownership interest or other interest in or to them, except the nonexclusive license to use them in accordance with this Agreement and the Standards; **(4)** any and all goodwill arising from your use of the Marks and/or the System shall inure solely and exclusively to D-BAT’s benefit, and upon expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with your use of the System or the Marks; and **(5)** the license and rights to use the Marks and Copyrighted Works granted hereunder to you are nonexclusive, and D-BAT may: **(a)** itself use, and grant franchises and licenses to others to use, the Marks, Copyrighted Works and the System; **(b)** establish, develop, and franchise other systems, different from the System licensed to you herein, without offering or providing you any rights in, to or under such other systems; and **(c)** modify or change, in whole or in part, any aspect of the Marks or Copyrighted Works.

B. Modification of the Marks and Copyrighted Works.

D-BAT reserves the right to add, eliminate, or modify any of the Marks and Copyrighted Works. You must promptly take all actions necessary to adopt all new and modified Marks and/or Copyrighted Works and discontinue using obsolete Marks and/or Copyrighted Works which may include, among other things, acquiring and installing, at your expense, new interior and exterior signage and graphics.

C. Use of the Marks and Copyrighted Works.

You shall use only the Marks and Copyrighted Works designated by D-BAT and shall use them only in connection with the operation and promotion of the Franchised Business and in the manner required or authorized and permitted by D-BAT. Your right to use the Marks and Copyrighted Works is limited to the uses authorized under this Agreement and in the Manual, and any unauthorized use thereof shall constitute an infringement of D-BAT's rights and grounds for termination of this Agreement.

You shall not use the Marks as part of your Business Entity or other legal name. You shall comply with all requirements of D-BAT and applicable state and local laws concerning use and registration of fictitious and assumed names, and shall execute any documents deemed necessary by D-BAT or its counsel to obtain protection for the Marks or to maintain their continued validity and enforceability.

You shall not use the Marks or any part or derivative thereof or any of D-BAT's Copyrighted Works on the Internet, except as expressly permitted in writing. Without limiting the generality of the foregoing, you may not cause or allow all or any recognizable portion of the Marks, or terms that may suggest an affiliate with us, including the term "D-BAT," for use or display as all or part of an e-mail address, account name, user name, Internet domain name, uniform resource locator, or meta-tag, or in connection with any Internet home page, Web site, or any other Internet-related activity without D-BAT's express written consent, and then only in a manner and in accordance with the procedures, standards, and specifications that D-BAT establishes. This prohibition includes the use or registration of the Marks, or any derivative of the Marks, as a part of any user name, account name, or in any other way that may suggest an affiliation with D-BAT or the franchise system, on any gaming, blogging, user review, video sharing, or social networking website, or as a part of any unauthorized email address. You also may not display on any website (including commercial, gaming, blogging, user review, video sharing, and social networking websites) D-BAT's Copyrighted Works, which includes, but is in no way limited to, the design portion of its Marks and collateral merchandise identified by the Marks.

You may not use or display in connection with any team, nor permit any team to use or display, the D-BAT® name or any other Mark without D-BAT's prior written consent, which D-BAT may grant or withhold in its sole discretion.

D. Assignment of Copyrighted Works.

To the extent that you or any Principal creates any derivative work based on the Copyrighted Works ("**Derivative Works**"), you and each such Principal assigns to D-BAT all ownership in and to the Derivative Work, and agree to execute such further assignments as D-BAT may request. You and each Principal shall take all actions and sign all documents necessary to give effect to the purpose and intent of this Section 13.D. You and each Principal irrevocably appoint D-BAT as true and lawful attorney-in-fact for you and each Principal, and authorize D-BAT to take such actions and to execute, acknowledge, and deliver all such documents as may from time to time be necessary to convey to D-BAT all rights granted herein.

E. Infringement; Notice of Claims.

If you become aware of any infringement of the Marks or Copyrighted Works or if your use of the Marks or Copyrighted Works is challenged by a third party, then you must immediately notify D-BAT. D-BAT shall have the exclusive right to take whatever action it deems appropriate. If D-BAT or its Affiliate undertakes the defense or prosecution of any litigation pertaining to any of the Marks or other intellectual property, you must sign all documents and perform such acts and things as may, in the opinion of D-BAT counsel, be necessary to carry out such defense or prosecution. If it becomes advisable at any time in the sole discretion of D-BAT to modify or discontinue the use of any Mark or Copyrighted Works, or to substitute a new mark or graphic for any Mark or Copyrighted Work, as applicable, you must promptly comply, at your expense (which may include the cost of replacement signage and/or trade dress), with such modifications, discontinuances, or substitutions.

F. Remedies and Enforcement.

You acknowledge that in addition to any remedies available to D-BAT under this Agreement, you agree to pay all court costs and reasonable attorneys' fees incurred by D-BAT in obtaining specific performance of, a temporary restraining order and/or an injunction against violation of the provisions of this Section 13.

**14. CONFIDENTIALITY OBLIGATIONS AND RESTRICTIVE COVENANTS**

A. Confidential Information.

You and each Principal acknowledge that all Confidential Information belongs exclusively to D-BAT. You and each Principal agree to maintain the confidentiality of all Confidential Information, not to duplicate any materials containing Confidential Information, and not to divulge any Confidential Information to anyone, except to other franchisees, your employees, and your professional advisors on a need to know basis. You may use the Confidential Information only for the purpose of operating the Franchised Business. This provision will survive expiration or termination of this Agreement.

You shall cause your General Manager, Assistant Manager, and each employee and independent contractor with access to Confidential Information, including information contained in the Manuals, to sign a confidentiality and noncompete agreement in a form prescribed by D-BAT, which identifies D-BAT as a third-party beneficiary of such agreement and gives D-BAT independent rights of enforcement.

B. Covenants of the Franchisee.

During the term of this Agreement and for a two-year uninterrupted period commencing upon expiration or termination of this Agreement, regardless of the reason for termination, you shall not, directly or indirectly, for yourself or through, on behalf of or in conjunction with any individual or Business Entity: **(1)** divert customers or potential customers to other businesses; or **(2)** own, operate, engage in, be employed by, advise, assist, invest in, franchise, make loans to or have any interest in any business (except another D-BAT<sup>®</sup> Facility pursuant to a valid franchise agreement) that specializes in baseball or softball training or the sale of baseball or softball equipment (provided that such restriction shall not apply to less than a 5% beneficial interest in any publicly traded corporation).

During the term of this Agreement, the restrictions contained in subsection **(3)**, above, shall apply universally. During the two-year restrictive period described above, the restrictions shall apply only to businesses located **(1)** at the former Facility location; **(2)** within a fifteen (15) mile radius surrounding the Facility location; and **(3)** within a fifteen (15) mile radius surrounding any D-BAT<sup>®</sup> Facility operating or under construction as of the date of termination or expiration of this Agreement.

The two-year restrictive period described above shall be tolled during any period of noncompliance.

C. Covenants of the Franchisee's Principals.

During the term of this Agreement and for a continuous uninterrupted two-year period commencing: **(1)** upon expiration or termination of this Agreement, regardless of the cause for termination; or **(2)** dissolution of the franchisee entity; or **(3)** the transfer or redemption of a Principal's interest in the franchisee entity, whichever occurs first, such Principal shall not, directly or indirectly, for himself or herself or through, on behalf of or in conjunction with any individual or Business Entity: **(a)** divert customers or potential customers to other businesses; or **(b)** own, operate, engage in, be employed by, advise, assist, invest in, franchise, make loans to, or have any interest in any business (except another D-BAT<sup>®</sup> Facility pursuant to a valid franchise agreement) that provides baseball or softball instruction or in which the sale of baseball or softball equipment and apparel comprises more than 10% of gross sales

(provided that such restriction shall not apply to less than a 5% beneficial interest in any publicly traded corporation).

During the term of this Agreement, the restrictions contained in subsection (3) shall apply universally. During the two-year restrictive period described above, the restrictions shall apply only to Facilities or businesses located **(1)** at the former Facility location; **(2)** within a fifteen (15) mile radius surrounding the Facility location; and **(3)** within a fifteen (15) mile radius surrounding any D-BAT® Facility operating or under construction as of the date of termination or expiration of this Agreement.

The two-year period restrictive period described above shall be tolled during any period of noncompliance.

At D-BAT's request, each Principal shall execute a separate agreement containing the terms contained in this Section 14.C.

**D. Reformation and Reduction of Scope of Covenants.**

If all or a portion of any covenant contained in this Section 14 is held to be unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which D-BAT or its Affiliate is a party, you and the Principals will be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 14. Notwithstanding the foregoing, D-BAT has the unilateral right, in its sole discretion, to reduce the scope of any covenant set forth in this Section 14, or any portion thereof, which reduction will become effective immediately upon delivery of notice of the reduction.

**E. Acknowledgments.**

The parties and each Principal acknowledge and agree that any claims that you or the Principal may have or allege to have against D-BAT shall not constitute a defense to the enforcement of any covenant contained in this Section 14.

**F. No Undue Hardship.**

You and each Principal acknowledge and agree that the covenants set forth in this Section 14 are fair and reasonable. You acknowledge and agree that such covenants will not impose any undue hardship on you and that you have other considerable skills, experience, and education affording you the opportunity to derive income from other endeavors. Each principal acknowledges and agrees that such covenants will not impose any undue hardship on him or her, and that each has other considerable skills, experience, and education affording him the opportunity to derive income from other endeavors.

**G. Injunctive Relief.**

You and each Principal acknowledge that the violation of any covenant contained in this Section 14 would result in immediate and irreparable injury to D-BAT for which there is no adequate remedy at law. The parties acknowledge and agree that, in the event of a violation of any covenant contained in this Section 14, D-BAT shall be entitled to seek injunctive relief to restrain such violation in accordance with the usual equity principles. The party in violation of any foregoing covenant shall reimburse D-BAT for any costs that it incurs (including attorneys' fees) in connection with enforcement of the provisions contained in this Section 14.

**15. ADVERTISING**

**A. General Requirements.**

All of your promotional and marketing materials shall be presented in a dignified manner and shall conform to D-BAT standards and specifications related to advertising, marketing, and trademark use. You shall submit to D-BAT samples of proposed promotional and marketing materials, and notify D-BAT of

the intended media, before first publication or use. D-BAT shall use good faith efforts to approve or disapprove proposed promotional and marketing materials within 10 business days of their receipt. You may not use the promotional or marketing materials until D-BAT expressly approves the materials and the proposed media. Once approved, you may use the materials only in connection with the media for which they were approved. D-BAT may disapprove your promotional or marketing materials, or the media for which they were approved, at any time, and you must discontinue using any disapproved materials or media upon your receipt of written notice of disapproval. As a matter of course, all banners and signs, whether for interior or exterior use, printed, digital, mounted, or otherwise, on which there is third party advertising or promotions are expressly prohibited.

**B. Grand Opening Advertising and Promotion.**

You shall conduct a grand opening advertising campaign within ninety (90) days after your Facility first opens for business. The grand opening advertising campaign must be conducted in accordance with D-BAT's standards as communicated to you via the Manuals. We also require that you purchase from us or our Designated Suppliers such marketing and promotional items as we specify for your use in connection with grand opening promotional activities. These items will both be purchased and used in accordance with our specifications. For example, we may instruct that these initial promotional items be used as giveaways for local leagues and coaches.

**C. Advertising and Promotion Fund.**

Each month during the Term, you shall contribute to the Advertising and Promotion Fund (the "**Fund**") the amount stated in the Summary Pages. D-BAT has the right to use Fund monies, in its sole discretion, to pay for creative development services (including creation and modification of logos, graphics, and vehicle wraps), preparing or procuring market studies, providing or obtaining marketing services (including, without limitation, conducting customer surveys, focus groups, and marketing-related mystery shoppers, and customer interviews), developing, producing, distributing, and placing advertising (including, without limitation, developing and producing point-of-sale advertising, and promotional materials); payment of league fees (*i.e.*, payments to Major League Baseball, Minor League Baseball, collegiate leagues and other leagues for sales rights); developing, updating, and hosting D-BAT's web site (including development of interior pages featuring franchised and D-BAT or Affiliate-owned D-BAT® Facilities and developing locator programs) and/or an intranet or extranet system, obtaining sponsorships and endorsements, preparing and conducting sweepstakes and other promotions including development and maintenance of stored value card systems and providing and procuring public relations services and conducting public relations activities. D-BAT also may use Advertising and Promotion monies to reimburse itself for its costs of personnel and other administrative and overhead costs associated with providing the services described in this Section 15.C.

The parties acknowledge that D-BAT owns all rights, and retains all copyrights, in all design and content developed using Fund monies, and that D-BAT will have sole control over the creative concepts, content, form, and media placement of all advertising and promotional materials developed with Fund expenditures, and the allocations of Fund monies to production, placement and other costs. You acknowledge and agree that D-BAT is not obligated to expend Fund contributions for placement of advertising in your trading area, or to ensure that the Facility benefits directly or *pro rata* from Fund expenditures. D-BAT will not use Fund contributions for creating or placing any advertisement that is principally a solicitation for new franchisees, but may include in all advertising prepared using Fund contributions (including Internet advertising) information concerning franchise opportunities, and a portion of Fund contributions may be used to create and maintain one or more pages on D-BAT's web site devoted to advertising franchise opportunities and identifying and screening inquiries and applications submitted by franchise candidates. D-BAT has no fiduciary duty to you or to any Principal or to any other Person with respect to the collection or expenditure of Fund contributions. Upon your reasonable request, D-BAT will provide you an annual statement of Fund contributions and expenditures.

D. Local Advertising Expenditure.

Each calendar quarter you shall expend for local advertising purposes the Minimum Local Advertising Expenditure amount set forth in the Summary Pages. Any amounts contributed to an Advertising Cooperative pursuant to Section 15.E, below, shall be credited toward satisfaction of your Local Advertising Expenditure.

E. Advertising Cooperatives.

D-BAT may, from time to time, form local or regional advertising cooperatives (“**Advertising Cooperative**”) to pay for the development, placement, and distribution of advertising for the benefit of Facilities located in the geographic region served by the Advertising Cooperative. Any Advertising Cooperative established by D-BAT will be operated solely as a conduit for the collection and expenditure of Advertising Cooperative fees for the foregoing purposes.

If D-BAT forms an Advertising Cooperative for the region in which the Facility is located, you agree to participate in the Advertising Cooperative pursuant to the terms of this Section 15.E.

D-BAT shall have the exclusive right to create, dissolve, and merge each Advertising Cooperative created, in its discretion, and to create and amend the organizational and governing documents related thereto; provided that such documents shall: **(1)** operate by majority vote, with each D-BAT Facility (including Facilities owned by D-BAT or its Affiliates) entitled to one vote; **(2)** entitle D-BAT to cast one vote (in addition to any votes it may be entitled to on account of its operation of Facilities in the area served by the Advertising Cooperative; **(3)** permit the members of the Advertising Cooperative, by majority vote, to determine the amount of required contributions; and **(4)** provide that any funds left in the Advertising Cooperative at the time of dissolution shall be returned to the members in proportion to their contributions during the 12-month period immediately preceding termination.

You agree to be bound by all organizational and governing documents created by D-BAT and, at D-BAT’s request, shall execute all documents necessary to evidence or affirm your agreement. The Advertising Cooperative shall begin operating on a date determined in advance by D-BAT.

No advertising or promotional plans or materials may be used by the Advertising Cooperative or furnished to its members without D-BAT’s prior approval. All advertising plans and materials must conform to the Standards and must be submitted to D-BAT for approval according to the procedures set forth in Section 15.A. of this Agreement.

F. Restriction Against Internet Advertising.

You may not establish or maintain a web site or other presence on the World Wide Web portion of the Internet that reflects any of the Marks or any of D-BAT copyrighted works, that includes the term “D-BAT” as part of its URL or domain name, that otherwise states or suggests your affiliation with D-BAT or its franchise system, or that uses or displays any equipment or collateral merchandise offered at the Facility.

G. Team Restrictions.

You may not establish, sponsor, facilitate, recruit, coach, or manage any sports teams from or related in any way to the Facility. You may not make or enter into any arrangements that suggest that such team operates from or is supported in any way by the Facility.

**16. INSURANCE**

A. Obligation to Maintain Insurance.

You shall be responsible for all loss or damage arising from or related to your development and operation of the Facility, and for all demands or claims with respect to any loss, liability, personal injury, death, property damage, or expense whatsoever occurring upon the premises of, or in connection with the development or operation of, the Facility. You shall maintain in full force and effect throughout the term

of this Agreement that insurance which you determine is necessary or appropriate for liabilities caused by or occurring in connection with the development or operation of the Facility which shall include, at a minimum, insurance policies of the kinds, and in the amounts, required by Sections 16.B and 16.C. D-BAT, and any entity with an insurable interest designated by D-BAT, shall be an additional named insured in such policies to the extent each has an insurable interest. Each liability insurance policy must contain a waiver of subrogation in favor of D-BAT, its Affiliates, and their respective officers, directors, shareholders, partners, members, agents, representatives, independent contractors, servants, and employees.

**B. Minimum Insurance Coverage.**

All insurance policies shall be written by an insurance company or companies satisfactory to D-BAT, in compliance with the standards, specifications, coverages, and limits set forth in the Manual or otherwise provided to you in writing. These policies shall include, at a minimum, the following:

(1) Comprehensive general liability insurance including coverage for bodily injury, personal injury, products liability, blanket contractual liability, broad form property damage, non-owned automobiles, completed operations and property damage on an occurrence basis with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(2) Property Insurance written on an “All Risks” policy for fire and related peril (including floods and earthquakes where applicable) with limits of insurance of not less than the full replacement value of the Franchised Facility, and its furniture, fixtures, equipment, inventory, and other tangible property.

(3) Employer’s Liability coverage in the amount of \$100,000 per person, \$500,000 in the aggregate, and \$100,000 for occupational disease.

(4) Workers’ compensation and such other insurance as may be required by statute or rule of the state or locality in which the Facility is located. This coverage shall also be in effect for all individuals who participate in any of the training programs described in this Agreement.

(5) In connection with any construction, renovation, refurbishment, or remodeling of the Facility, you shall maintain Builder’s All Risks insurance and in connection with new construction or substantial renovation, refurbishment, or remodeling of the Facility, you shall maintain performance and completion bonds in forms and amounts, and written by carrier(s), reasonably satisfactory to D-BAT.

D-BAT may reasonably increase the minimum coverage required and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards or other relevant changes in circumstances. You shall receive written notice of such modifications and shall take prompt action to secure the additional coverage or higher policy limits.

**C. Insurance Policy Requirements.**

The following general requirements shall apply to each insurance policy that you are required to maintain under this Agreement:

(1) Each insurance policy shall be specifically endorsed to provide that the coverage shall be primary and that any insurance carried by any additional insured shall be excess and non-contributory.

(2) No insurance policy shall contain a provision that in any way limits or reduces coverage for you in the event of a claim by D-BAT or its affiliates.

(3) Each insurance policy shall extend to, and provide indemnity for, all of your obligations and liabilities to third parties and all other items for which you are required to indemnify D-BAT under this Agreement.

(4) Each insurance policy shall be written by an insurance company that has received and maintains “A+” or better rating by the latest edition of Best’s Insurance Rating Service.

(5) No insurance policy shall provide for a deductible amount that exceeds \$5,000, unless otherwise approved in writing by D-BAT, and your co-insurance under any insurance policy shall be 80% or greater.

D. Delivery of Certificate.

No later than 30 days after this Agreement is executed by D-BAT, and on each policy renewal date thereafter, you shall submit evidence of satisfactory insurance and proof of payment therefore to D-BAT. The evidence of insurance shall include a statement by the issuer that the policy or policies will not be cancelled or materially altered without at least 30 days' prior written notice to D-BAT. Upon request, you also shall provide to D-BAT copies of all or any policies, and policy amendments and riders.

E. Minimum Insurance Requirements Not a Representation of Adequacy.

You acknowledge that no requirement for insurance contained in the Agreement constitutes advice or a representation by D-BAT that only such policies, in such amounts, are necessary or adequate to protect you from losses in connection with your business under this Agreement. Maintenance of this insurance, and the performance of your obligations under this Section 16, shall not relieve you of liability under the indemnification provisions of this Agreement.

F. D-BAT's Right to Procure Insurance.

If you fail to procure or maintain at least the insurance required by this Section 16, as revised from time to time pursuant to the Manual or otherwise in writing, D-BAT shall have the immediate right and authority, but not the obligation, to procure such insurance and charge its cost to you. You shall reimburse D-BAT for all out-of-pocket costs incurred by D-BAT in obtaining such insurance on your behalf immediately upon demand for payment.

## 17. TRANSFER

A. Transfer by D-BAT.

D-BAT shall have the right, in its sole discretion and without your consent, to assign this Agreement and/or all of its rights and/or obligations hereunder in a related or third party transaction, may sell any or all of its assets (including its rights in and to the Marks and the System); may issue new shares through an initial public offering and/or private placement; may merge with and/or acquire other companies, or may merged into or be acquired by another company; may pledge its assets to secure payment of its financial obligations.

B. Transfer by Franchisee.

(1) Transfer to Individual Franchisee to Business Entity for Convenience. If you are an individual, you may transfer your interest in this Agreement to a Business Entity for convenience of operation within the first twelve (12) months of this Agreement by signing D-BAT's standard form of assignment and assumption agreement, pursuant to which your Principals will personally guaranty the Business Entity's obligations under this Agreement, if (a) the Business Entity is formed solely for purposes of operating the Facility, (b) you own and control 100% of the equity interest, (c) you provide to D-BAT a copy of the Business Entity's formation and governing documents and a certificate of good standing from the jurisdiction under which the Business Entity was formed, and (d) you pay to D-BAT a \$3,000 transfer fee.

(2) Transfer Among Principals; Transfer of Non-Controlling Interest. If you are a Business Entity, your Principals may transfer their ownership interests in the Business Entity among each other, and may transfer up to a Non-Controlling Interest in the Business Entity to one or more third parties, if (a) you have provided to D-BAT advance notice of the transfer, (b) This Agreement, including the Statement of Ownership Interests in Attachment B, has been amended to reflect the new ownership, (c) each new Principal has signed a Guaranty and Personal Undertaking in the form of Attachment C, and (d) you pay to D-BAT a \$5,000 transfer fee, and reimburse D-BAT for all costs (including attorneys' fees) that it incurs



in connection with the transfer.

**(3) Transfer of Agreement; Transfer of Controlling Interest.** All other transfers (including any sale or transfer of your interest in this Agreement, the sale or transfer of all or substantially of the assets of the Facility in connection with a transfer of this Agreement, and the sale of a Controlling Interest in you if you are a Business Entity) require D-BAT's prior written consent. For the purpose of determining whether you are transferring and/or selling a Controlling Interest or a Non-Controlling Interest, "**Control**" shall mean the ability to direct the business decisions of a business entity or to exercise the voting rights of fifty percent (50%) or more of the voting shares of a business entity, or ownership of fifty percent (50%) or more of the shares of a business entity, or the ability to appoint half or a majority of the directors (or equivalent officers) of a business entity.

You must notify D-BAT in writing at least 60 days prior to the date of any such intended transfer. Any purported transfer, by operation of law or otherwise, not having the written consent of D-BAT shall be null and void and shall constitute a material breach of this Agreement. D-BAT shall not unreasonably withhold its consent to any transfer, but may, in its sole discretion, require any or all of the following as conditions of its consent:

**(a)** All of your accrued monetary obligations and all other outstanding obligations to D-BAT and its Affiliates and your suppliers shall be up to date, fully paid, and satisfied;

**(b)** You must be in full compliance with this Agreement and any other agreements between you and D-BAT, its Affiliates, and your suppliers;

**(c)** You and each Principal shall have executed a general release, in a form satisfactory to D-BAT, of any and all claims against D-BAT and its Affiliates and their respective officers, directors, shareholders, agents, and employees in their corporate and individual capacities, including, without limitation, claims arising under federal, state, and local laws, rules and ordinances; provided, however, that any release will not be inconsistent with any state statute regulating franchising;

**(d)** The transferee shall demonstrate to D-BAT's satisfaction that the transferee meets D-BAT's then-current educational, managerial, and business standards; possesses a good moral character, business reputation, and credit rating; has the aptitude and ability to operate the Franchised Business; and has sufficient equity capital to operate the Franchised Business;

**(e)** At D-BAT's election, either:

**(i)** The transferee shall enter into a written assignment in a form satisfactory to D-BAT under which it assumes all of your obligations under this Agreement for the remaining term (and if the transferee is a Business Entity, then the transferee's principals shall jointly and severally guarantee your obligations under this Agreement in writing in a form satisfactory to D-BAT), and you shall pay to D-BAT a \$15,000 transfer fee and reimburse D-BAT for all costs (including attorneys' fees) that it incurs in connection with the transfer; or

**(ii)** The transferee shall execute D-BAT's then-current form of franchise agreement for a full term (and if the transferee is a Business Entity, then the transferee's principals shall jointly and severally guarantee the transferee's obligations thereunder in writing in a form satisfactory to D-BAT), and the transferee shall pay to D-BAT a \$15,000 transfer fee and reimburse D-BAT for all costs (including attorneys' fees) that it incurs in connection with the transfer. The parties acknowledge that the terms of D-BAT's then-current form of franchise agreements may differ from the terms of this Agreement and may include, among other things, a different percentage Management Fee, Advertising and Promotion Fund contribution, and/or advertising requirements.

**(f)** The transferee shall agree to refurbish the Facility, at its expense, to conform to D-BAT's then-current standards and specifications for a new D-BAT Facility;

**(g)** You agree to remain liable for all direct and indirect obligations to D-BAT in connection

with the Franchised Business prior to the effective date of the transfer, shall continue to remain responsible for its obligations of nondisclosure, non-competition, and indemnification as provided elsewhere in this Agreement, and all other obligations that survive termination, expiration, or transfer and shall execute any and all instruments reasonably requested by D-BAT to further evidence such obligation;

(h) The transferee shall comply with D-BAT initial training requirements;

(i) You or the transferor must provide D-BAT with a copy of the agreements of purchase and sale between the transferor and the transferee. The economic terms of the transfer may not materially and adversely affect, in D-BAT's sole judgment, the post transfer viability of the Franchised Business.

C. Security Interest.

You may grant a security interest in this Agreement or the franchise represented by this Agreement only to the limited extent permitted by Section 9-408 of the Uniform Commercial Code. Any such security interest may only attach to an interest in the proceeds of the operation of the Franchised Business and may not under any circumstances entitle or permit the secured party to take possession of or operate the Franchised Business or to transfer your interest in the franchise without D-BAT's consent.

D. Public and Private Offerings.

If you are a Business Entity and you intend to issue equity interests pursuant to a public or private offering, you shall first obtain D-BAT's written consent, which consent shall not be unreasonably withheld. You must provide to D-BAT for its review a copy of all offering materials (whether or not such materials are required by applicable securities laws) at least 60 days prior to such documents being filed with any government agency or distributed to investors. No offering shall imply (by use of the Marks or otherwise) that D-BAT is participating in an underwriting, issuance, or offering of your securities, and D-BAT's review of any offering shall be limited to ensuring compliance with the terms of this Agreement. D-BAT may condition its approval on satisfaction of any or all of the conditions set forth in Section 17.B. and on execution of an indemnity agreement, in a form prescribed by D-BAT, by you and any other participants in the offering. For each proposed offering, you shall pay to D-BAT a retainer in an amount determined by D-BAT, which D-BAT shall use to reimburse itself for the reasonable costs and expenses it incurs (including, without limitation, attorneys' fees and accountants' fees) in connection with reviewing the proposed offering.

E. Right of First Refusal.

If you receive a bona fide offer to purchase your interest in this Agreement or all or substantially all of the assets of the Franchised Business, or if any Principal receives a bona fide offer to purchase his or her equity interests in you, and you or such Principal wishes to accept such offer, you or the Principal must deliver to D-BAT written notification of the offer and, except as otherwise provided herein, D-BAT shall have the right and option, exercisable within 30 days after receipt of such written notification, to purchase the seller's interest on the same terms and conditions offered by the third party. If the bona fide offer provides for the exchange of assets other than cash or cash equivalents, the bona fide offer shall include the fair market value of the assets and you shall submit with the notice an appraisal prepared by a qualified independent third party evidencing the fair market value of such assets as of the date of the offer. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by D-BAT as in the case of an initial offer. If D-BAT elects to purchase the seller's interest, closing on such purchase must occur by the later of: (1) the closing date specified in the third party offer; or (2) within 60 days from the date of notice to the seller of D-BAT's election to purchase. D-BAT's failure to exercise the option described in this paragraph shall not constitute a waiver of any of the transfer conditions set forth in this Section 17.

F. Transfer Upon Death or Mental Incapacity.

If any Principal dies or becomes incapacitated, D-BAT shall consent to a transfer of the Principal's interest in this Agreement or equity interest in the franchisee (as applicable) to his or her spouse, heirs or relatives, whether such transfer is made by will or by operation of law, if, in D-BAT's sole discretion and judgment, the transferee meets D-BAT's educational, managerial, and business standards; possesses a good moral character, business reputation, and credit rating; has the aptitude and ability to conduct the Franchised Business; has at least the same managerial and financial criteria required by new franchisees and has sufficient equity capital to operate the Franchised Business. If said transfer is not approved by D-BAT, the executor, administrator, or personal representative of such person shall transfer the Principal's interest to a third party approved by D-BAT within six months after such death, mental incapacity, or disability. Such transfer shall be subject to D-BAT's right of first refusal and to the same conditions as any inter vivos transfer.

G. Non-Waiver of Claims.

D-BAT consent to a Transfer shall not constitute a waiver of any claims it may have against the transferring party, and it will not be deemed a waiver of D-BAT's right to demand strict compliance with any of the terms of this Agreement, or any other agreement to which D-BAT and the transferee are parties, by the transferee.

H. Step-In Rights.

To prevent any interruption of the business of the Franchised Business and any injury to the goodwill and reputation thereof which may be caused thereby, you hereby authorize D-BAT, and D-BAT shall have the right, but not the obligation, to operate the Franchised Business for as long as D-BAT deems necessary and practical, and without waiver of any other rights or remedies D-BAT may have under this Agreement, in the event that: **(1)** your General Manager is absent, or incapacitated by reason of illness or death, and you do not hire a replacement within the required period of time and so you are not, therefore, in the sole judgment of D-BAT, able to operate the Franchised Business, or **(2)** any allegation or claim is made against the Franchised Business, you or any Principal, director or employee, involving or relating to misrepresentations or any fraudulent or deceptive practice. If D-BAT undertakes to operate the Franchised Business, D-BAT shall have the right to collect and pay from the revenues of the Franchised Business all expenses relating to the operation of the Franchised Business including, without limitation, Management Fees, Advertising and Promotion Fund contributions, employee salaries, instructor compensation, reimbursement of D-BAT expenses incurred in connection with such operation, and a reasonable management fee. You shall indemnify and hold D-BAT harmless from any and all claims arising from the alleged acts and omissions of D-BAT and its representatives.

## **18. DEFAULT AND TERMINATION**

A. Automatic Termination.

This Agreement will terminate automatically without notice and without an opportunity to cure if you become insolvent or make a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by you or against you, or if you are adjudicated bankrupt, or if a bill in equity or other proceeding for the appointment of a receiver for your business or assets is filed and against you, or if any court of competent jurisdiction appoints a receiver for your business assets, or if a final judgment is entered against you and remains unsatisfied or of record for 30 days or longer (unless a *supersedeas* bond is filed), or if execution is levied against any of the Facility's assets, or foreclosure proceedings are initiated against you by any secured lender.

B. Termination without Opportunity to Cure.

D-BAT may terminate this Agreement, by delivering to you written notice of termination, upon the occurrence of any of the following events of default:

(1) Your failure to identify a site for the Facility in accordance with Section 3.A, or your failure to open the Facility for business in accordance with Section 5.

(2) Your abandonment of the Facility (for purposes of this provision “abandonment” will be deemed to occur if you fail to operate the Facility on three or more consecutive days or if you otherwise convey an intention to close the Facility), or lose the right to possess the Facility premises.

(3) The making of any false or materially misleading representations in your franchise application or during the franchise application process;

(4) Your conviction, or any Principal’s conviction of a felony, a crime involving moral turpitude, or any other crime which is likely to materially and adversely affect the System or the goodwill associated with the Marks, or if you or any Principal is held liable in any civil action involving allegations of fraud or unfair trade practices or similar allegations;

(5) Violation of any confidentiality or non-compete obligations, as described in Section 14, by you or any Principal;

(6) The Facility fails two consecutive quality assurance inspections or fails three quality assurance inspections during any rolling 24-month period;

(7) Termination for cause of any other franchise agreement between D-BAT and you or your Affiliate; or

(8) Delivery of three or more notices of default during any rolling 24-month period, whether or not the event(s) of default described in such notices ultimately are cured.

C. Termination with Opportunity to Cure.

D-BAT may terminate this Agreement, by delivery of written notice of default, upon the occurrence of any of the following events of default and your failure to take appropriate corrective action during the applicable cure period:

(1) You fail to pay any monies owed to D-BAT or its Affiliates, to your landlord, or any other third party suppliers or creditors within 10 days after delivery of written notice of a deficiency;

(2) You misuse the Marks, the Copyrighted Works, or D-BAT’s other intellectual property (which includes, without limitation, offering or selling unauthorized products or services under or in conjunction with the Marks), and fail to correct the misuse within five days after delivery of written notice;

(3) The Facility is cited for violation of health, sanitation or safety laws or regulations, and fails to cure the violation within five days after receiving the citation;

(4) You fail to comply with any provision of this Agreement (except as otherwise provided in this Section 18) and fail to take appropriate corrective action within 30 days after delivery of written notice of a deficiency.

D. Other Remedies.

In addition to its termination rights, D-BAT shall have the right to require that the Facility close during any period in which (1) it is in violation of applicable health, sanitation, or safety laws or regulations, or (2) in D-BAT’s sole discretion, continued operation of the Facility poses a risk to public health or safety.

In lieu of exercising its right to terminate this Agreement, D-BAT may, without waiving such right to terminate: (a) withhold services to you; (b) limit your access to any or all portions of certain software or computer systems; (c) revoke your right to participate in promotions or programs and to attend franchise conventions and meetings; (d) after your failure to cure such default, inspect or re-inspect the Facility; (e) exercise its option to acquire the Facility pursuant to Section 19.B; and/or (f) withdraw from your bank account or withhold from the Membership Fees collected, such amounts necessary to pay D-BAT or its

Affiliates for any overdue amounts, and you hereby grant to D-BAT all authorizations necessary for D-BAT to take such actions.

## **19. OBLIGATIONS UPON EXPIRATION OR TERMINATION**

### **A. Expiration or Termination of Franchise.**

Upon termination or expiration of this Agreement, you shall have no further right to use the Marks, Copyrighted Works, or other intellectual property owned and licensed to you by D-BAT. You may no longer hold yourself out as a D-BAT® Franchisor operator, and you shall refrain from representing any present or former affiliation with D-BAT or the D-BAT® Franchise System. You shall immediately pay all sums due and owing to D-BAT and its Affiliates.

You shall immediately take all actions necessary to cancel any assumed or fictitious name containing the Marks, and shall do all things necessary to transfer to D-BAT or its designee the Facility's telephone number(s). You hereby grant to D-BAT and its representatives, power of attorney for the specific purpose of executing all documents and doing all things necessary to effect such cancellations and transfers.

You shall immediately surrender to D-BAT all copies of all materials in your possession including the Manual and all other documentation relating to the operation of the Franchised Business in your possession, and all copies thereof, and shall retain no copy or record of any of the foregoing, excepting only your copy of this Agreement, any correspondence between the parties, and any other documents which you reasonably need for compliance with any provision of law.

### **B. D-BAT's Option to Assume Lease and Purchase Assets.**

Upon termination or expiration of this Agreement, D-BAT shall have the option (but not the obligation) to assume your lease for the Facility premises by delivering to you written notice of its election within 30 days after termination or expiration of this Agreement. If D-BAT exercises its option, D-BAT also shall purchase the Facility's leasehold improvements, fixtures, furnishings, equipment, graphics, and signage for a purchase price equal to fully depreciated book value. D-BAT also shall have the right (but not the obligation) to assume any equipment leases and other contracts relating to the operation of the Facility as D-BAT, in its sole discretion, agrees to assume. Closing on the purchase of assets shall occur no later than 60 days after D-BAT exercises its option.

If D-BAT elects not to assume your lease for the Facility premises, D-BAT shall have the option to purchase or may require you to destroy, any graphics, signage, or other materials bearing the Marks. To the extent that D-BAT elects to purchase any such items, the purchase price shall be equal to fully depreciated book value of such items. You shall immediately remove from the Facility premises all items bearing the Marks and Copyrighted Works and modify the trade dress as necessary to distinguish the premises from a D-BAT® Facility. If you fail or refuse to comply with the requirements of this subsection, D-BAT and its representatives shall have the right to enter on the Facility premises, without liability for trespass or other civil tort, for purposes of making such changes, at your expense, which you shall pay upon demand.

D-BAT shall have the right to offset against the purchase price of any items purchased from you pursuant to this Section 19.B.: **(1)** amounts that you owe to D-BAT or its Affiliates; **(2)** lease transfer fees (if any), other costs owed to your landlord and the costs of renovating the Facility premises so that it meets D-BAT's then-current standards and specifications (if D-BAT elects to assume the lease for the Facility premises); **(3)** the costs of de-identifying the Facility premises in accordance with this Section 19.B. if you fail to do so (if D-BAT does not elect to assume the lease for the Facility premises); and **(4)** all costs incurred by D-BAT relating to its purchase of the Facility's assets (including the cost of an independent appraiser, if necessary).

C. Compliance with Post Term Obligations.

You and each Principal shall comply with all covenants and obligations which, by their nature, survive termination of this Agreement including, without limitation, the confidentiality obligations and restrictive covenants contained in Section 14 and the indemnification obligations described in Section 20.B.

**20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

A. Independent Contractor.

The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you will operate the Franchised Business as an independent contractor, and that neither party to this Agreement shall be considered an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other party.

Except as otherwise expressly authorized by this Agreement, neither party hereto will make any express or implied agreements, warranties, guarantees, or representations or incur any debt in the name of or on behalf of the other party, or represent that the relationship between D-BAT and you are other than that of D-BAT and franchisee. D-BAT does not assume any liability, and will not be deemed liable, for any agreements, representations, or warranties made by you which are not expressly authorized under this Agreement, nor will D-BAT be obligated for any damages to any person or property which directly or indirectly arise from or relate to the operation of the Franchised Business.

During the term of this Agreement, you shall identify yourself as the owner of the Facility operating under a franchise granted by D-BAT, and shall apply for all permits and certificates of occupancy in your own name. Additionally, your individual name (if you are an individual) or your corporate name (if you are a Business Entity) must appear prominently on all invoices, order forms, receipts, business stationery, and contracts. You shall not use the Marks to incur or secure any obligation or indebtedness on behalf of D-BAT. You shall display at the Facility, in a conspicuous location, a form of notice approved by D-BAT, stating that you are an independent franchised operator of the D-BAT® Facility.

B. Indemnification.

You shall defend at your own cost and indemnify and hold harmless to the fullest extent permitted by law, D-BAT, its Affiliates, and their respective directors, officers, employees, agents, shareholders, designees, and representatives (collectively, the “**D-BAT Indemnities**”) from all Losses and Expenses incurred in connection with any action, suit, proceeding, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises out of or is based upon any of the following: **(1)** your alleged infringement or any other violation or any other alleged violation of any patent, trademark or copyright or other proprietary right owned or controlled by third parties; **(2)** your alleged violation or breach of any contract, federal, state, or local law, regulation, ruling, standard or directive of any industry standard; libel, slander or any other form of defamation by you; **(3)** your alleged violation or breach of any warranty, representation, agreement or obligation in this Agreement; **(4)** any acts, errors, or omissions of you or any of your agents, servants, employees, contractors, partners, proprietors, affiliates, or representatives; **(5)** your operation of the Facility business; **(6)** latent or other defects in the Facility premises, equipment or inventory, whether or not discoverable by D-BAT or you; the inaccuracy, lack of authenticity, or nondisclosure of any information by any customer of the Franchised Business; **(7)** any services or products provided by you at or from the Facility premises or otherwise related to the operation of the Franchised Business; **(8)** any services or products provided by any affiliated or nonaffiliated participating entity; any action by any customer of the Franchised Business; and, **(8)** any damage to the property of you or D-BAT, their agents or employees, or any third person, firm, or corporation, whether or not such losses, claims, costs, expenses, damages, or liabilities were actually or allegedly caused wholly or in part through the active or passive negligence of D-BAT or any of its agents or employees, or resulted from any strict liability imposed on D-BAT or any of its agents or employees.

“**Losses and Expenses**” means, for purposes of this Agreement, without limitation, all losses and expenses including compensatory, exemplary, incidental, consequential, or punitive damages, fines, charges, expenses, lost profits, legal fees, expert fees, court costs, settlement amounts, judgments, compensation for D-BAT’s reputation and goodwill, costs of or resulting from delays, financing, costs of advertising material and media/time/space and costs of changing, substituting, or replacing the same, and any and all expenses of recall, refunds, compensation, public notices, and other such amounts incurred in connection with the matters described.

## 21. NOTICES

All notices, requests and reports required or permitted under this Agreement must be in writing and must be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid or by facsimile (provided that the sender confirms the facsimile by sending an original confirmation copy by certified mail or expedited delivery service within five (5) calendar days after transmission) to the respective parties at the addresses reflected in the Summary Pages, unless and until a different address has been designated by written notice to the other party. Any notice will be deemed to have been given at the time of personal delivery or receipt; provided, however, that if delivery is rejected, delivery will be deemed to have been given at the time of such rejection.

## 22. SEVERABILITY AND CONSTRUCTION

### A. Entire Agreement.

This Agreement and its Attachments constitute the final and fully integrated agreement between the parties concerning the subject matter hereof, and supersede all prior agreements. Nothing in this Agreement or in any related agreement is intended to disclaim the representations made by D-BAT in the Franchise Disclosure Document.

### B. Modification.

This Agreement may be modified only by a written document, signed by both parties.

### C. Written Consent.

Whenever this Agreement requires the prior approval or consent of D-BAT, you shall make a timely written request to D-BAT and such approval or consent shall be obtained in writing.

### D. No Waiver.

No failure of D-BAT to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by you with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of D-BAT’s right to demand exact compliance with any of the terms herein. D-BAT’s waiver of any particular default by you shall not affect or impair D-BAT’s rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance or omission of D-BAT to exercise any power or right arising out of any breach or default by you of any of the terms, provisions or covenants hereof affect or impair D-BAT’s right to exercise the same, nor shall such constitute a waiver by D-BAT of any right hereunder or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by D-BAT of any payments due to it hereunder shall not be deemed to be a waiver by D-BAT of any preceding breach by you of any terms, covenants or conditions of this Agreement.

### E. Severability.

Except as expressly provided to the contrary herein, each section, part, term, and/or provision of this Agreement shall be considered severable, and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as

may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement; provided, however, that if D-BAT determines that such finding of invalidity or illegality adversely affects the basic consideration of this Agreement, D-BAT, at its option, may terminate this Agreement.

F. Captions and Headings; References to Gender; Counterparts.

All captions in this Agreement are intended solely for the convenience of the parties, and none of the captions shall be deemed to affect the meaning or construction of any provision hereof. All references herein to the masculine, feminine, neuter, or singular shall be construed to include the masculine, feminine, neuter, or plural. This Agreement may be executed in one or more originals, each of which shall be deemed an original.

G. Persons Bound.

All acknowledgments, promises, covenants, agreements, and obligations herein made or undertaken by you shall be deemed jointly and severally undertaken by all of the parties executing this Agreement as franchisee hereunder. As used in this Agreement, the term “you” shall include all persons who succeed to the interest of the original franchisee by transfer or operation of law.

H. Electronic Signature.

This Agreement, including all Attachments, may be signed with full force and effect using electronic signatures. By signing via your electronic signature you consent to the legally binding terms and conditions of this Agreement and represent that you are the authorized signatory indicated in each signature block.

## **23. GOVERNING LAW AND FORUM SELECTION**

A. Governing Law.

This Agreement is made in and takes effect upon its acceptance and execution by D-BAT at its headquarters in Carrollton, Texas. This Agreement shall be and all claims arising out of or related to the relationship created hereby shall be governed by and interpreted and construed under the substantive laws of the State of Texas, without regard to its conflicts of laws principles, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 et seq.) and U.S. Copyright Act, 17 U.S.C. Section 101 et seq.).

B. Mediation.

The parties acknowledge that during the term and any extensions of this Agreement certain disputes may arise that the parties are unable to resolve, but that may be resolvable through mediation. To facilitate such resolution, D-BAT, you, and each Principal agree to submit any claim, controversy or dispute between D-BAT or its Affiliates (and D-BAT’s and its Affiliate’s respective owners, officers, directors, managers, agents, representatives and/or employees) and you or your Affiliates (and your Principals, agents, representatives and/or employees) arising out of or related to **(1)** this Agreement or any other agreement between D-BAT and you, **(2)** D-BAT’s relationship with you, or **(3)** the validity of this Agreement or any other agreement between D-BAT and you, to mediation before bringing such claim, controversy or dispute in a court or before any other tribunal.

The mediation shall be conducted by a mediator agreed upon by D-BAT and you and, failing such agreement within not more than 15 days after either party has notified the other of its desire to seek mediation, by the American Arbitration Association or any successor organization (“AAA”) in accordance with its rules governing mediation. Mediation shall be held at the offices of the AAA in the county in which D-BAT maintains its principal place of business. The costs and expenses of mediation, including the



compensation and expenses of the mediator (but excluding attorneys' fees incurred by either party), shall be borne by the parties equally.

If the parties are unable to resolve the claim, controversy or dispute within 90 days after the mediator has been chosen, then, unless such time period is extended by written agreement of the parties, either party may bring a legal proceeding pursuant to Section 23.C. The parties agree that statements made during such mediation proceeding will not be admissible for any purpose in any subsequent legal proceeding.

Notwithstanding the foregoing provisions of this Section 23.B, the parties' agreement to mediate shall not apply to controversies, disputes or claims related to or based on amounts owed to D-BAT pursuant to this Agreement, the Proprietary Marks or D-BAT's Confidential Information. Moreover, regardless of this mediation agreement, D-BAT and you each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief in any court of competent jurisdiction without first adhering to the provisions of this Section 23.B.

C. Jurisdiction and Venue.

Except as expressly provided by applicable state law, the parties agree that any action brought by either party against the other shall be instituted and maintained in the federal or state courts situated in the county in which D-BAT maintains its principal headquarters. The parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Notwithstanding the foregoing, you acknowledge and agree that D-BAT may bring and maintain an action against you in any court of competent jurisdiction for injunctive or other extraordinary relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary and permanent injunctions.

D. Remedy.

No right or remedy conferred upon or reserved by D-BAT or you by this Agreement is intended and it shall not be deemed to be exclusive of any other right or remedy provided or permitted herein, by law or at equity, but each right or remedy shall be cumulative of every other right or remedy.

E. Waiver of Jury Trial.

EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, INVOLVING D-BAT OR ITS AFFILIATES, WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF ANY PARTY UNDER THIS AGREEMENT, AND/OR THE OFFER OR GRANT OF THE FRANCHISE.

F. Contractual Limitations Period.

Any and all claims and actions arising out of or relating to this Agreement, the parties' relationship, or the operation of the Facility (including any defenses and any claims of set-off or recoupment), must be brought or asserted before the expiration of the earlier of **(1)** the time period for bringing an action under any applicable state or federal statute of limitations; **(2)** one **(a)** year after the date upon which a party discovered, or should have discovered, the facts giving rise to an alleged claim; or **(b)** two **(2)** years after the first act or omission giving rise to an alleged claim, whichever occurs first; or it is expressly acknowledged and agreed by all parties that such claims or actions shall be irrevocably barred.

G. Waiver of Punitive Damages.

The parties hereby waive to the fullest extent permitted by law any right to or claim of any punitive, exemplary, or multiple damages against the other.

**24. ACKNOWLEDGMENTS**

A. Receipt of Franchise Disclosure Document

You hereby acknowledge that you received from D-BAT the D-BAT Franchise Disclosure Document at least fourteen (14) days prior to the execution of this Agreement. \_\_\_\_\_ **[Please initial to acknowledge that you have read and understand this Paragraph]**

B. Receipt of Agreement.

You hereby acknowledge that you received from D-BAT this Agreement with all blanks filled in at least seven (7) days prior to the execution of this Agreement. You represent that you have read this Agreement in its entirety and that you have been given the opportunity to clarify any provisions that you did not understand and to consult with an attorney or other professional advisor. You further represent that you understand the terms, conditions and obligations of this Agreement and agree to be bound thereby. \_\_\_\_\_ **[Please initial to acknowledge that you have read and understand this Paragraph]**

C. Independent Investigation.

You acknowledge and represent that you have conducted an independent investigation of all aspects relating to the Franchised Business and recognize that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon your skills and ability as an independent business person. This offering is not a security as that term is defined under applicable federal and state securities laws. \_\_\_\_\_ **[Please initial to acknowledge that you have read and understand this Paragraph]**

D. No Representations; No Reliance.

You acknowledge and represent that D-BAT has made no representations, warranties, or guarantees, express or implied, as to the potential revenues, profits, or services of the business venture contemplated under this Agreement other than those contained in D-BAT’s Franchise Disclosure Document, and that you have not relied on any such representations, other than those contained in D-BAT’s Franchise Disclosure Document, in making your decision to purchase a D-BAT® Franchise. You further acknowledge and represent that neither D-BAT nor its representatives have made any statements inconsistent with the terms of this Agreement. \_\_\_\_\_ **[Please initial to acknowledge that you have read and understand this Paragraph]**

**IN WITNESS WHEREOF**, the parties hereto have duly executed, sealed and delivered this Agreement on the day and year first above written.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## CALIFORNIA AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT TO FRANCHISE AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Amendment.

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., (collectively, the “**Act**”). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

2. Sections 20000 through 20043 of the California Business and Professions Code provide rights to you concerning nonrenewal and termination of the Franchise Agreement. The Federal Bankruptcy Code also provides rights to you concerning termination of the Franchise Agreement upon certain bankruptcy-related events. To the extent the Franchise Agreement contains a provision that is inconsistent with these laws, these laws will control.

3. The Franchise Agreement requires you to execute a general release of claims upon renewal or transfer of the Franchise Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any 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 31000 through 31516). California Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (California Business and Professions Code 2000 through 20043).

4. If the Franchise Agreement requires payment of liquidated damages that is inconsistent with California Civil Code Section 1671, the liquidated damage clause may be unenforceable.

5. If the Franchise Agreement contains a covenant not to compete which extends beyond the expiration or termination of the Agreement, the covenant may be unenforceable under California law.

6. If the Franchise Agreement requires litigation, arbitration, or mediation to be conducted in a forum other than the State of California, the requirement may unenforceable under California law.

7. If the Franchise Agreement requires that it be governed by a state’s law other than the State of California, such requirement may be unenforceable.

8. Section 6.A. of the Franchise Agreement is deleted and replaced with the following:

“6.A. Initial Franchise Fee. You will pay to D-BAT an Initial Franchise Fee in the amount specified in the Summary Pages on the first business day following the date D-BAT has completed its pre-opening obligations to you under the Franchise Agreement and the Facility opens for business. You acknowledge and agree that the Initial Franchise Fee is fully earned by D-BAT when paid and is not refundable.”

9. Questionnaires and Acknowledgements. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

10. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## ILLINOIS AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT TO FRANCHISE AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Amendment.

1. 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 (“**FDA**”), 815 ILCS 705/1-44. To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Illinois law shall apply to and govern the Franchise Agreement.
- b. In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.
- c. 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. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois is void.

2. Section 6.A. of the Franchise Agreement is deleted and replaced with the following:

“6.A. Initial Franchise Fee. Payment of your Initial Franchise and Development Fees will be deferred until Franchisor has met its initial obligations to franchisee, and franchisee has commenced doing business. This financial assurance requirement was imposed by the Office of the Illinois Attorney General due to Franchisor’s financial condition.”

3. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

- a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

4. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment will prevail.

5. Each provision of this Amendment will be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

*[The Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## MARYLAND AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT TO FRANCHISE AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**us**” or “**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Amendment. Where and to the extent that any of the provisions of this Amendment are contrary to, in conflict with or inconsistent with any provision contained in the Agreement, the provisions contained in this Amendment shall control.

To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

1. Any provision in the Franchise Agreement that provides for termination upon bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

2. Any provision requiring you to sign a general release as a condition of renewal, sale, and/or assignment or transfer shall not apply to any liability arising under the Maryland Franchise Registration and Disclosure Law.

3. Any provision requiring you to bring an action against us in any state other than Maryland shall not apply to claims arising under the Maryland Franchise Registration and Disclosure Law. You may bring an action in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

4. Notwithstanding anything to the contrary set forth in the Agreement, any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

5. Based upon the franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement and the outlet is opened.

6. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

7. Each provision of this Amendment 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 Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

8. As to any state law described in this Amendment that declares void or unenforceable any provision contained in the Franchise Agreement, Franchisor reserves the right to challenge the enforceability of the state law by, among other things, bringing an appropriate legal action or by raising the claim in a legal action or arbitration that you have initiated.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## NORTH DAKOTA AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT TO FRANCHISE AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 20\_\_\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Amendment.

1. Releases. The following language is added to those sections in the Franchise Agreement regarding the execution of general releases:

“Notwithstanding the foregoing, any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law (“**NDFIL**”).”

2. Covenants Not to Compete. The following language is added to the end of Sections 14.B and 14.C of the Franchise Agreement:

“Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.”

3. Governing Law. Section 23.A of the Franchise Agreement is supplemented with the following language:

“To the extent required by the NDFIL, North Dakota law will apply to this Agreement.”

4. Mediation. Section 23.B of the Franchise Agreement is supplemented with the following language:

“To the extent required by the NDFIL, Franchisee may bring an action in North Dakota. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.”

5. Waiver of Jury Trial. Section 23.E of the Franchise Agreement is supplemented the following language:

“The Commissioner has determined waiver of trial by jury to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the NDFIL. Franchisor and Franchisee agree to enforce these provisions only to the extent the law allows.”

6. Contractual Limitations Period. Section 23.F of the Franchise Agreement is supplemented with the following language:

“The Commissioner has determined waiver of punitive damages to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the NDFIL. To the extent this provision is inconsistent with the NDFIL, the parties agree that North Dakota law will apply.”

7. Waiver of Punitive Damages. Section 23.G of the Franchise Agreement is supplemented with the following language:

“The Commissioner has determined waiver of punitive damages to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the NDFIL. However, Franchisor and Franchisee agree to enforce these provisions to the extent the law allows, which may, however, require that all or part of Section 23.G be deleted in order for the provision to comply with the NDFIL.”

8. Questionnaires and Acknowledgements. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other

person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

9. Conflicting Terms. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

10. Miscellaneous. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the North Dakota Franchise Investment Law are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**VIRGINIA AMENDMENT TO FRANCHISE AGREEMENT**

THIS AMENDMENT TO FRANCHISE AGREEMENT (this “**Amendment**”) dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Agreement**”) dated \_\_\_\_\_, by and between D-BAT Academies, Inc., a Texas corporation (“**Franchisor**”), and \_\_\_\_\_ (“**Franchisee**”). Where and to the extent that any of the provisions of this Amendment are contrary to, in conflict with or inconsistent with any provision contained in the Agreement, the provisions contained in this Amendment shall control. Defined terms contained in the Agreement shall have the identical meanings in this Amendment.

1. Under Section 13.1-564 of the Virginia Retail Franchising Act, (the “**Act**”), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the Agreement does not constitute “reasonable cause”, as that term may be defined in the Act or the laws of Virginia, that provision may not be enforceable.

2. The Virginia State Corporation Commission’s Division of Securities and retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

3. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

4. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

5. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## WASHINGTON AMENDMENT TO THE FRANCHISE AGREEMENT, FRANCHISEE COMPLIANCE QUESTIONNAIRE, AND RELATED AGREEMENTS

THIS AMENDMENT TO FRANCHISE AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Amendment.

1. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
2. 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.
3. 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 in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act 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.
5. Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.
6. 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.
7. 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.
8. Section 6.A and 6.C of this Franchise Agreement is revised to state that the Washington Department of Financial Institutions Securities Division has imposed a financial assurance requirement. Therefore, as a condition to becoming registered to offer and sell franchises in the State of Washington, we have agreed to defer your obligation to pay the Initial Franchise Fee and Construction Management and On-Site Training Fee to us until Franchisor has completed all of its pre-opening obligations to Franchisee under the Franchise Agreement and Franchisee has opened for business.
9. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any

statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Franchise Agreement, the terms of this Amendment shall prevail.

a. In addition, Section 24 of the Franchise Agreement is hereby deleted.

10. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

11. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT A**  
**GLOSSARY OF ADDITIONAL TERMS**

Capitalized terms will have the following meanings, unless otherwise defined in this Agreement.

“**Advertising Cooperative**” means a group of D-BAT® Facilities formed to facilitate marketing and advertising placement in a particular geographic area.

“**Affiliate**” means any entity that is wholly or partly owned by another entity, that shares common ownership with another entity, or that has an ownership interest in another entity.

“**Business Entity**” means a corporation, limited liability company, limited partnership or other entity created pursuant to statutory authority.

“**Confidential Information**” means and includes any and all manuals, trade secrets, training systems and methods, customer lists and contacts, equipment design, technology, and utilization, advertising strategies and methods, D-BAT’s goodwill, your goodwill, client pricing policies, hiring of, training and development of instructors, customer and instructor personnel files, lists and information, and all other items designated as “Confidential” by D-BAT.

“**Franchise Site Application**” means the form of application prescribed by D-BAT, from time to time, and used to evaluate proposed sites for the Facility premises.

“**Gross Revenue**” means the aggregate of: **(1)** all revenue from the sale of products and services, whether made for cash, on credit, or otherwise, without reserve or deduction for inability or failure to collect, that you, in the normal course of your operations would credit or attribute to the operation of a D-BAT® Facility; **(2)** all monies, trade value or other things of value that you receive from Facility operations, whether at, in, from, or through the Facility; and **(3)** business interruption insurance proceeds. Gross Revenue does not include: **(a)** the exchange of merchandise between D-BAT® Facilities (if you operate multiple Facilities) if the exchanges are made solely for the convenient operation of your business and not for the purpose of depriving us of the benefit of a sale that otherwise would have been made at, in, on or from the Facility premises; **(b)** returns to shippers, vendors, or manufacturers; **(c)** sales of equipment, fixtures or furniture after being used in the conduct of the Facility; **(d)** cash or credit refunds for transactions included within Gross Revenue (limited, however, to the selling price of the merchandise or service); **(e)** the amount of any city, county, state or federal sales, luxury or excise tax on such sales that is both **(i)** added to the selling price or absorbed therein and **(ii)** paid to the taxing authority by you. Customer refunds may be deducted from Gross Revenue if the charge was previously included in Gross Revenue.

“**Person**” means an individual (and the heirs, executors, administrators or other legal representatives of an individual); a partnership, a corporation, a limited liability D-BAT, a government, or any department or agency thereof, a trust, and any other incorporated or unincorporated association or organization.

“**Principals**” means **(1)** if you are a sole proprietorship, you and your spouse, **(2)** if you are a general partnership, all partners and spouses of partners, **(3)** if you are a limited partnership, all general and limited partners, and all Principals of the general partner, **(4)** if you are a limited liability company, all members and managers, and **(5)** if you are a corporation, all officers, directors and shareholders. If any Principal is a Business Entity, then the term “Principal” also includes the Principals of the Business Entity.

“**Term**” means a number of years as reflected on the Summary Pages.

“**Territory**” means the geographic or other area identified in the Summary Pages.

**ATTACHMENT B  
STATEMENT OF OWNERSHIP INTERESTS**

**STATEMENT OF OWNERSHIP INTERESTS AND FRANCHISEE’S PRINCIPALS**

A. The following is a list of all shareholders, partners, members or other investors owning a direct or indirect interest in the Franchisee, and a description of the nature of their interest:

NAME	OWNERSHIP INTEREST IN FRANCHISEE	NATURE OF INTEREST

B. The following is a list of all of Franchisee’s Principals, each of whom shall (unless executing the Guaranty and Personal Undertaking) execute the Confidentiality Agreement and Ancillary Covenants Not to Compete substantially in the form set forth in Attachment D to the Franchise Agreement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT C  
GUARANTY AND PERSONAL UNDERTAKING**

Each of the undersigned acknowledges and agrees as follows:

- (1) Each has read the terms and conditions of the Franchise Agreement and acknowledges that the execution of this Guaranty and Personal Undertaking and the undertakings of the Principals in the Franchise Agreement are in partial consideration for, and a condition to, the granting of the rights under the Franchise Agreement, and that D-BAT would not have granted such rights without the execution of this Guaranty and Personal Undertaking and the other undertakings by each of the undersigned;
- (2) Each is included in the term “Principal”;
- (3) Each individually, jointly, and severally, makes all of the covenants, representations, warranties and agreements of the Principals set forth in the Franchise Agreement and is obligated to perform thereunder (including, without limitation, those regarding compliance with the Franchise Agreement; the use of confidential information in Section 14, the covenants in Section 14; transfer provisions in Section 17; the choice of law and venue provisions in Section 23; and indemnification obligations in Section 20);
- (4) Each individually, jointly and severally, unconditionally, and irrevocably guarantees to D-BAT and its successors and assigns that all obligations of the franchisee under the Franchise Agreement will be punctually paid and performed. Upon default by the franchisee or upon notice from D-BAT, each Principal will immediately make each payment and perform each obligation required of the franchisee under the Franchise Agreement. Without affecting the obligations of any Principal under this Guaranty and Personal Undertaking, D-BAT may, without notice to any Principal, waive, renew, extend, modify, amend, or release any indebtedness or obligation of the franchisee or settle, adjust, or compromise any claims that D-BAT may have against the franchisee. Each Principal waives all demands and notices of every kind with respect to the enforcement of this Guaranty and Personal Undertaking, including notices of presentment, demand for payment or performance by the franchisee, any default by the franchisee or any guarantor, and any release of any guarantor or other security for this Guaranty and Personal Undertaking or the obligations of the franchisee. D-BAT may pursue its rights against any Principal without first exhausting its remedies against the franchisee and without joining any other guarantor and no delay on the part of D-BAT in the exercise of any right or remedy will operate as a waiver of the right or remedy, and no single or partial exercise by D-BAT of any right or remedy will preclude the further exercise of that or any other right or remedy. Upon receipt by D-BAT of notice of the death of any Principal, the estate of the deceased will be bound by the foregoing Guaranty and Personal Undertaking, but only for defaults and obligations under the Franchise Agreement existing at the time of death, and in that event, the obligations of the Principals who survive such death will continue in full force and effect;
- (5) Each also agrees to be bound individually to all of the provisions of the Franchise Agreement including, without limitation, the litigation and dispute resolution provisions set forth in Section 23, and each irrevocably submits to the jurisdiction of the state court situated in Dallas County, Texas, or the U.S. District Court for the Northern District of Texas.
- (6) **EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, INVOLVING D-BAT OR ITS AFFILIATES, WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THE FRANCHISE AGREEMENT, THE PERFORMANCE OF ANY PARTY UNDER THE FRANCHISE AGREEMENT, AND/OR THE OFFER OR GRANT OF THE FRANCHISE.**



IN WITNESS WHEREOF, each of the parties hereto, intending to be legally bound, has caused this Guaranty and Personal Undertaking to be executed on the date set forth below.

**THE PRINCIPALS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**ATTACHMENT D**  
**CONFIDENTIALITY AND NONCOMPETITION AGREEMENT**  
**(for trained employees, shareholders, officers, directors,**  
**members and general partners of Franchisee)**

In consideration of my being a \_\_\_\_\_ of \_\_\_\_\_ (the “**Franchisee**”), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that:

1. \_\_\_\_\_ doing business as \_\_\_\_\_ (the “**Franchisee**”), has acquired the right and franchise from D-BAT Academies, Inc. (“**D-BAT**”) to establish and operate a Franchised Business (the “**Franchised Business**”) and the right to use in the operation of the Franchised Business D-BAT trade names, trademarks, service marks, including the service mark D-BAT® (the “**Marks**”) and the system developed by D-BAT and/or its affiliates for operation and management of Franchised Businesses (the “**System**”), as they may be changed, improved and further developed from time to time in D-BAT’s sole discretion.

2. D-BAT possesses certain proprietary and confidential information relating to the operation of the System, which includes the Operations Manual, trade secrets and copyrighted materials, methods and other techniques and know-how (the “**Confidential Information**”).

3. Any and all manuals, trade secrets, training systems and methods, customer lists and contacts, equipment design, technology, and utilization, advertising strategies and methods, D-BAT’s goodwill, Franchisee’s goodwill, client pricing policies, hiring of, training and development of instructors, customer and instructor personnel files, lists and information, and all other items designated as “Confidential” by D-BAT” or Franchisee shall be deemed to be Confidential Information for purposes of this Agreement.

4. As \_\_\_\_\_ of the Franchisee, D-BAT and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, the D-BAT operations manual (the “**Manual**”) and other general assistance during the term of this Agreement.

5. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term hereof, and the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

6. The Confidential Information is proprietary, involves trade secrets of D-BAT, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by D-BAT as confidential. Unless D-BAT otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as \_\_\_\_\_ of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

7. Except as otherwise approved in writing by D-BAT, I shall not, while in my position with the Franchisee and for a continuous uninterrupted period commencing upon the cessation or termination of my position with Franchisee, regardless of the cause for termination, and continuing for two (2) years thereafter, either directly or indirectly, for myself or through, on behalf of, or in conjunction with any other person or entity, **(1)** own, maintain, engage in, be employed by, advise, assist, invest in, franchise, make loans to or have any interest in any business that provides baseball or softball instruction or in which the sale of baseball or softball equipment and apparel comprises more than 10% of gross sales, and that is located within fifteen (15) miles of any D-BAT® baseball or softball training academy and pro shop, or **(2)** contact other instructors or customers of the Franchisee or utilize any information relating to the instructors or customers

for a competitive business purpose. I agree that the two-year restrictive period described in this Agreement shall be tolled during any period of noncompliance.

8. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which D-BAT is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement. I understand and acknowledge that D-BAT shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

9. I agree that any breach of the covenants contained in this Agreement will result in irreparable harm to Franchisee and D-BAT, and that Franchisee and/or D-BAT shall be entitled to an injunction, both preliminary and final, enforcing said covenants in the event of any breach or threatened breach by me, in addition to any other damages or remedies available to the Franchisee or D-BAT, at law or in equity. For enforcement purposes, the covenants contained in this Agreement shall be considered obligations independent of any other obligations between the parties, and the existence of any claim or cause of action against Franchisee or D-BAT shall not constitute a defense to enforcement of said covenants by injunction. Likewise, the provisions of this Agreement survive whether termination of my relationship with Franchisee is with or without cause, rightful or wrongful.

10. D-BAT is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause D-BAT and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or D-BAT may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and D-BAT all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and D-BAT, any claim I have against the Franchisee or D-BAT is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

11. This Agreement shall be construed under the laws of the State of Texas. The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

12. With respect to all claims, controversies and disputes, I irrevocably consent to personal jurisdiction and submit myself to the jurisdiction of the state courts located in Dallas County, Texas, and the United States District Court for the Northern District of Texas. I acknowledge that this Agreement has been entered into in the State of Texas, and that I am to receive valuable information emanating from D-BAT's headquarters in Dallas County, Texas. In recognition of the information and its origin, I hereby irrevocably consent to the personal jurisdiction of the state and federal courts of Texas as set forth above. Notwithstanding the foregoing, I acknowledge and agree that D-BAT may bring and maintain an action against me in any court of competent jurisdiction for injunctive or other extraordinary relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary and permanent injunctions.

THE PARTIES HERETO, INTENDING TO BE LEGALLY BOUND, HAVE EXECUTED THIS AGREEMENT THE DAY AND YEAR FIRST ABOVE WRITTEN.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGED BY FRANCHISEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT E**  
**ELECTRONIC DEBIT AND CREDIT AUTHORIZATION**  
**Authorization Agreement for Direct Payments (ACH Debits and Credits)**

I (we) hereby authorize D-BAT Academies, Inc., hereinafter called D-BAT, to initiate debit and credit entries to my (our)  Checking Account/  Savings Account (select one) indicated below at the depository financial institution named below, hereafter called DEPOSITORY, and to debit or credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of the laws of the United States.

Depository Name: \_\_\_\_\_ Branch: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Routing Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

This authorization will remain in full force and effect until D-BAT has received written notification from me (or either of us) of its termination in such time and in such manner as to afford D-BAT and DEPOSITOR a reasonable opportunity to act on it.

Name(s): \_\_\_\_\_ ID Number: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**NOTE: DEBIT AND CREDIT AUTHORIZATIONS MUST PROVIDE THAT THE GRANTOR OF THE AUTHORIZATION HEREUNDER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.**

**ATTACHMENT F  
TELEPHONE NUMBER ASSIGNMENT AGREEMENT**

**THIS TELEPHONE NUMBER ASSIGNMENT AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter the “Assignor”) and **D-BAT ACADEMIES, INC.** (hereinafter the “Assignee”).

**WITNESSETH:**

**WHEREAS**, Assignee franchises the operation of baseball and softball academies and pro shops identified by the trade name and service mark D-BAT® (the “Franchised Business”);

**WHEREAS**, the Assignor has been granted a license to operate a Franchised Business pursuant to a Franchise Agreement dated \_\_\_\_\_;

**WHEREAS**, in order to operate its Franchised Business, the Assignor shall be acquiring one or more telephone numbers, telephone listings and telephone directory advertisements; and

**WHEREAS**, as a condition to the execution of the Franchise Agreement, the Assignee has required that the Assignor assign all of its right, title and interest in its telephone numbers, telephone listings and telephone directory advertisements to the Assignee in the event of a termination of the Franchise Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assignment. In the event of termination of the Franchise Agreement, and in order to secure continuity and stability of the operation of the System, the Assignor hereby sells, assigns, transfers and conveys to the Assignee all of its rights, title and interest in and to certain telephone numbers, telephone listings and telephone directory advertisements pursuant to which Assignor shall operate its Franchised Business in accordance with the terms of the Franchise Agreement; provided, however, such Assignment shall not be effective unless and until the Franchise Agreement is terminated in accordance with the provisions thereof.

2. Representation and Warranties of the Assignor. The Assignor hereby represents, warrants and covenants to the Assignee that:

(a) As of the effective date of the Assignment, all of the Assignor’s obligations and indebtedness for telephone, telephone listing services and telephone directory advertisement services shall be paid and current;

(b) As of the date hereof, the Assignor has full power and legal right to enter into, execute, deliver and perform this Agreement;

(c) This Agreement is a legal and binding obligation of the Assignor, enforceable in accordance with the terms hereof;

(d) The execution, delivery and performance of this Assignment does not conflict with, violate, breach or constitute a default under any contract, agreement or instrument to which the Assignor is a party or by which the Assignor is bound, and no consent of nor approval by any third party is required in connection herewith; and

(e) The Assignor has the specific power to assign and transfer its right, title and interest in its telephone numbers, telephone listings and telephone directory advertisements, and the Assignor has obtained all necessary consents to this Assignment.

3. Miscellaneous. The validity, construction and performance of this Assignment shall be governed by the laws of the State of Texas. All agreements, covenants, representations and warranties made herein shall survive the execution hereof. All rights of the Assignee shall inure to its benefit and to the benefit of its successors and assigns.

**IN WITNESS WHEREOF**, each of the parties has executed this Assignment as of the day and year first written above.

**ASSIGNEE:  
D-BAT ACADEMIES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT G**  
**RENEWAL ADDENDUM**  
**TO**  
**D-BAT FRANCHISE AGREEMENT**

THIS RENEWAL ADDENDUM (“**Addendum**”) is made effective as of \_\_\_\_\_, 20\_\_ (“**Effective Date**”), by and between D-BAT Academies, Inc., a Texas corporation (“**Franchisor**” or “**D-BAT**”), \_\_\_\_\_, a/an \_\_\_\_\_ (“**Franchisee**”), and \_\_\_\_\_ and \_\_\_\_\_, each an adult individual (“**Guarantors**”).

**BACKGROUND**

- A. Effective \_\_\_\_\_, Franchisor and Franchisee entered into a franchise agreement (together with all amendments, “**Franchise Agreement**”) pursuant to which Franchisee acquired the right and assumed the obligation to establish and operate a D-BAT® facility ultimately located at \_\_\_\_\_ (the “**Facility**”).
- B. Simultaneously with the execution of the Franchise Agreement, Guarantors personally guaranteed the obligations of Franchisee under the Franchise Agreement through the execution of a Guaranty and Personal Undertaking (“**Guaranty**”).
- C. Now, however, as of [Expiration Date] the Franchise Agreement is expiring, and Franchisee has notified Franchisor that it is electing to exercise its first renewal term.
- D. To that end, simultaneously with the execution of this Addendum, Franchisor and Franchisee are entering into a new franchise agreement, effective as of \_\_\_\_\_, 20\_\_, for Franchisee’s first renewal term (“**Renewal Franchise Agreement**”) and pursuant to which Franchisee will continue to operate the Facility.
- E. Franchisor has determined that, on Franchisee’s execution of this Addendum and fulfillment of the terms hereunder, Franchisee will have met the conditions for renewal.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Summary Pages. The following replace the corresponding terms in the Summary Pages of the Renewal Franchise Agreement:

**EXPIRATION DATE:** Midnight on the 5<sup>th</sup> anniversary of the Effective Date.

**INITIAL FRANCHISE FEE:** As this Agreement is being entered into for a renewal term, the Initial Franchise Fee is not applicable and instead, a Renewal Fee of \$7,500 is due and payable by Franchisee to D-BAT on the execution of this Agreement.

**INITIAL SOFTWARE LICENSE FEE:** Not Applicable

**CONSTRUCTION MANAGEMENT AND ON-SITE TRAINING FEE:** Not Applicable

2. Renewal Term: In Section 2.B of the Franchise Agreement, the term “two additional five-year renewal terms” is deleted and replaced with “one additional five-year renewal term.”
3. Initial Training Program. Section 8.A of the Renewal Franchise Agreement is deleted.



4. Pre-Opening Assistance. Section 8.B. of the Renewal Franchise Agreement is deleted.
5. Release of Franchisor. Franchisee and Guarantors, on behalf of themselves, their heirs, successors, and assigns, and all other persons or entities acting on their behalf or claiming under any of them (collectively, “**Franchisee Releasors**”) freely and without any influence, fully and forever release, discharge, and covenant not to sue Franchisor, its parents, and its affiliates and Franchisor’s and each of their respective past and present officers, directors, shareholders, owners, agents, representatives, attorneys, servants, and employees, in their corporate and individual capacities (collectively, “**Franchisor Releasees**”), with respect to any and all claims, demands, liabilities, obligations, damages, debts, covenants, promises, agreements, costs, expenses, attorneys’ fees, and causes of action of whatever kind or nature, whether known or unknown, direct or indirect, vested or contingent, suspected or unsuspected (collectively, “**Claims**”), that any of the Franchisee Releasors now own or hold or may at any time have owned or held from the beginning of time through the Effective Date, including, without limitation, Claims arising under federal, state, and local laws, rules, and ordinances and Claims arising out of, or related in any way to, the Franchise Agreement, the Guaranty, the Facility, the Renewal Franchise Agreement, or any other agreement between any Franchisee Releasors and any Franchisor Releasees, the establishment and operation or proposed establishment of any D-BAT<sup>®</sup> facility (including the Facility), the offer and/or sale of a franchise to any Franchisee Releasors, the operation of any business using the D-BAT<sup>®</sup> system by any Franchisee Releasors, and/or performance by any Franchisor Releasees of any obligations under any agreement with any Franchisee Releasors (together “**Released Events**”). Franchisee and Guarantors (on behalf of the Franchisee Releasors) agree that fair consideration has been given for this release and fully understands that this is a negotiated, complete, full, and final release of all of Franchisee Releasors’ Claims. FRANCHISEE AND GUARANTORS, ON BEHALF OF THEMSELVES AND THE FRANCHISEE RELEASORS, WAIVE ANY RIGHTS AND BENEFITS CONFERRED BY ANY APPLICABLE PROVISION OF LAW EXISTING UNDER ANY FEDERAL, STATE, OR POLITICAL SUBDIVISION THEREOF WHICH WOULD INVALIDATE ALL OR ANY PORTION OF THE RELEASE CONTAINED IN THIS AGREEMENT BECAUSE SUCH RELEASE MAY EXTEND TO CLAIMS THAT THE FRANCHISEE AND/OR GUARANTORS DO NOT KNOW OR SUSPECT TO EXIST IN THEIR FAVOR AT THE TIME OF EXECUTION OF THIS AGREEMENT.
6. Miscellaneous. Capitalized terms will have the meanings ascribed to them in the Franchise Agreement. All other provisions of the Franchise Agreement remain in full force and effect. If any discrepancy or conflict arises between the provisions of this Addendum and the provisions of the Franchise Agreement, the provisions of this Addendum will control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the Effective Date first above written.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**GUARANTORS**

\_\_\_\_\_  
[Name], Individually  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name], Individually  
  
Date: \_\_\_\_\_

**ATTACHMENT H**  
**RELEASE AMENDMENT**  
**TO SUBSEQUENT FRANCHISE AGREEMENT**

This Release Amendment to Subsequent Franchise Agreement (“**Amendment**”) is entered into and made effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between D-BAT Academies, Inc., a Texas corporation (“**Franchisor**” or “**D-BAT**”), \_\_\_\_\_, a/an \_\_\_\_\_ (“**Franchisee**”), and \_\_\_\_\_ and \_\_\_\_\_, each an adult individual (“**Guarantors**”).

**BACKGROUND**

- A. Effective \_\_\_\_\_, Franchisor and Franchisee entered into a franchise agreement (together with all amendments, “**Franchise Agreement**”) pursuant to which Franchisee acquired the right and assumed the obligation to establish and operate a D-BAT<sup>®</sup> facility ultimately located at \_\_\_\_\_ (the “**Facility**”).
- B. Simultaneously with the execution of the Franchise Agreement, Guarantors personally guaranteed the obligations of Franchisee under the Franchise Agreement through the execution of a Guaranty and Personal Undertaking (“**Guaranty**”).
- C. [List other agreements and facilities related to Franchisee as well as related parties, each of which are to be included in the Release of Franchisor in this Amendment]
- D. Franchisee has now requested that Franchisor grant to Franchisee additional franchise rights under a new franchise agreement (the “**New Franchise Agreement**”) for a new Facility to be located within the geographic area described as \_\_\_\_\_ (“**New Facility**”). While Franchisor has no legal obligation to grant such additional franchise rights to Franchisee, Franchisor has agreed to grant such rights in exchange for Franchisee’s and Guarantors’ agreement to the releases and covenants set forth in this Amendment.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual premises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Release of Franchisor. In consideration of Franchisor’s agreement to grant to Franchisee such additional franchise rights as requested pursuant to the New Franchise Agreement, as well as other good and valuable consideration, Franchisee and Guarantors (on behalf of themselves and their respective heirs, executors, insurers, representatives, attorneys, successors, and assigns) and any individual or entity claiming by, through, or under any of the foregoing (collectively, the “**Releasing Parties**”), freely and without influence hereby fully releases, acquits, and forever discharges Franchisor, its parents, and affiliates, and each of the Franchisor’s and foregoing’s respective present and former officers, directors, owners, members, managers, stockholders, partners, employees, agents, attorneys, servants, representatives, predecessors, successors, and assigns, in their individual and corporate capacities (“**Released Parties**”), of and from any and all losses, damages, obligations, claims, demands, debts, accounts, covenants, promises, agreements (whether written or oral), liabilities, costs, attorneys’ fees, actions, and causes of action whatsoever, whether known or unknown, direct or indirect, vested or contingent (collectively, “**Claims**”) that any of the Releasing Parties now own or hold or may at any time have owned or held from the beginning of time through the Effective Date of this Amendment, including but in no way limited to, any Claims arising out of or in any way related to the Franchise Agreement, the Facility, [list all other existing agreements and facilities], and any other agreements (whether oral or in writing) entered into between any of the Released Parties and any of the Releasing Parties, the relationships created thereunder, the operation and establishment of any D-BAT<sup>®</sup> franchised business connected in any

way to any of the Releasing Parties (“**Releasing Parties Facilities**”), and/or the offer, sale, establishment, or operation of the Releasing Parties Facilities (and franchise opportunity).

a. Waiver of California Civil Code, Section 1542. The foregoing release extends to all claims, known or unknown, whether or not suspected and constitutes a waiver of each and all of the provisions of California Civil Code, Section 1542 (to the extent it would be applicable), which reads as follows: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

2. Covenant Not to Sue. Franchisee and Guarantors hereby covenant and agree, on behalf of each of the Releasing Parties, that none of the Releasing Parties will commence, maintain, participate in, or prosecute any suit or legal proceeding against Released Parties, or any of them, for Claims that any of the Releasing Parties now own or hold or may at any time have owned or held from the beginning of time through the Effective Date.

3. Representations and Warranties. Franchisee and Guarantors, on behalf of the Releasing Parties, hereby represents and warrants to Franchisor that, in entering into such release, he/she/it (i) is doing so freely and voluntarily upon the advice of counsel and business advisor of its own choosing (or declined to do so, free from coercion, duress or fraud); (ii) has read and fully understands the terms and scope of this Amendment that such party is entering into; (iii) realizes that it is final and conclusive, and intends to be final and conclusive, as to the matters set forth in this Amendment entered into by the party; and (iv) has not assigned, transferred, or conveyed to any third party all or any part of or partial or contingent interest in any of the Claims which are called for to be released by this Amendment now or in the future, that he/she/it is aware of no third party who contends or claims otherwise, and that he/she/it shall not purport to assign, transfer, or convey any such claim hereafter.

4. Miscellaneous. All other provisions of the New Franchise Agreement remain in full force and effect. If any discrepancy or conflict arises between the provisions of this Amendment and the provisions of the New Franchise Agreement, the provisions of this Amendment will control. Any capitalized terms not defined herein will have the meanings ascribed to them in the New Franchise Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the Effective Date first written above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**GUARANTORS**

\_\_\_\_\_  
[Name], Individually  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name], Individually  
  
Date: \_\_\_\_\_

**EXHIBIT E**  
**AREA DEVELOPMENT AGREEMENT**



**D-BAT ACADEMIES, INC.  
AREA DEVELOPMENT AGREEMENT**

**AREA DEVELOPMENT AGREEMENT  
SUMMARY PAGES**

**EFFECTIVE DATE:** \_\_\_\_\_

**DEVELOPER(S):** \_\_\_\_\_

**ADDRESS FOR NOTICES:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**FACSIMILE NUMBER:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

**DEVELOPMENT FEE:** \$ \_\_\_\_\_, calculated as \$45,000 for the first Facility plus \$22,500 for the second and each additional Facility to be developed (\$45,000 plus (\_\_\_\_ Facilities X \$20,000) = \$ \_\_\_\_\_)

**NUMBER OF FACILITIES TO BE DEVELOPED:** Two (2) Facilities

**INITIAL FRANCHISE FEE FOR THE FIRST FACILITY TO BE DEVELOPED:**

\$45,000 (paid as a development fee credit)

\$42,500 (Veteran’s Discount – paid as a development fee credit)

**INITIAL FRANCHISE FEE FOR THE SECOND AND SUBSEQUENT FACILITY TO BE DEVELOPED:**

\$45,000 (\$22,500 per Facility paid as a development fee credit; \$22,500 per Facility balance payable in cash no later than the respective Franchise Agreement Execution Date)

**TRANSFER FEE:** \$3,000 (Convenience of Ownership, refer to Section 8.2.),

\$5,000, plus reimbursements of D-BAT's costs in facilitating the transfer (including reasonable attorneys’ fees) (Non-controlling Interest, refer to Section 8.3.),

\$15,000, plus reimbursements of D-BAT's costs in facilitating the transfer (including reasonable attorneys’ fees) (Transfer of Agreement, and/or Controlling Interest, refer to Section 8.4.)

**D-BAT ACADEMIES, INC.  
COMPANY ADDRESS FOR NOTICE PURPOSES:**

2101 Midway Road, Suite 300  
Carrollton, Texas 75006  
Facsimile: 972-398-1001  
Attention: Chief Executive Officer

\_\_\_\_\_  
D-BAT Initials

\_\_\_\_\_  
Developer Initials



**D-BAT ACADEMIES, INC.  
AREA DEVELOPMENT AGREEMENT**

**TABLE OF CONTENTS**

1.	GRANT.....	1
2.	TERM OF AREA DEVELOPMENT AGREEMENT .....	2
3.	FEES .....	2
4.	DEVELOPMENT SCHEDULE AND MANNER FOR EXERCISING DEVELOPMENT RIGHTS .....	2
5.	DEVELOPER’S OBLIGATIONS.....	4
6.	CONFIDENTIALITY .....	4
7.	INDEPENDENT CONTRACTOR, INSURANCE AND INDEMNIFICATION .....	5
8.	TRANSFER OF INTEREST .....	6
9.	DEFAULT AND TERMINATION .....	9
10.	COVENANTS .....	10
11.	REPRESENTATIONS .....	11
12.	NOTICES.....	12
13.	CONSTRUCTION.....	13
14.	APPLICABLE LAW; DISPUTE RESOLUTION.....	14

STATE SPECIFIC AMENDMENTS

**ATTACHMENTS**

Attachment A	Glossary of Additional Terms
Attachment B	Development Area and Schedule
Attachment C	Entity Information
Attachment D	Guaranty and Personal Undertaking
Attachment E	Form of Franchise Agreement

**D-BAT ACADEMIES, INC.**  
**AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into as of the Effective Date reflected in the Summary Pages (“**Effective Date**”), by and between D-BAT Academies, Inc., a Texas corporation, with its principal office in Carrollton, Texas (“**D-BAT**” or “**Franchisor**”), and the Developer identified in the Summary Pages (“**you**” or “**Developer**”):

A. D-BAT, has acquired license to use and to sublicense the use of a proprietary business format and system (“**System**”) for operating a baseball and softball training academy and retail pro shop (“**Facility**”).

B. The System includes a distinctive interior and exterior design, décor, color scheme, graphics, fixtures and furnishings, a proprietary membership program designed to encourage customer loyalty through the offer of price discounts and other unique benefits to D-BAT<sup>®</sup> Facility members (“**Membership Program**”), the offer and sale of proprietary merchandise (*e.g.*, baseball and softball bats, gloves, balls, uniforms, apparel, footwear and other inventory items) bearing the Marks (“**Proprietary Products**”), baseball and softball instruction standards and techniques; operation, and customer service standards and procedures, advertising and marketing specifications and requirements, and other standards, specifications, techniques, and procedures designated for developing, operating, and managing a Facility, all of which may be changed, improved and/or further developed (collectively, the “**Standards**”).

C. The System is identified by a distinctive trade dress, the trade name, and service mark D-BAT<sup>®</sup> and logo, and other trademarks, service marks, logos, tag lines, slogans, and other indicia of origin that D-BAT designates to identify facilities operating under the System (collectively, the “**Proprietary Marks**”).

D. You wish to develop multiple D-BAT<sup>®</sup> Facilities using the System and Proprietary Marks in the Development Area and D-BAT wishes to grant you the right to develop multiple D-BAT Facilities in the Development Area pursuant to the terms of this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual premises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. GRANT**

**1.1 Grant of Area Development Rights**

1.1.1. D-BAT hereby grants to you, and you hereby accept, the right and obligation, to develop, in the Development Area (identified in Attachment B), the number of D-BAT<sup>®</sup> Facilities set forth in the Development Schedule (also identified in Attachment B). Each Facility to be developed shall be developed and operated pursuant to a separate franchise agreement to be entered into between you and D-BAT in accordance with Section 4.1.

1.1.2. This Agreement grants you no right or license to use any trademarks, trade names, service marks, logotypes, insignias, trade dress or designs owned by D-BAT, such right and license being granted solely pursuant to Franchise Agreements executed pursuant to this Agreement. Without limiting the generality of the foregoing, nothing in this Agreement shall permit you to own or operate a D-BAT<sup>®</sup> Facility, except pursuant to a duly executed and then-currently effective Franchise Agreement.

1.1.3. This Agreement grants you no right to offer, sell, or negotiate the sale of D-BAT<sup>®</sup> franchises to any third party, either in your own name or in the name and/or on behalf of D-BAT, or otherwise sub-franchise, subcontract, sublicense, share, divide or partition this Agreement, and nothing in this Agreement will be construed as granting you the right to do so. You shall not execute any Franchise Agreement with D-BAT, or construct or equip any D-BAT<sup>®</sup> Facility with a view to offering or assigning such Franchise Agreement or D-BAT<sup>®</sup> Facility to any third party.

## 1.2. Development Area Protection.

1.2.1. During the term of this Agreement, D-BAT shall not own or operate, or grant anyone else the right to operate, a D-BAT<sup>®</sup> Facility in the Development Area.

1.2.2. D-BAT reserves to itself all other rights in and to use the Proprietary Marks including: *(a)* the right to own and operate and to grant others the right to own and operate D-BAT<sup>®</sup> Facilities outside the Development Area, regardless of their proximity to the Development Area; *(b)* the right to distribute products and services identified by the Proprietary Marks anywhere inside or outside the Development Area, such as baseball and softball bats, gloves, balls, uniforms, apparel, footwear and other related or unrelated items, through alternative channels of distribution including retail stores, via mail order, catalog sales, and/or the Internet.

1.2.3. Nothing in this Agreement prohibits or restricts D-BAT from *(a)* owning, acquiring, establishing, owning, operating, or granting franchise rights for one or more other businesses under a different trademark or service mark (*i.e.*, a mark other than D-BAT<sup>®</sup>), whether or not the business is the same as or competitive with D-BAT<sup>®</sup> Facilities; or *(b)* owning, operating, or franchising one or more businesses offering products or services under the name D-BAT<sup>®</sup> or some derivative of the Proprietary Marks.

## 2. **TERM OF AREA DEVELOPMENT AGREEMENT**

2.1 Term. Unless sooner terminated, the term (the “**Term**”) of this Agreement shall commence on the Effective Date and, unless otherwise negotiated, terminated or extended as provided in this Agreement, and all rights granted by D-BAT hereunder shall expire on the earlier of: *(a)* the date on which you have completed your development obligations under this Agreement, or *(b)* 12:00 midnight CST on the last day of the last Development Period identified in Attachment B.

2.2 Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all territorial protection afforded under this Agreement shall end, and you shall have no further right to develop any D-BAT<sup>®</sup> Facilities for which a Franchise Agreement has not been signed. Termination or expiration of this Agreement shall not affect any rights or obligations under any then-existing Franchise Agreement.

## 3. **FEES**

3.1 Development Fee. Upon execution of this Agreement, you shall pay to D-BAT a Development Fee in the amount set forth in the Summary Pages (the “**Development Fee**”). The Development Fee shall equal 100% of the Initial Franchise Fee due under the first Franchise Agreement to be signed under this Agreement, plus \$20,000 for the second and each additional Franchise Agreement to be signed under this Agreement. When each Franchise Agreement is signed, D-BAT will credit a portion of the Development Fee payment (“**Development Credit**”) toward satisfaction of the applicable Initial Franchise Fee due thereunder. Development Credits shall be calculated on the same basis as the Development Fee, and shall be applied to Initial Franchise Fees only to the extent that the Development Fee has been paid. The Development Fee is fully earned by D-BAT when paid and is not refundable, in whole or in part, under any circumstances.

3.2 Initial Franchise Fee. Upon execution of this Agreement, you shall pay D-BAT an Initial Franchise Fee in the amount specified in the Summary Pages. You acknowledge and agree that the Initial Franchise Fee is fully earned by D-BAT when paid and is not refundable.

## 4. **DEVELOPMENT SCHEDULE AND MANNER FOR EXERCISING DEVELOPMENT RIGHTS**

4.1. Separate Franchise Agreements. The Franchise Agreement for the first Facility to be developed hereunder shall be in the form attached as Attachment E. The Franchise Agreement for the second and each additional Facility to be developed shall be in the form of D-BAT’s then-current Franchise Agreement,

which may materially differ from the form attached as Attachment E (i.e. including a higher Management Fee).

4.2. **Development Schedule.** Recognizing that time is of the essence, you agree to satisfy the Development Schedule set forth in Attachment B. Your failure to adhere to the Development Schedule shall constitute a default under this Agreement, as provided in Section 9.2.

4.3. **Manner for Exercising Development Rights.**

4.3.1. Prior to exercising any development right granted hereunder, you shall apply to D-BAT for a franchise to operate a Facility within the Development Area. If D-BAT, in its sole discretion, determines that you have met each of the following operational, financial, and legal conditions, then D-BAT will grant you a franchise for a Facility in the Development Area:

**(a) Operational Conditions:** You are in compliance with the Development Schedule and this Agreement, and you and your Affiliates are in compliance with any other agreement between them and D-BAT or its Affiliates. You are conducting the operation of your existing Facilities, if any, and are capable of conducting the operation of the proposed Facility in accordance with the terms and conditions of this Agreement, the respective Franchise Agreements, and the standards, specifications, and procedures set forth and described in the Manuals (defined in the Franchise Agreement).

**(b) Financial Conditions:** You and the Owners satisfy D-BAT's then-current financial criteria for developers and Owners of D-BAT<sup>®</sup> Facilities. You and the Owners have been and are faithfully performing all terms and conditions under each of the existing Franchise Agreements with D-BAT. You are not in default, and have not been in default during the rolling 12 months preceding your request for financial approval, of any monetary obligations owed to D-BAT or its Affiliates under any Franchise Agreement or any other agreement between you or your Affiliates and D-BAT or its Affiliates. You acknowledge and agree that it is vital to D-BAT's interest that each of its franchisees must be financially sound to avoid failure of a Facility and that such failure would adversely affect the reputation and good name of D-BAT and the System.

**(c) Legal Conditions:** You have submitted to D-BAT, in a timely manner, all information and documents requested by D-BAT as a basis for the issuance of individual franchises or pursuant to any right granted to you by this Agreement or by any Franchise Agreement.

4.4. **Development Schedule.** Acknowledging that time is of the essence, you agree to exercise your development rights according to Section 4.3., and the Development Schedule reflected in Attachment B. You may, subject to the terms and conditions of this Agreement and with D-BAT's prior written consent, which may be withheld in its sole discretion, develop more than the total minimum number of Facilities which you are required to develop during any Development Period. Any Facilities in excess of the minimum number of Facilities required to be developed shall be applied to satisfy your development obligation during the next succeeding Development Period, if any. Notwithstanding the above, you shall not open or operate more than the cumulative total number of Facilities you are obligated to develop under the Development Schedule.

4.4.1. If during the term of this Agreement, you cease to operate any Facility developed under this Agreement for any reason, you shall develop a replacement Facility. The replacement Facility shall be developed within a reasonable time (not to exceed 120 days) after you cease to operate the original Facility. If, during the term of this Agreement, you transfer your interest in a Facility in accordance with the terms of the applicable Franchise Agreement for the Facility, the transferred Facility shall continue to be counted in determining whether you have complied with the Development Schedule so long as it continues to be operated as a D-BAT<sup>®</sup> Facility. If the transferred Facility ceases to be operated as a D-BAT<sup>®</sup> Facility during the term of this Agreement, you shall develop a replacement Facility within a reasonable time (not to exceed 120 days) thereafter.

4.4.2. Your failure to adhere to the Development Schedule (including any extensions thereof, approved by D-BAT in writing) or to any time period for the development of replacement Facilities is a material breach of this Agreement.

4.5. Projected Opening Dates. You acknowledge that the Projected Opening Date for each Facility to be developed hereunder is reasonable. Subject to Developer's compliance with Section 4.3. hereof, Developer will execute a Franchise Agreement for each Facility at or prior to the applicable Execution Date identified in the Development Schedule, which will be a date no later than six months prior to the Projected Opening Date for the applicable Facility.

4.5.1. No later than six months prior to the expiration of a Development Period expiration date, Developer will request to sign a Franchise Agreement for each Facility to be developed during the Development Period.

4.5.2. Upon receiving your request, D-BAT shall deliver to you its then-current form of Franchise Disclosure Document, and execution copies of its then-current form of franchise agreement.

4.5.3. No later than the Franchise Agreement Execution Date (but no sooner than as permitted by law), you shall sign and return a signed copy of the Franchise Agreement and payment of the initial franchise fee (less any applicable development credit) due thereunder.

4.5.4. D-BAT shall approve and countersign the Franchise Agreement if:

(a) You are in compliance with this Agreement and all other agreements between you or your Affiliates and D-BAT including, without limitation, all Franchise Agreements signed under this Agreement. If this condition is not met, D-BAT shall have the right to require you to cure any deficiencies before it approves and countersigns the Franchise Agreement.

(b) You have demonstrated to D-BAT, in D-BAT's discretion, your financial and other capacity to perform the obligations set forth in the proposed new Franchise Agreement.

(c) You, and each of your Affiliates who then has a then-currently effective Franchise Agreement or Area Development Agreement with D-BAT, has signed a general release, in a form prescribed by D-BAT, of any and all claims that the party has, had, or claims to have against D-BAT and/or its Affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, arising out of or relating to this Agreement, any Franchise Agreement, the relationship created by this Agreement or any Franchise Agreement, and the offer and sale of the D-BAT® franchise opportunity.

## 5. DEVELOPER'S OBLIGATIONS

5.1. Satisfaction of Development Schedule. You shall execute a Franchise Agreement for each Facility contemplated under this Agreement in accordance with Section 4.1. and the Development Schedule, and shall establish and operate each Facility in accordance with the terms and conditions of the respective Franchise Agreement.

5.2. Compliance with Laws. You shall fully comply with all federal, state and local laws, rules, and regulations when exercising your rights and fulfilling its obligations under this Agreement.

5.3. Developer May Not Exceed The Development Obligation. Unless D-BAT otherwise authorizes in writing, you may not construct, equip, open and operate more than the total number of D-BAT® Facilities reflected on the Development Schedule.

## 6. CONFIDENTIALITY

6.1 Nondisclosure of Confidential Information. You shall maintain the confidentiality of all Confidential Information. You shall use Confidential Information only in connection with the development and operation of the Facilities, and you shall divulge Confidential Information only to your employees, and only on a need to know basis. This obligation shall survive expiration or termination of this Agreement.

## 7. INDEPENDENT CONTRACTOR, INSURANCE AND INDEMNIFICATION

7.1. Independent Contractor. The parties acknowledge and agree that you are operating the business contemplated under this Agreement as an independent contractor. Nothing contained in this Agreement shall create or be construed to create a partnership, joint venture, or agency relationship between the parties. Neither party shall have fiduciary obligations to the other, or be liable for the debts or obligations of the other. Neither party shall have the right to bind the other, transact business in the other party's name or in any manner make any promises or representations on behalf of the other party, nor contract any debts or obligations on behalf of the other party, or their affiliates, unless otherwise agreed in writing by the parties. You shall conspicuously identify yourself and the business contemplated under this Agreement in all dealings with your customers, contractors, suppliers, public officials, and others, as an independent franchisee of D-BAT, and shall place a conspicuous notice, in the form and at such place as D-BAT prescribes, notifying the public of such independent ownership.

### 7.2. Insurance Obligations.

7.2.1. You shall maintain in full force and effect at all times during the term of this Agreement, at your expense, an insurance policy or policies protecting you, D-BAT and its Affiliates, and their respective partners, shareholders, directors, managers, agents, and employees, against any demand or claim with respect to personal and bodily injury, death, or property damage, or any loss, liability, or expense arising or occurring upon or in connection with the operation of the business contemplated under this Agreement.

7.2.2. Such policy or policies shall: **(a)** be written by insurer(s) licensed and admitted to write coverage in the state in which the Franchised Business (as defined in the Franchise Agreement) is located and with a rating of "A" or better as set forth in the most recent edition of Best's Key Rating Guide; **(b)** name D-BAT and its Affiliates, and their partners, officers, subsidiaries, affiliates, shareholders, directors, regional directors, agents, and employees on a primary non-contributory basis; **(c)** the additional insured coverage must be provided on an Additional Insured Grantor of Franchise Endorsement per form CG2029 (or an endorsement form with comparable wording acceptable to D-BAT); and **(d)** comply with D-BAT's written requirements at the time such policies are obtained, and provide at least the types and minimum amounts of coverage that D-BAT requires from time to time. D-BAT may unilaterally modify these insurance requirements, which modifications may include increasing minimum policy limits, by delivering to you written notice of the change.

7.2.3. In connection with any and all insurance that you are required to maintain under Section 7.2, you and your insurers shall agree to waive their rights of subrogation against D-BAT, and you shall provide evidence of such waiver in accordance with this Section 7.3.

7.2.4. Your obligation to obtain and maintain insurance shall not be limited in any way by reason of any insurance which may be maintained by D-BAT, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Section 7.3 of this Agreement.

7.2.5. All public liability and property damage policies shall contain a provision that D-BAT and its Affiliates, although named as an additional insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to D-BAT, or its Affiliates, partners, shareholders, officers, directors, agents, or employees by reason of your negligence.

7.2.6. At least 10 days prior to the time you are first required to carry insurance, and thereafter at least 30 days prior to the expiration of any policy, you shall deliver to D-BAT certificate of insurance evidencing your compliance with this Section 7. Each certificate of insurance shall expressly provide that no less than 30 days' prior written notice shall be given to D-BAT in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such certificates.

7.2.7. If you fail to procure or maintain these minimum insurance requirements, D-BAT or its designee shall have the right and authority (but not the obligation) to procure such insurance on your behalf. Such right shall be in addition to and not in lieu of any other rights or remedies available to D-BAT. If this occurs, you shall reimburse D-BAT the cost of the premium upon demand.

7.3. **Indemnification.** You shall indemnify and hold harmless to the fullest extent by law, D-BAT, its Affiliates and their respective directors, regional directors officers, managers, employees, shareholders, and agents, (collectively the “**Indemnitees**”) from any and all “**losses and expenses**” (as hereinafter defined) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises directly or indirectly from, as a result of, or in connection with your operation of the business contemplated under this Agreement (an “**event**”), and regardless of whether same resulted from any strict or vicarious liability imposed by law on the Indemnitees; provided, however, that this indemnity shall not apply to any liability arising from the gross negligence of Indemnitees (except to the extent that joint liability is involved, in which event the indemnification provided in this Agreement shall extend to any finding of comparative negligence or contributory negligence attributable to you). For the purpose of this Section 7.3, the term “**losses and expenses**” shall be deemed to include compensatory, exemplary, or punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; and all other costs associated with any of the foregoing losses and expenses. You shall give D-BAT prompt notice of any event of which you are aware, for which indemnification is required, and, at your expense and risk, D-BAT may elect to assume (but under no circumstance is obligated to undertake) the defense and/or settlement thereof, provided that D-BAT will seek your advice and counsel. Any assumption by D-BAT shall not modify your indemnification obligation. D-BAT may, in its sole and absolute discretion, take such actions as it seems necessary and appropriate to investigate, defend, or settle any event or take other remedial or corrective actions with respect thereof as may be, in D-BAT's sole and absolute discretion, necessary for the protection of the Indemnitees or the System.

## **8. TRANSFER OF INTEREST**

8.1. **Transfer by D-BAT.** D-BAT may transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of D-BAT's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all of D-BAT's obligations under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, you expressly affirm and agree that D-BAT and/or its Affiliates may sell their assets, the Proprietary Products, Proprietary Marks, Copyrighted Works or the System; may sell securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of D-BAT's name, the Proprietary Products, Copyrighted Works, Proprietary Marks (or any variation thereof) and System and/or the loss of association with or identification of D-BAT Academies, Inc. as the franchisor under this Agreement. You specifically waive any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing. You agree that D-BAT has the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as D-BAT<sup>®</sup> Facilities operating under the Proprietary Marks or any other marks following D-BAT's purchase, merger, acquisition or affiliation, regardless of the

location of these facilities (which you acknowledge may be proximate to any D-BAT® Facility developed under this Agreement).

8.2. Transfer by Individual Developer to Business Entity for Convenience. If you are an individual, you may transfer your interest in this Agreement to a Business Entity for convenience of operation within the first 12 months of this Agreement by signing D-BAT's standard form of assignment and assumption agreement if **(a)** the Business Entity is formed solely for purposes of continuing your development rights and obligations, **(b)** you provide to D-BAT a copy of the Business Entity's formation and governing documents and a certificate of good standing from the jurisdiction under which the Business Entity was formed, and **(c)** you pay to D-BAT a \$3,000 transfer fee.

8.3. Transfer Among Owners; Transfer of Non-Controlling Interest. If you are a Business Entity, your Owners may transfer their ownership interests in the Business Entity among each other, and may transfer up to a Non-Controlling Interest in the Business Entity to one or more third parties, if: **(a)** you have provided to D-BAT advance notice of the transfer, **(b)** Attachment C to this Agreement has been amended to reflect the new ownership; **(c)** each new Owner has signed a Guaranty and Personal Undertaking in the form of Attachment D; and **(d)** you pay to D-BAT a \$5,000 transfer fee, and reimburse D-BAT for all costs (including attorneys' fees) that it incurs in connection with the transfer.

8.4. Transfer of Agreement; Transfer of Controlling Interest. All other transfers (including any sale or transfer of your interest in this Agreement, the sale or transfer of all or substantially of the assets of any Facility developed hereunder, and the sale of a Controlling Interest in you if you are a Business Entity) require D-BAT's prior written consent. D-BAT will not unreasonably withhold its consent to a transfer, but may condition its consent on satisfaction of any or all of the following:

8.4.1. You shall have requested consent in writing and delivered to D-BAT a copy of the proposed transfer agreements, including sale terms, at least 30 days prior to the proposed transfer, and D-BAT has determined, in its sole and reasonable discretion, that the terms of the sale will not materially and adversely affect the post transfer viability of any Franchised Business in operation at the time of transfer.

8.4.2. The transferee shall demonstrate to D-BAT's satisfaction that the transferee meets D-BAT's then-current educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to operate each Franchised Business; and has sufficient equity capital to operate each Franchised Business (which condition shall be presumed if the transferee's net worth is equal to or exceeds your net worth at the time of transfer, excluding the value of each Franchised Business);

8.4.3. All of your accrued monetary obligations and all other outstanding obligations to D-BAT, its Affiliates, and third party suppliers shall be up to date, fully paid and satisfied, and you must be in full compliance with this Agreement and any other agreements between you and D-BAT, its Affiliates and your suppliers;

8.4.4. You or the transferee shall have agreed to refurbish each Facility premises identified by D-BAT so that it meets D-BAT's image requirements for new D-BAT® Facilities;

8.4.5. You and each Owner shall have executed a general release, in a form satisfactory to D-BAT, of any and all claims against D-BAT and its Affiliates and their respective officers, directors, managers, shareholders, agents and employees in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances; provided, however, that any release will not be inconsistent with any state law regulating franchising;

8.4.6. You or the transferee shall have paid a \$15,000 transfer fee, plus the reimbursement of D-BAT's reasonable costs and expenses incurred in facilitating the transfer;

8.4.7. The transferee shall have executed D-BAT's then-current form of development agreement, the terms of which may be materially different than the terms of this Agreement and may include, among



other things, a different percentage Management Fee and different advertising obligations. The term of such development agreement shall be the remaining term of this Agreement at the time of transfer;

8.4.8. If the transferee is a Business Entity, then the transferee's Owners each shall sign D-BAT's standard form of Guaranty and Personal Undertaking; and

8.4.9. The transferee shall have complied with D-BAT's then-current initial training requirements for the operation of each then-existing Facility; and

8.4.10. If D-BAT introduced the buyer to you, you have paid all fees due D-BAT under its then-current franchise resale policy or program.

8.5. Transfer of Franchise Agreements. Notwithstanding Section 8.4 of this Agreement, you may, with D-BAT's prior written consent, execute and contemporaneously assign your right to enter into a Franchise Agreement pursuant to this Agreement to a business entity under common control with you if **(a)** such business entity executes and complies with the terms and conditions of the Franchise Agreement; and **(b)** you pay D-BAT a Franchise Assignment Fee in the amount of \$5,000 and reimburse D-BAT for its related expenses.

8.6. Transfers Void. Any purported transfer, by operation of law or otherwise, made without D-BAT's prior written consent will be considered null and void and will be considered a material breach of this Agreement.

8.7. Security Interest. You may grant a security interest in this Agreement or the franchise represented by this Agreement only to the limited extent permitted by Section 9-408 of the Uniform Commercial Code. Any such security interest may only attach to an interest in the proceeds of the operation of the Franchised Business and may not entitle or permit the secured party to take possession of or operate the Franchised Business or to transfer your interest in this Agreement or the franchise without D-BAT's consent.

8.8. Private or Public Offerings. If you are a Business Entity and you intend to issue equity interests pursuant to a private or public offering, you shall first obtain D-BAT's written consent, which consent shall not be unreasonably withheld. You must provide to D-BAT for its review a copy of all offering materials (whether or not such materials are required by applicable securities laws) at least 60 days prior to such documents being filed with any government agency or distributed to investors. No offering shall imply (by use of the Proprietary Marks or otherwise) that D-BAT is participating in an underwriting, issuance or offering of your securities, and D-BAT's review of any offering shall be limited to ensuring compliance with the terms of this Agreement. D-BAT may condition its approval on satisfaction of any or all of the conditions set forth in Section 8.4 and on execution of an indemnity agreement, in a form prescribed by D-BAT, by you and any other participants in the offering. For each proposed offering, you shall pay to D-BAT a retainer in an amount determined by D-BAT, which D-BAT shall use to reimburse itself for the reasonable costs and expenses it incurs (including, without limitation, attorneys' fees and accountants' fees) in connection with reviewing the proposed offering.

8.9. Right of First Refusal. If you receive a bona fide offer to purchase your interest in this Agreement, or if any Owner receives a bona fide offer to purchase his or her equity interests in you, and you or such Owner wishes to accept such offer, you or the Owner must deliver to D-BAT written notification of the offer and, except as otherwise provided herein, D-BAT shall have the right and option, exercisable within 30 days after receipt of such written notification, to purchase the seller's interest on the same terms and conditions offered by the third party. If the bona fide offer provides for the exchange of assets other than cash or cash equivalents, the bona fide offer shall include the fair market value of the assets and you shall submit with the notice an appraisal prepared by a qualified independent third party evidencing the fair market value of such assets as of the date of the offer. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by D-BAT as in the case of an initial offer. If D-BAT elects to purchase the seller's interest, closing on such purchase must occur by the later of: **(a)** the closing date specified in the third party offer; or **(b)** within 60 days from the date of

notice to the seller of D-BAT's election to purchase. D-BAT's failure to exercise the option described in this Section shall not constitute a waiver of any of the transfer conditions set forth in this Section 8.

8.10 Transfer Upon Death or Incapacitation. Upon the death or permanent incapacity (mental or physical) of any person with an interest in this Agreement or you, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by D-BAT within six months after such death or mental incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as an inter vivos transfer, except that the transfer fee shall be waived. In the case of transfer by devise or inheritance, however, if the heirs or beneficiaries of any such person are unable to meet the conditions of this Section 8, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by D-BAT within six months, which disposition shall be subject to all the terms and conditions for transfer contained in this Agreement. If the interest is not disposed of within such period, D-BAT may, at its option, terminate this Agreement, pursuant to Section 9.5.

8.11. Non-Waiver of Claims. D-BAT's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, and it will not be deemed a waiver of D-BAT's right to demand strict compliance with any of the terms of this Agreement, or any other agreement to which D-BAT's and the transferee are parties, by the transferee.

## 9. DEFAULT AND TERMINATION

9.1. Termination In the Event of Bankruptcy or Insolvency. You shall be deemed to be in default under this Agreement, and all rights granted to you in this Agreement shall automatically terminate without notice, if you become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by you or such a petition is filed against you and you do not oppose it; if you are adjudicated as bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver for you or other custodian for your business or assets is filed and consented to by you; if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law is instituted by or against you; if a final judgment remains unsatisfied or of record for 30 days or longer (unless a supersedeas bond is filed); if you are dissolved; or if execution is levied against your business or property.

9.2. Termination with Notice and Without Opportunity to Cure. D-BAT has the right to terminate this Agreement, which termination will become effective upon delivery of notice without opportunity to cure if: **(a)** you fail to meet the Development Schedule; **(b)** you or any Owner is convicted of, or pleads no contest to, a felony, a crime involving moral turpitude, or any other crime or offense that D-BAT believes is reasonably likely to have an adverse effect on the System; **(c)** there is any transfer or attempted transfer in violation of Section 8 of this Agreement; **(d)** you or any Owner fails to comply with the confidentiality or non-compete covenants in Section 6 and Section 10 of this Agreement; or **(e)** you or any Owner has made any material misrepresentations in connection with your application for franchise development rights; or **(f)** D-BAT delivers to you three or more written notices of default pursuant to this Section 9 within any rolling 12-month period, whether or not the defaults described in such notices ultimately are cured.

9.3. Termination with 10-Day Cure Period. D-BAT has the right to terminate this Agreement, which termination will become effective upon delivery of written notice of termination, if you fail to cure the following defaults within 10 days after delivery of written notice: **(a)** failure to obtain or maintain required insurance coverage; **(b)** failure to pay any amounts due to D-BAT; **(c)** failure to pay any amounts due to your trade creditors (unless such amount is subject to a bona fide dispute); or **(d)** failure to pay any amounts for which D-BAT has advanced funds for or on your behalf, or upon which D-BAT is acting as guarantor of your obligations.

9.4. Termination with 30-Day Cure Period. Except as otherwise provided in this Section 9, D-BAT has the right to terminate this Agreement, which termination will become effective upon delivery of written notice of termination, if you fail to cure any curable default within 30 days after delivery of written notice.

9.5. Termination Related to Death or Permanent Incapacity. D-BAT has the right to terminate this Agreement if an approved transfer as required by Section 8.10 is not effected within the designated time frame following a death or permanent incapacity (mental or physical).

9.6. Cross-Default. Any default under any agreement between you and D-BAT or its Affiliates (including any Franchise Agreement), which you failure to cure within any applicable cure period, shall be considered a default under this Agreement and shall provide an independent basis for termination of this Agreement.

9.7. Additional Remedies. If you are in default of this Agreement, D-BAT may, in its sole discretion, elect to exercise any one or more of the following remedies in lieu of terminating this Agreement: **(a)** terminate or modify any territorial protections granted to you in each Franchise Agreement identified by D-BAT, **(b)** reduce the size of the Development Area, or **(c)** reduce the number of Facilities which you may establish pursuant to the Development Schedule. If D-BAT elects to exercise one or more of the additional remedies set forth above, you agree to continue to develop Facilities in accordance with your rights and obligations under this Agreement, as modified. To the extent such rights are modified pursuant to this Section 9.7, you acknowledge that D-BAT will be entitled to establish, and to license others to establish, D-BAT® Facilities in some or all of the Development Area, except as otherwise provided under any Franchise Agreement which is then in effect between D-BAT and you or your Affiliates. D-BAT's exercise of any of its remedies under this Section 9.7 shall not constitute a waiver by D-BAT to exercise D-BAT's option to terminate this Agreement at any time with respect to a subsequent event of default of a similar or different nature.

## 10. COVENANTS

10.1. Non-Competition During Term of Agreement. You and each Owner acknowledge that you and each Owner will receive valuable specialized training and Confidential Information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques and trade secrets of D-BAT and the System. You and each Owner covenant and agree that during the term of this Agreement, except as otherwise approved in writing by D-BAT, you and, if applicable, such Owner, shall not, either directly or indirectly, for yourselves, or through, on behalf of, or in conjunction with any person, or legal entity:

10.1.1. Divert or attempt to divert any present or prospective customer of any D-BAT® Facility to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.

10.1.2. Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any business that specializes in baseball or softball training or the sale of baseball or softball equipment (provided that such restriction shall not apply to less than a 5% beneficial interest in any publicly traded corporation), other than a D-BAT® Facility operated by you pursuant to a then-currently effective franchise agreement with D-BAT at any location within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which D-BAT or its Affiliates have used, sought registration of or registered the Proprietary Marks or similar marks or operate or license others to operate a business under the Proprietary Marks or similar marks.

10.2. Non-Competition After Expiration or Termination of Agreement. Commencing upon the later of: **(a)** a transfer permitted under Section 8 of this Agreement, expiration of this Agreement, or termination of this Agreement (regardless of the cause for termination) or **(b)** a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Section 10.2,

and continuing for an uninterrupted period of two years thereafter, you shall not either directly or indirectly, for yourselves, or through, on behalf of, or in conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a business that specializes in baseball or softball training or the sale of baseball or softball equipment (provided that such restriction shall not apply to less than a 5% beneficial interest in any publicly traded corporation), other than a D-BAT<sup>®</sup> Facility operated by you pursuant to a then-currently effective franchise agreement with D-BAT, and **(i)** that is within the former Development Area; or **(ii)** is within a five-mile radius of any other D-BAT<sup>®</sup> Facility operating under the System and Proprietary Marks in existence or under development at the time of such termination or transfer. If any Owner ceases to be an Owner of the franchisee for any reason during the term of this Agreement, the foregoing covenant shall apply to the departing Owner for a two-year period beginning on the date such person ceases to meet the definition of an Owner. The obligations described in this Section 10.2 shall be tolled during any period of noncompliance.

10.3 Additional Provisions. The parties acknowledge and agree that D-BAT shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 10.1 and 10.2, or any portion thereof, without your consent or the consent of any Owner, effective immediately upon delivery of written notice to the affected party; and you and each Owner agree that such person shall comply forthwith with any covenant as so modified, which shall be fully enforceable. You and each Owner expressly agree that the existence of any claims you may have against D-BAT, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by D-BAT of the covenants in this Section 10. You agree to pay all costs and expenses (including reasonable attorneys' fees) incurred by D-BAT in connection with the enforcement of this Section 10.

10.4. Breach of Covenants Causes Irreparable Injury. You acknowledge that your violation of any covenant of this Section 10 would result in irreparable injury to D-BAT for which no adequate remedy at law may be available, and you consent to the issuance of, and agree to pay all court costs and reasonable attorneys' fees incurred by D-BAT in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

10.5. Exception for Publicly Held Companies. The foregoing restrictions shall not apply to your ownership or any Owner's ownership of less than a 5% beneficial interest in the outstanding equity securities of any company registered under the Securities Act of 1933 or the Securities Exchange Act of 1934.

## 11. REPRESENTATIONS

11.1. Representations of D-BAT. D-BAT represents and warrants that **(a)** D-BAT is duly organized and validly existing under the law of the state of its formation; **(b)** D-BAT is duly qualified and authorized to do business in each jurisdiction in which its business activities or the nature of the properties it owns requires such qualification; and **(c)** the execution of this Agreement and the performance of the transactions contemplated by this Agreement are within D-BAT's corporate power and have been duly authorized.

### 11.2. Representations of Developer.

11.2.1. You represent and warrant that the information set forth in Attachment C, incorporated by reference hereto, is accurate and complete in all material respects. You shall notify D-BAT in writing within 10 days of any change in the information set forth in Attachment C. You further represent to D-BAT that **(a)** you are duly organized and validly existing under the law of the state of your formation; **(b)** you are duly qualified and authorized to do business in each jurisdiction in which your business activities or the nature of the properties you own require such qualification; **(c)** your corporate charter or written partnership or limited liability company agreement, as applicable, will at all times provide that your activities are confined exclusively to the development and operation of the Franchised Business, **(d)** you warrant and represent that neither you nor any of your Affiliates or Owners own, operate or have any financial or

beneficial interest in any business that is the same as or similar to a D-BAT<sup>®</sup> Facility; **(e)** the execution of this Agreement and the performance of the transactions contemplated by this Agreement are within your corporate power, or if you are a partnership or a limited liability company, are permitted under your written partnership or limited liability company agreement and have been duly authorized.

11.2.2. You acknowledge that you have conducted an independent investigation of the business contemplated under this Agreement, and recognize that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent on your ability as an independent business person.

11.2.3. In addition, you acknowledge that D-BAT makes no representation: **(a)** that your Development Area contains a sufficient number of acceptable locations to meet the number of Facilities to be developed under the Development Schedule; nor **(b)** that your Development Area is sufficient to economically support the number of Facilities to be developed under the Development Schedule. You acknowledge that you have performed all related and necessary due diligence before your execution of this Agreement and that, accordingly, you assume the risk of identifying a sufficient number of acceptable locations within the Development Area, and the economic risk of developing the agreed-upon number of Facilities within the Development Area.

11.2.4. Except for representations contained in D-BAT's Franchise Disclosure Document provided to you in conjunction with this franchise offering, you represent that neither D-BAT nor its agents or representations have made any representations, and you have not relied on representations made by D-BAT or its agents or representatives, concerning actual or potential gross revenues, expenses or profit of a D-BAT<sup>®</sup> Facility.

11.2.5. You acknowledge that you have received a complete copy of D-BAT's Franchise Disclosure Document at least 14 calendar days before you signed this Agreement or paid any consideration to D-BAT for your franchise rights.

11.2.6. You acknowledge that you have read and that you understand the terms of this Agreement and its attachments, and that you have had ample time and opportunity to consult with an attorney or business advisor of your choice about the potential risks and benefits of entering into this Agreement.

11.2.7. You represent that neither your property nor any interest in your property, nor the property of any of your Owners, officers, directors, managers, partners, agents or employees, or their respective interests therein, have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism ("**Blocked Persons**"). You represent and warrant to D-BAT that you will not accept money from or employ any Blocked Person.

## 12. NOTICES

12.1. Notices. All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail; by private overnight delivery; or by or by facsimile or other electronic system. Service shall be deemed conclusively made **(a)** at the time of service, if personally served; **(b)** 24 hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; **(c)** upon the earlier of actual receipt or three calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; **(d)** 24 hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and **(e)** at the time of transmission by telecopier, if such transmission occurs prior to 5:00 p.m. on a Business Day and a copy of such notice is mailed within 24 hours after the transmission. Notices and demands shall be given to the respective parties at the addresses set forth on the Summary Pages, unless and until a different address has been designated by written notice to the other party. Either party may change its address for the purpose of receiving notices, demands and other communications as in this Agreement by providing a written notice given in the manner aforesaid to the other party.

### 13. CONSTRUCTION

13.1. Entire Agreement. This Agreement and its Attachments represent the entire fully integrated agreement between the parties and supersede all other negotiations, agreements, representations, and covenants, oral or written. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation that D-BAT made in the Franchise Disclosure Document (including its exhibits and amendments) that D-BAT delivered to you in connection with this franchise offering. Except for those changes permitted to be made unilaterally by D-BAT hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to in writing by the parties and executed by their authorized officers or agents

13.2. No Waiver. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless the same is made in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid.

13.3. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

13.4. Survival of Terms. Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination.

13.5. Definitions and Captions. Unless otherwise defined in this body of this Agreement, capitalized terms shall have the meaning ascribed to them in Attachment A (“**Glossary of Additional Terms**”). All captions in this Agreement are intended for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

13.6. Persons Bound. This Agreement shall be binding on the parties and their respective successors and assigns. As applicable, each Owner shall execute the Guaranty and Personal Undertaking attached as Attachment D. Failure or refusal to do so shall constitute a breach of this Agreement. You and each Owner shall be joint and severally liable for each person’s obligations hereunder and under the applicable Guaranty and Personal Undertaking.

13.7. Rules of Construction. Neither this Agreement nor any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. Terms used in this Agreement shall be construed and interpreted according to their ordinary meaning. If any provision of this Agreement is susceptible to two or more meanings, one of which would render the provision enforceable and the other(s) which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

13.8. Timing. Time is of the essence with respect to all provisions in this Agreement. Notwithstanding the foregoing, if performance of either party is delayed on account of a Force Majeure, the applicable deadline for performance shall be extended for a period commensurate with the Force Majeure, but not to exceed 12 months.

13.9 Electronic Signature. This Agreement, including all Attachments, may be signed with full force and effect using electronic signatures. By signing via your electronic signature you consent to the legally binding terms and conditions of this Agreement and represent that you are the authorized signatory indicated in each signature block.

## 14. APPLICABLE LAW; DISPUTE RESOLUTION

14.1 Choice of Law. This Agreement and all claims arising out of or related to this Agreement or the parties' relationship created hereby shall be construed under and governed by the laws of the State of Texas (without giving effect to any conflict of laws).

### 14.2. Mediation.

14.2.1. The parties acknowledge that during the term and any extensions of this Agreement certain disputes may arise that the parties are unable to resolve, but that may be resolvable through mediation. To facilitate such resolution, D-BAT, you, and each Owner agree to submit any claim, controversy or dispute between D-BAT or its Affiliates (and D-BAT's and its Affiliate's respective owners, officers, directors, managers, agents, representatives and/or employees) and you or your Affiliates (and your Owners, agents, representatives and/or employees) arising out of or related to **(a)** this Agreement or any other agreement between D-BAT and you, **(b)** D-BAT's relationship with you, or **(c)** the validity of this Agreement or any other agreement between D-BAT and you, to mediation before bringing such claim, controversy or dispute in a court or before any other tribunal.

14.2.2. The mediation shall be conducted by a mediator agreed upon by D-BAT and you and, failing such agreement within not more than 15 days after either party has notified the other of its desire to seek mediation, by the American Arbitration Association or any successor organization ("AAA") in accordance with its rules governing mediation. Mediation shall be held at the offices of the AAA in the county in which D-BAT maintains its principal place of business. The costs and expenses of mediation, including the compensation and expenses of the mediator (but excluding attorneys' fees incurred by either party), shall be borne by the parties equally.

14.2.3. If the parties are unable to resolve the claim, controversy or dispute within 90 days after the mediator has been chosen, then, unless such time period is extended by written agreement of the parties, either party may bring a legal proceeding pursuant to Section 14.3. The parties agree that statements made during such mediation proceeding will not be admissible for any purpose in any subsequent legal proceeding.

14.2.4. Notwithstanding the foregoing provisions of this Section 14.2, the parties' agreement to mediate shall not apply to controversies, disputes or claims related to or based on amounts owed to D-BAT pursuant to this Agreement, the Proprietary Marks or D-BAT's Confidential Information. Moreover, regardless of this mediation agreement, D-BAT and you each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief in any court of competent jurisdiction.

14.3. Venue. With respect to any controversies, disputes or claims which are not finally resolved through mediation as provided in Section 14.2, the parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the state and federal judicial district courts located in the county in which D-BAT maintains its principal place of business, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Notwithstanding the foregoing, nothing in this Agreement shall bar D-BAT's right to seek injunctive relief from any court of competent jurisdiction; and you agree to pay all costs and reasonable attorneys' fees incurred by D-BAT in obtaining such relief.

14.4. Nonexclusivity of Remedy. No right or remedy conferred upon or reserved to D-BAT or you by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy in this Agreement or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

14.5. WAIVER OF JURY TRIAL. D-BAT AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY,

BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

14.6. WAIVER OF PUNITIVE DAMAGES. THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT.

14.7. Attorneys' Fees. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

14.8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates noted below, but effective for all purposes as of the Effective Date.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## CALIFORNIA AMENDMENT TO AREA DEVELOPMENT AGREEMENT

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Area Development Agreement**” or “**Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Developer**”). Defined terms contained in the Area Development Agreement shall have the identical meanings in this Amendment.

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., (collectively, the “**Act**”). To the extent that the Area Development Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

2. Sections 20000 through 20043 of the California Business and Professions Code provide rights to you concerning nonrenewal and termination of the Area Development Agreement. The Federal Bankruptcy Code also provides rights to you concerning termination of the Area Development Agreement upon certain bankruptcy-related events. To the extent the Area Development Agreement contains a provision that is inconsistent with these laws, these laws will control.

3. The Area Development Agreement requires you to execute a general release of claims upon transfer of the Area Development Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any 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 31000 through 31516). California Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (California Business and Professions Code 2000 through 20043).

4. If the Area Development Agreement requires payment of liquidated damages that is inconsistent with California Civil Code Section 1671, the liquidated damage clause may be unenforceable.

5. If the Area Development Agreement contains a covenant not to compete which extends beyond the expiration or termination of the Agreement, the covenant may be unenforceable under California law.

6. If the Area Development Agreement requires litigation, arbitration, or mediation to be conducted in a forum other than the State of California, the requirement may unenforceable under California law.

7. If the Area Development Agreement requires that it be governed by a state’s law other than the State of California, such requirement may be unenforceable.

8. The first sentence of Section 3.1. of the Area Development Agreement is deleted and replaced with the following:

“3.1. Development Fee. You will pay to D-BAT a Development Fee in the amount specified in the Summary Pages on the first business day following the date D-BAT has completed its pre-opening obligations to you under the first Franchise Agreement executed simultaneously with this Area Development Agreement, and the Facility opens for business.”

9. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the

franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Development Agreement, the terms of this Amendment shall prevail.

10. In the event of any conflict between the terms of this Amendment and the terms of the Area Development Agreement, the terms of this Amendment shall prevail.

11. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## ILLINOIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Area Development Agreement**” or “**Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Developer**”). Defined terms contained in the Area Development Agreement shall have the identical meanings in this Amendment.

1. 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 (“**FDA**”), 815 ILCS 705/1-44. To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Illinois law shall apply to and govern the Area Development Agreement.
- b. In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.
- c. 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. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois is void.

2. The first sentence of Section 3.1. of the Area Development Agreement is deleted and replaced with the following:

“3.1. Development Fee. Payment of your Initial Franchise and Development Fees will be deferred until Franchisor has met its initial obligations to franchisee, and franchisee has commenced doing business. This financial assurance requirement was imposed by the Office of the Illinois Attorney General due to Franchisor’s financial condition.”

3. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

4. In the event of any conflict between the terms of this Amendment and the terms of the Area Development Agreement, the terms of this Amendment will prevail.

5. Each provision of this Amendment will be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

[The next page is the signature page.]

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## MARYLAND AMENDMENT TO AREA DEVELOPMENT AGREEMENT

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Area Development Agreement**” or “**Agreement**”) dated \_\_\_\_\_, 20\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Developer**”). Defined terms contained in the Area Development Agreement shall have the identical meanings in this Amendment.

To the extent that the Development Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

1. Any provision in the Franchise Agreement that provides for termination upon bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).
2. Any provision requiring you to sign a general release as a condition of renewal, sale, and/or assignment or transfer shall not apply to any liability arising under the Maryland Franchise Registration and Disclosure Law.
3. Any provision requiring you to bring an action against us in any state other than Maryland shall not apply to claims arising under the Maryland Franchise Registration and Disclosure Law. You may bring an action in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.
4. Notwithstanding anything to the contrary set forth in the Agreement, any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.
5. Based upon the franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.
6. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.
7. Each provision of this Amendment 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 Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.
8. As to any state law described in this Amendment that declares void or unenforceable any provision contained in the Development Agreement, Franchisor reserves the right to challenge the enforceability of the state law by, among other things, bringing an appropriate legal action or by raising the claim in a legal action or arbitration that you have initiated.

*[The Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**MINNESOTA AMENDMENT TO AREA DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Agreement**”) dated \_\_\_\_\_, 20 \_\_, by and between D-BAT Academies, Inc. (“**us**” or “**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Franchisee**”). Defined terms contained in the Area Development Agreement shall have the identical meanings in this Amendment. Where and to the extent that any of the provisions of this Amendment are contrary to, in conflict with or inconsistent with any provision contained in the Agreement, the provisions contained in this Amendment shall control.

1. Notwithstanding anything to the contrary set forth in the Agreement, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that a developer be given ninety (90) days’ notice of termination (with sixty (60) days to cure) and one hundred eighty (180) days’ notice for non-renewal of the Agreement.

2. Notwithstanding anything to the contrary set forth in the Agreement, any general release you are required to assent to shall not apply to any liability we may have under the Act.

3 Minn. Stat. Section 80C.21 and Minn. Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Agreement can abrogate or reduce any of franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

4. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

4. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

5. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## NORTH DAKOTA AMENDMENT TO AREA DEVELOPMENT AGREEMENT

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (this “**Amendment**”) dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Agreement**”) dated \_\_\_\_\_, by and between D-BAT Academies, Inc., a Texas corporation (“**Franchisor**”), and \_\_\_\_\_ (“**Franchisee**”). Where and to the extent that any of the provisions of this Amendment are contrary to, in conflict with or inconsistent with any provision contained in the Agreement, the provisions contained in this Amendment shall control. Defined terms contained in the Agreement shall have the identical meanings in this Amendment.

1. Jurisdiction and Venue. Section 14.3 of the Development Agreement is supplemented with the following language:

“To the extent required by North Dakota Franchise Investment Law, Developer may bring an action in North Dakota. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.”. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

2. Governing Law. Section 14.1 of the Development Agreement is supplemented with the following language:

“To the extent required by the North Dakota Franchise Investment Law, North Dakota law will apply to this Agreement.”

3. Waiver of Jury Trial. The Commissioner has determined waiver of trial by jury and waiver of exemplary and punitive damages to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. However, Franchisor and Developer agree to enforce these provisions to the extent the law allows, which may, however, require that all or part of Section 14.6 be deleted in order for the provision to comply with the NDFIL.

4. Acknowledgements and Questionnaires. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

5. Conflicting Terms. In the event of any conflict between the terms of this Amendment and the terms of the Development Agreement, the terms of this Amendment shall prevail.

6. Miscellaneous. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the North Dakota Franchise Investment Law are met independently without reference to this Amendment.

*[The Signature Page Follows]*



**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**VIRGINIA AMENDMENT TO AREA DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (this “**Amendment**”) dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Agreement**”) dated \_\_\_\_\_, by and between D-BAT Academies, Inc., a Texas corporation (“**Franchisor**”), and \_\_\_\_\_ (“**Franchisee**”). Where and to the extent that any of the provisions of this Amendment are contrary to, in conflict with or inconsistent with any provision contained in the Agreement, the provisions contained in this Amendment shall control. Defined terms contained in the Agreement shall have the identical meanings in this Amendment.

1. Under Section 13.1-564 of the Virginia Retail Franchising Act, (the “**Act**”), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the Agreement does not constitute “reasonable cause”, as that term may be defined in the Act or the laws of Virginia, that provision may not be enforceable.

2. The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to defer payment of the development fee owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the development agreement.

3. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

4. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

5. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**WASHINGTON AMENDMENT TO THE AREA DEVELOPMENT AGREEMENT,  
FRANCHISEE COMPLIANCE QUESTIONNAIRE, AND RELATED AGREEMENTS**

THIS AMENDMENT TO AREA DEVELOPMENT AGREEMENT (“**Amendment**”) dated \_\_\_\_\_, 20\_\_ is intended to be a part of, and by this reference is incorporated into that certain Area Development Agreement (the “**Agreement**”) dated \_\_\_\_\_, 20\_\_\_\_, by and between D-BAT Academies, Inc. (“**D-BAT**”), a Texas corporation, with its principal office in Carrollton, Texas, and \_\_\_\_\_ (“**you**” or “**Developer**”). Defined terms contained in the Development Agreement shall have the identical meanings in this Amendment.

1. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
2. RCW 19.100.180 may supersede the development 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 development agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
3. 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 development agreement, a franchisee may bring an action or proceeding arising out of in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act 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.
5. Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.
6. 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.
7. 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.
8. Section 3.1 of this Agreement is revised to state that the Washington Department of Financial Institutions Securities Division has imposed a financial assurance requirement. Because we have material pre-opening obligations with respect to each Facility you open under the Area Development Agreement, payment of the Development Fee will be released proportionally with respect to each Facility opened and is deferred until we have met all our pre-opening obligations under the Area Development Agreement and you are open for business with respect to each such location.

9. No statement, questionnaire, or acknowledgment signed or agreed to by a developer in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

10. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

11. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the date first shown above.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**D-BAT ACADEMIES, INC.**  
**AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT A**  
**GLOSSARY OF ADDITIONAL TERMS**

“**Affiliate**” means an affiliate of a named person identified as any person or entity that is controlled by, controlling or under common control with such named person.

“**Business Entity**” means any person with the power to enter into contracts, other than a natural person. The term includes a corporation, limited liability company, limited partnership, and trust.

“**Confidential Information**” means and includes any and all manuals, trade secrets, training systems and methods, customer lists and contacts, equipment design, technology, and utilization, advertising strategies and methods, D-BAT’s goodwill, your goodwill, client pricing policies, hiring of, training and development of instructors, customer and instructor personnel files, lists and information, and all other items designated as “Confidential” by D-BAT.

“**Copyrighted Works**” means works of authorship which are owned by D-BAT and fixed in a tangible medium of expression including, without limitation, the content of the Manual, the design elements of the Proprietary Marks, D-BAT’s product packaging and advertising and promotional materials, and the content and design of D-BAT’s Web site and advertising and promotional materials.

“**Development Period**” means each of the time periods indicated on Attachment B during which you shall have the right and obligation to construct, equip, open and thereafter continue to operate D-BAT® Facilities.

“**Franchise Agreement**” means the form of agreement prescribed by D-BAT and used to grant to you the right to own and operate a single Facility in the Development Area, including all attachments, exhibits, riders, guarantees or other related instruments, all as amended from time to time.

“**Force Majeure**” means acts of God (such as tornadoes, earthquakes, hurricanes, floods, fire or other natural catastrophe); strikes, lockouts or other industrial disturbances; war, terrorist acts, riot, or other civil disturbance; epidemics; or other similar forces which you could not by the exercise of reasonable diligence have avoided; provided however, that neither an act or failure to act by a Governmental Authority, nor the performance, non-performance or exercise of rights under any agreement with you by any lender, landlord, or other person shall be an event of Force Majeure under this Agreement, except to the extent that such act, failure to act, performance, non-performance or exercise of rights results from an act which is otherwise an event of Force Majeure. Your financial inability to perform or your insolvency shall not be an event of Force Majeure under this Agreement.

“**Membership Fees**” means all revenue collected from the sale of memberships, exclusive of sales tax.

“**Owner**” means each individual or entity holding a beneficial ownership in the franchisee. It includes all shareholders of a corporation, all members of a limited liability company, all general and limited partners of a limited partnership, and the grantor and the trustee of the trust.

“**You**” means the individual(s) or entity(ies) identified as the developer in the Summary Pages. If more than one individual or entity is identified as the “developer,” the developer will be considered a general partnership comprised of the individual(s) and/or entity(ies) and the term “you” will refer to the general partnership.

**D-BAT ACADEMIES, INC.  
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT B  
DEVELOPMENT AREA AND SCHEDULE**

The “Development Area” is defined as the territory within the boundaries described below. The description may consist of both a map and a written description, and in the event of any conflict between the two, the written description shall prevail.

Development Area: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If the Development Area is defined by streets, highways, freeways or other roadways, or rivers, streams, or tributaries, then the boundary of the Development Area shall extend to the center line of each such street, highway, freeway or other roadway, or river, stream, or tributary.

The “Development Schedule” is as follows:

	<b>Development Period Ending</b>	<b>Franchise Agreement Execution Date</b>	<b>Number of Facilities to be Opened During Development Period</b>	<b>Cumulative Number of Facilities to be in Operation at End of Development Period</b>
1				
2				
3				

**IN WITNESS WHEREOF**, the parties hereof have executed this Attachment B as of the dates shown below but effective for all purposes as of the Effective Date.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
 a Texas corporation

**DEVELOPER**  
 \_\_\_\_\_  
 a/an \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**D-BAT ACADEMIES, INC.  
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT C  
ENTITY INFORMATION**

If the developer is an entity, you represent and warrant that the following information is accurate and complete in all material respects as of \_\_\_\_\_, 20\_\_\_\_.

- (1) Developer is a \_\_\_\_\_, formed under the laws of the state of \_\_\_\_\_.
- (2) You shall provide to D-BAT concurrently with the execution hereof true and accurate copies of the Developer's charter documents and governing documents including Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution hereof, and any amendments to the foregoing.
- (3) You promptly shall provide such additional information as D-BAT may from time to time request concerning all persons who may have any direct or indirect financial interest in the franchisee entity.
- (4) The name and address of each of Owner:

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST
<hr/>		
<hr/>		

(5) The address where the Developer's Financial Records, and other records (e.g., Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, etc.) are maintained is: \_\_\_\_\_.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**DEVELOPER**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**D-BAT ACADEMIES, INC.  
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT D  
GUARANTY AND PERSONAL UNDERTAKING**

1. I have read the Area Development Agreement between D-BAT Academies, Inc., and \_\_\_\_\_ (the “Developer”).
2. I own a beneficial interest in the Developer, and would be considered an “Owner” within the definition contained in Area Development Agreement.
3. I understand that, were it not for this Guaranty and Personal Undertaking (“Guaranty”), D-BAT would not have agreed to enter into the Area Development Agreement with the Developer.
4. I will comply with all of the provisions contained in Section 6 of the Area Development Agreement concerning the use of the Confidential Information. I will maintain the confidentiality of all Confidential Information disclosed to me. I agree to use the Confidential Information only for the purposes authorized under the Area Development Agreement. I further agree not to disclose any of the Confidential Information, except **(a)** to the Developer’s employees on a need to know basis, **(b)** to the Developer’s and my legal and tax professionals to the extent necessary for me to meet my legal obligations, and **(c)** as otherwise may be required by law.
5. I will comply with all of the provisions contained in Section 8 of the Area Development Agreement concerning the assignment of my Area Development Agreement.
6. While I am an “Owner” of the Developer and, for a two-year period after I cease to be an Owner (or two years after termination or expiration of the Area Development Agreement, whichever occurs first), I will not:
  - (a)** Divert or attempt to divert any present or prospective customer of any D-BAT® Facility to any competitor or do anything to harm the goodwill associated with the Proprietary Marks and the System; or
  - (b)** Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any business that provides baseball or softball instruction or in which the sale of baseball or softball equipment and apparel comprises more than 10% of gross sales (provided that such restriction shall not apply to less than a 5% beneficial interest in any publicly traded corporation), other than a D-BAT® Facility operated pursuant to a then-currently effective franchise agreement. This restriction shall apply, while I am an Owner, to any location within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which D-BAT or its Affiliates have used, sought registration of or registered the Proprietary Marks or similar marks or operate or license others to operate a business under the Proprietary Marks or similar marks. It will apply for two years after I cease to be an Owner (or two years after termination or expiration of the Area Development Agreement, whichever occurs first) to any location that is, or is intended to be, located in the Development Area identified in the Area Development Agreement. This restriction will be tolled during any period of my noncompliance.
7. I agree that the provisions contained in Section 14 of the Area Development Agreement will apply to any dispute arising out of or relating to this Guaranty. If D-BAT brings any legal action to enforce its rights under this Guaranty, I will reimburse D-BAT its reasonable attorneys’ fees and costs.
8. I hereby guarantee the prompt and full payment of all amounts owed by the Developer under the Area Development Agreement.



9. I will pay all amounts due under this Guaranty within 14 days after receiving notice from D-BAT that the Developer has failed to make the required payment. I understand and agree that D-BAT need not exhaust its remedies against the Developer before seeking recovery from me under this Guaranty.

10. No modification, change, impairment, or suspension of any of D-BAT's rights or remedies shall in any way affect any of my obligations under this Guaranty. If the Developer has pledged other security or if one or more other persons have personally guaranteed performance of the Developer's obligations, I agree that D-BAT's release of such security will not affect my liability under this Guaranty.

11. I hereby waive **(a)** all rights described in California Civil Code Section 2856(a)(1)-(2), inclusive, which includes, without limitation, any rights and defenses which are or may become available to the undersigned by reason of California Civil Code Sections 2787 to 2855, inclusive; and **(b)** California Civil Code Sections 2899 and 3433.

**12. I WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, INVOLVING D-BAT, WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THE AREA DEVELOPMENT AGREEMENT AND/OR THE PERFORMANCE OF ANY PARTY UNDER THE AREA DEVELOPMENT AGREEMENT.**

13. I understand that D-BAT's rights under this Guaranty shall be in addition to, and not in lieu of, any other rights or remedies available to D-BAT under applicable law.

14. I agree that any notices required to be delivered to me will be deemed delivered at the time delivered by hand; one Business Day after electronically confirmed transmission by facsimile or other electronic system; one Business Day after delivery by Express Mail or other recognized, reputable overnight courier; or three Business Days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the address identified on the signature line below. I may change this address only by delivering to D-BAT written notice of the change.

Executed on the date set forth below:

**GUARANTORS**

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT F**  
**FINANCIAL STATEMENTS**

D-BAT Academies, Inc.  
Balance Sheet  
For the Period Ending 3/31/23

ASSETS

Current Assets

Cash in Bank	\$ 5,281,092
Deposits in Transit	205,922
Accounts Receivable	1,905
Notes Receivable Franchisees	12,878
Notes Receivable Related Party	845,383
Deferred Commission Current Portion	59,703
Prepaid Expenses	<u>459,728</u>

Total Other Current Assets 6,866,612

Fixed Assets

Computer Equipment	63,028
Furniture & Fixtures	186,059
Leasehold Improvements	179,928
Right of Use Assets	509,205
Vehicles	7,500
Less Accumulated Depr	<u>(241,703)</u>

Total Fixed Assets 704,016

Other Assets

Commissions Costs Deferred	543,201
Security Deposit	<u>3,101</u>

Total Other Assets 546,301

TOTAL ASSETS \$ 8,116,930

LIABILITIES & EQUITY

Current Liabilities

Accounts Payable	\$ 1,569,452
Deferred Revenue Current Portion	493,623
Line of Credit	488,909
Lease Liability Current Portion	<u>95,525</u>

Total Current Liabilities 2,647,509

Long Term Liabilities

Lease Liability	423,751
Deferred Franchise Revenue	<u>6,902,334</u>

Total Long Term Liabilities 7,326,085

Total Liabilities 9,973,594

Equity

Stockholders Equity	<u>(1,856,664)</u>
---------------------	--------------------

TOTAL LIABILITIES & EQUITY \$ 8,116,930

D-BAT Academies, Inc.  
Income Statement  
For the Three Months Ending March 31, 2023

Income	
Franchise Fee Income	\$ 123,083
Management Fee Income	2,849,786
Computer System Fee Revenue	13,005
Advertising Fund Revenue	<u>184,143</u>
Total Income	3,170,017
Expense	
Cost of Computer System Fee Revenue	155,801
Cost of Location Fixtures and Setup	185,944
Impact Area Fees	99,191
Location Software Subscription Fees	143,397
Advertising Fund Expense	110,271
Bank Service Charges	94
Depreciation Expense	15,830
Dues & Subscriptions	657
Insurance	30,763
Personnel Cost	370,961
Professional Fees	37,980
Janitorial	1,234
Repairs/Maintenance/Security	6,137
Office Expense	27,025
Rent	43,411
Business Meals & Entertainment	8,731
Travel	7,105
Telecommunications	8,393
Utilities	12,510
Website Fees	<u>3,403</u>
Total Expense	<u>1,268,837</u>
Net Ordinary Income	1,901,180
Other Income/Expense	
7000 · Interest Income	19,442
8000 · Interest Expense	<u>(6,228)</u>
Total Other Income (Expense)	<u>13,214</u>
Net Income	<u><u>\$ 1,914,393</u></u>

**D-BAT ACADEMIES, INC.**

**FINANCIAL STATEMENTS**

**For the Years Ended December 31, 2022 and 2021  
with Report of Independent Auditors**

**D-BAT ACADEMIES, INC.**

**FINANCIAL STATEMENTS**

**For the Years Ended December 31, 2022 and 2021**

**Table of Contents**

Report of Independent Auditors .....	1
Financial Statements:	
Balance Sheets .....	3
Statements of Income.....	4
Statements of Changes in Stockholders' Deficit.....	5
Statements of Cash Flows.....	6
Notes to Financial Statements .....	7

## REPORT OF INDEPENDENT AUDITORS

To the Board of Directors of  
D-BAT Academies, Inc.

### Opinion

We have audited the financial statements of D-BAT Academies, Inc. (the “Company”), which comprise the balance sheets as of December 31, 2022 and 2021, and the related statements of income, changes in stockholders’ deficit, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, 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 (“GAAP”).

### 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 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.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with GAAP, 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 the Company’s ability to continue as a going concern for one year after the date that 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 there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the 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 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 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.

*Whitley Penn LLP*

Dallas, Texas  
April 25, 2023



**D-BAT ACADEMIES, INC.**

**BALANCE SHEETS**

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 3,707,144	\$ 4,889,087
Due from related party	49,057	21,237
Note receivable - related party	789,298	717,742
Advances to franchisees	10,297	39,928
Notes receivable - franchisees	26,397	828
Prepaid expenses and other current assets	581,325	560,229
Current portion of deferred commission costs	59,703	54,378
Total current assets	<u>5,223,221</u>	<u>6,283,429</u>
Property and equipment, net	195,877	189,275
Operating lease right of use asset, net	479,248	-
Financing lease right of use assets, net	54,598	-
Deferred commission costs, net of current portion	528,136	465,678
Deposits	3,101	3,101
Total assets	<u>\$ 6,484,181</u>	<u>\$ 6,941,483</u>
<b>Liabilities and Stockholders' Deficit</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 1,345,597	\$ 1,157,546
Due to franchisee	-	3,583
Line of credit	446,684	406,983
Deferred revenue	493,623	387,335
Current portion of operating lease liability	79,933	-
Current portion of financing lease liabilities	15,592	-
Total current liabilities	<u>2,381,429</u>	<u>1,955,447</u>
Long-term liabilities:		
Deferred revenue, net of current portion	6,300,422	5,307,717
Operating lease liability, net of current portion	409,386	-
Financing lease liabilities, net of current portion	39,006	-
Total liabilities	<u>9,130,243</u>	<u>7,263,164</u>
Commitments and contingencies		
Stockholders' deficit	<u>(2,646,062)</u>	<u>(321,681)</u>
Total liabilities and stockholders' deficit	<u>\$ 6,484,181</u>	<u>\$ 6,941,483</u>

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**  
**STATEMENTS OF INCOME**

	<b>Year Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Revenues:		
Management fee revenue	\$ 9,859,920	\$ 7,665,067
Advertising fund revenue	644,518	497,299
Franchise fee revenue	421,398	384,881
Computer system fee revenue	69,634	69,547
Other fund revenue	1,000	39,000
Total revenues	10,996,470	8,655,794
Operating expenses:		
Costs of computer system fee revenue	476,059	228,558
Costs of other revenues	318,137	265,872
Advertising and marketing	118,317	190,291
Advertising fund expense	644,518	497,299
Depreciation and amortization	75,226	62,892
Personnel costs	3,560,308	2,607,988
Professional fees	100,938	159,078
Rent	155,136	149,633
Other general and administrative expenses	1,192,465	1,215,148
Total operating expenses	6,641,104	5,376,759
Income from operations	4,355,366	3,279,035
Other income (expense):		
Other income	46,022	26,878
Interest expense	(25,773)	(15,422)
Gain on forgiveness of PPP loans	-	304,500
Other expense	-	(15,982)
Total other income	20,249	299,974
Net income	\$ 4,375,615	\$ 3,579,009

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**

**STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT**

**For the Years Ended December 31, 2022 and 2021**

	<u>Common Stock</u>	<u>Paid-in</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Capital</u>	<u>Deficit</u>	<u>Stockholders'</u>
	<u>Amount</u>	<u>Capital</u>	<u>Deficit</u>	<u>Deficit</u>
Balance at December 31, 2020	400,000	\$ -	\$ (950,690)	\$ (950,690)
Net income	-	-	3,579,009	3,579,009
Distributions to stockholders	-	-	(2,950,000)	(2,950,000)
Balance at December 31, 2021	400,000	-	(321,681)	(321,681)
Net income	-	-	4,375,615	4,375,615
Distributions to stockholders	-	-	(6,700,000)	(6,700,000)
Balance at December 31, 2022	400,000	\$ -	\$ (2,646,062)	\$ (2,646,062)

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**  
**STATEMENTS OF CASH FLOWS**

	<b>Year Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Operating Activities:</b>		
Net income	\$ 4,375,615	\$ 3,579,009
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for bad debt expense	-	1,508
Depreciation	56,269	62,892
Amortization	18,957	-
Non-cash interest expense	2,337	-
Non-cash lease costs	19,278	-
Loss on sale of assets	-	15,982
Gain on forgiveness of Paycheck Protection Program loans	-	(304,500)
Changes in operating assets and liabilities:		
Due from related party	(27,820)	3,828
Advances to franchisees	29,631	(38,956)
Prepaid expenses and other current assets	(21,092)	(375,752)
Deferred commission costs	(67,783)	(73,311)
Accounts payable and accrued expenses	188,051	375,255
Operating lease liability	(9,207)	-
Deferred revenue	1,098,993	1,080,623
Net cash provided by operating activities	<u>5,659,646</u>	<u>4,326,578</u>
<b>Investing Activities:</b>		
Purchases of property and equipment	(62,871)	(42,362)
Proceeds from sale of assets	-	9,000
Net activity on note receivable - related party	(71,556)	(130,385)
Issuance of notes receivable - franchisees	(25,569)	(56,589)
Collections on notes receivable - franchisees	-	125,118
Net cash used in investing activities	<u>(159,996)</u>	<u>(95,218)</u>
<b>Financing Activities:</b>		
Payments on finance leases	(21,294)	-
Net activity on line of credit	39,701	82,151
Proceeds from long-term debt	-	148,000
Distributions to stockholders	(6,700,000)	(2,950,000)
Net cash used in financing activities	<u>(6,681,593)</u>	<u>(2,719,849)</u>
Net (decrease) increase in cash and cash equivalents	(1,181,943)	1,511,511
Cash and cash equivalents, beginning of year	<u>4,889,087</u>	<u>3,377,576</u>
Cash and cash equivalents, end of year	<u>\$ 3,707,144</u>	<u>\$ 4,889,087</u>
<b>Supplemental Disclosure of Cash Flow Information</b>		
Interest paid	<u>\$ 23,436</u>	<u>\$ 15,968</u>
<b>Noncash financing activities:</b>		
Operating lease right of use asset addition	<u>\$ 492,813</u>	<u>\$ -</u>
Operating lease liability addition	<u>\$ 492,813</u>	<u>\$ -</u>
Finance lease right of use asset additions	<u>\$ 73,555</u>	<u>\$ -</u>
Finance lease liability additions	<u>\$ 73,555</u>	<u>\$ -</u>

See accompanying notes to financial statements.

## **D-BAT ACADEMIES, INC.**

### **NOTES TO FINANCIAL STATEMENTS**

**December 31, 2022 and 2021**

#### **A. Organization and Operations**

##### **Description of Business**

D-BAT Academies, Inc. (the “Company”) is a corporation operating under the laws of the State of Texas. The Company was formed in March of 1993 under the name CMNS Properties, Inc., and changed its name to D-BAT Academies, Inc. and began operations in October of 2007.

The Company operates a franchising business that sells franchise licenses for the operation of baseball facilities and pro shops. All franchisee facilities operate under the terms and conditions of a franchise agreement. Franchisees operate under the trademark “D-BAT”, which has been registered by D-BAT Sports, Inc. (“DSI”), a related party, under a nonexclusive perpetual, royalty-free licensing agreement (the “Intercompany License”). The Intercompany License grants the Company the right to use this trademark and the proprietary information related to the facility and pro shop system, such as the know-how and the manuals, for the purpose of licensing them to franchisees.

The Company has 1,000,000 authorized shares of no-par value common stock. As of December 31, 2022 and 2021, the Company had 400,000 shares issued and outstanding.

During the years ended December 31, 2022 and 2021, 44 and 12 franchised outlets were opened, respectively, and no franchised outlets closed. As of December 31, 2022 and 2021, were 156 and 112 franchised outlets in operation, respectively.

#### **B. Significant Accounting Policies**

##### **Basis of Accounting**

The accounts are maintained, and the financial statements have been prepared using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

##### **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. Estimates are used for the following, among others: revenue recognition, valuation of acquired assets, and useful lives for depreciation of long-lived assets. Actual results could differ from these estimates.

**D-BAT ACADEMIES, INC.**

**NOTES TO FINANCIAL STATEMENTS (continued)**

**B. Significant Accounting Policies – continued**

**Cash and Cash Equivalents**

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. As of December 31, 2022 and 2021, the Company had no such investments. The Company maintains deposits in one financial institution, which may at times exceed amounts covered by insurance provided by the U.S. Federal Deposit Insurance Corporation (“FDIC”). The Company has not experienced any losses related to amounts in excess of FDIC limits.

**Notes Receivable**

Notes receivables are carried at original agreement amount less an allowance for doubtful notes based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful notes by identifying troubled accounts and by using historical experience applied to an aging of accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for doubtful notes. There was no allowance for doubtful notes as of December 31, 2022 or 2021. Interest income on notes receivable is recognized in the period earned.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives of the respective asset:

	<u>Estimated Useful Life</u>
Computer equipment	3 to 5 years
Furniture and fixtures	7 years

Leasehold improvements are amortized using the straight-line method over the shorter of the remaining lives of the respective leases or the service lives of the improvements. 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.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### B. Significant Accounting Policies – continued

##### Impairment of Long-lived Assets – continued

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, 2022 and 2021, no impairment charges were recognized related to long-lived assets.

##### Revenue Recognition

The Company generates revenues and earns fees from franchised facilities. The Company provides the use of trademarks, system, training, pre-opening assistance, and facility operating assistance in exchange for initial franchise fee and management fee-based on a facility's sales.

A franchise agreement establishes a facility developed in one or multiple defined geographic area and provides for a 10-year initial term with renewals of 5-year terms. An area development agreement establishes the number of multiple stores that must be developed in a defined geographic area and the deadlines by which these stores must open. The area development agreement can be terminated by the Company, if among other reasons, the area developer fails to open stores on schedule.

Initial franchise fees and area development agreement fees are recorded as deferred revenue when received and are recognized as revenue over the contractual term of the franchise agreement, when a franchised facility is opened. Transfer and renewal fees are recognized as revenue over the contractual term of the franchise agreement. The Company receives continuing management fee revenue for providing billing and collection services on behalf of its franchisees and recognizes the revenue in the period earned. Computer system fee revenue and other revenues are recognized when the products have been shipped or services provided. The Company accounts for shipping and handling costs as expenses within the caption of costs of other revenues, in the statements of income. Advertising fund revenue is contributed by franchisees based on a percentage of each franchisees' revenue and is recognized as earned.

The following table disaggregates revenue by source for the year ended December 31, 2022:

	<u>Point in Time</u>	<u>Over Time</u>	<u>Net Revenues</u>
Franchise fee revenue	\$ -	\$ 421,398	\$ 421,398
Management fee revenue	-	9,859,920	9,859,920
Computer system fee revenue	69,634	-	69,634
Advertising fund revenue	-	644,518	644,518
Other revenues	1,000	-	1,000
Total revenues	<u>\$ 70,634</u>	<u>\$ 10,925,836</u>	<u>\$ 10,996,470</u>

**D-BAT ACADEMIES, INC.**

**NOTES TO FINANCIAL STATEMENTS (continued)**

**B. Significant Accounting Policies – continued**

**Revenue Recognition – continued**

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 fee revenue	\$ -	\$ 384,881	\$ 384,881
Management fee revenue	-	7,665,067	7,665,067
Computer system fee revenue	69,547	-	69,547
Advertising fund revenue	-	497,299	497,299
Other revenues	39,000	-	39,000
	<u>\$ 108,547</u>	<u>\$ 8,547,247</u>	<u>\$ 8,655,794</u>

*Contract Costs*

Contract assets consist of deferred costs resulting from commission amounts incurred when the franchise rights are sold to franchisees. The Company classifies the contract costs as deferred commission costs in the balance sheets. Contract assets were \$587,839 at December 31, 2022, \$520,056 at December 31, 2021, and \$446,745 at January 1, 2021.

*Contract Liabilities*

Contract liabilities consist of deferred revenue resulting from initial franchise fees, area development fees, and transfer fees, paid by franchisees, which are recognized on a straight-line basis over the term of the franchise agreements. Contract liabilities also consist of software fee, construction management, and on-site training fee, which are recognized when the products are shipped or services are provided. Contract liabilities were \$6,794,045 at December 31, 2022, \$5,695,052 at December 31, 2021, and \$4,614,429 at January 1, 2021.

**Advertising Costs**

All costs associated with advertising and marketing are expensed in the period incurred. Company advertising costs are included in advertising and marketing. Franchising advertising costs are included in advertising fund expense.

**Personnel Costs**

Personnel costs include all salaries, wages, commissions, contract labor costs, and bonuses paid to employees and contract laborers. Personnel costs also include various payroll taxes.



## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS (continued)

#### B. Significant Accounting Policies – continued

##### Income Taxes

The Company elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code (the “Code”), effective January 1, 2009. Under those provisions, the Company does not pay federal corporate income taxes on its taxable income. Instead, the stockholders are taxed on their proportionate share of the Company’s taxable income. Accordingly, no provision has been made for federal income taxes in the accompanying financial statements. In certain instances, the Company is subject to state taxes on income arising in or derived from the state tax jurisdictions in which it operates.

State income tax positions are evaluated in a two-step process. The Company first determines whether it is more likely than not that a tax position will be sustained upon examination. If a tax position meets the more likely than not threshold, it is then measured to determine the amount of expense to record in the financial statements. The tax expense recorded would equal the largest amount of expense related to the outcome that is 50% or greater likely to occur. The Company classifies any potential accrued interest recognized on an underpayment of income taxes as interest expense and classifies any statutory penalties recognized on a tax position taken as operating expense. Management of the Company has not taken a tax position that, if challenged, would be expected to have a material effect on the financial statements as of or for the years ended December 31, 2022 or 2021.

The Company did not incur any penalties or interest related to its state tax returns during the years ended December 31, 2022 or 2021.

##### Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2016-13, *Financial Instruments – Credit Losses, (Topic 362): Measurement of Credit Losses on Financial Instruments*. The amendments in this ASU replace the incurred loss model for recognition of credit losses with an expected loss methodology, which will result in more timely recognition of credit losses. In November 2019, FASB issued ASU 2019-10, which provides a deferral of the effective dates of ASU No. 2016-13. Accordingly, the guidance is effective for fiscal years beginning after December 15, 2022, for nonpublic companies. The Company is assessing the method of adoption and the impact this new accounting guidance will have on its financial statements and related disclosures.

##### Adoption of New Accounting Standards

In February 2016, the FASB issued Accounting Standards Codification (“ASC”) 842, *Leases*, to increase transparency and comparability among organizations by requiring the recognition of right of use (“ROU”) assets and lease liabilities on the balance sheet. Most prominent among the changes in the standard is the recognition of ROU assets and lease liabilities by lessees for those leases classified as operating leases. Under the standard, disclosures are required to meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases. The Company elected the practical expedient allowing aggregation of non-lease components with related lease components when evaluating the accounting treatment for all classes of underlying assets.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS (continued)

#### B. Summary of Significant Accounting Policies – continued

##### Adoption of New Accounting Standards – continued

The Company elected the package of practical expedients permitted under the transition guidance, allowing the Company to carry forward conclusions related to: (a) whether expired or existing contracts contain leases; (b) lease classification; and (c) initial direct costs for existing leases. The Company has elected not to record operating lease ROU assets or lease liabilities associated with leases with durations of 12 months or less.

The Company adopted this standard effective January 1, 2022, using the modified retrospective approach. In transitioning to ASC 842, the Company elected to use the practical expedient package available at the time of implementation. These elections have been applied consistently to all leases existing at, or entered into after, January 1, 2022, the beginning of the period of adoption. As a result of the adoption of the new lease accounting guidance, the Company recognized on January 1, 2022, a financing ROU asset and lease liability of approximately \$64,000. The adoption did not result in an adjustment to retained earnings. The standard did not materially impact net income and had no impact on cash flows.

##### Reclassifications

Certain prior year amounts have been reclassified to conform to the current year presentation. These reclassifications had no effect on previously reported results of operations.

#### C. Notes Receivable – Franchisees

The Company holds notes receivable from franchisees. These notes are payable based on the terms and conditions agreed at the time of sale. The notes range in length from 1 to 3 years and bear interest at rates ranging from 3.00% to 6.00%. The Company recognizes interest income from these notes in the period earned. For the years ended December 31, 2022 and 2021, bad debt expense related to notes receivable was \$0.

#### D. Property and Equipment

The principal asset classifications, at cost, are as follows at December 31:

	<u>2022</u>	<u>2021</u>
Computer equipment	\$ 63,028	\$ 58,329
Furniture and fixtures	186,059	173,537
Leasehold improvements	165,163	127,013
Vehicles	7,500	-
Less Accumulated depreciation	<u>(225,873)</u>	<u>(169,604)</u>
Property and equipment, net	<u>\$ 195,877</u>	<u>\$ 189,275</u>

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### **E. Line of Credit**

The Company has a revolving credit agreement with a bank, which provides a line of credit up to \$500,000 through March 29, 2023. Interest is payable monthly, and the outstanding principal balance and any accrued and unpaid interest is due upon maturity. The line provides for interest at 0.75% over the prime-lending rate, with a floor of 3.50%, and is secured by substantially all assets of the Company and a stockholder's personal guaranty. The interest rate at December 31, 2022 and 2021, was 8.25% and 4.00%, respectively. At December 31, 2022 and 2021, the line of credit had an outstanding balance of \$446,684, and \$406,983, respectively. Subsequent to year end, the line of credit was extended to mature in April 2024 under the same terms.

#### **F. Long Term Debt**

##### *Paycheck Protection Program Loans*

On March 27, 2020, the U.S. federal government enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which included provision for a Paycheck Protection Program ("PPP") administered by Small Business Administration ("SBA"). The PPP allows qualifying business to borrow up to \$10 million calculated based on qualifying payroll costs. PPP loans bear a fixed interest rate of 1% over a two-year term, are guaranteed by the federal government, and do not require collateral. Payments of principal and interest are deferred until 10 months from the date of the loan, and prepayments may be made at any time without penalty. The loans may be forgiven, in part or whole, if the proceeds are used to retain and pay employees and for other qualifying expenditures. The Company applied for a PPP loan in the amount of \$156,500, which was approved by the SBA on April 17, 2020.

On December 27, 2020, the U.S. federal government enacted the Hard-Hit Small Businesses, Nonprofits, and Venues Act ("Economic Aid Act" or "EAA"), which included provision for the Second Draw Paycheck Protection Program ("PPP2") administered by SBA. The PPP2 allows qualifying businesses to borrow up to \$2 million calculated based on qualifying payroll costs and other criteria as prescribed in the EAA. PPP2 loans bear a fixed interest rate of 1% over a two-year term, are guaranteed by the federal government, and do not require collateral. Payments of principal and interest are deferred until 16 months from the date of the loan, and prepayments may be made at any time without penalty. The loan may be forgiven, in part or whole, if the proceeds are used to retain and pay employees and for other qualifying expenditures. The Company applied for and received a PPP2 loan in the amount of \$148,000 on May 5, 2021.

The Company has elected to account for the PPP and PPP2 loans in accordance with ASC 470 – *Debt*. The Company used the proceeds of the PPP and PPP2 loans in accordance with the provisions of the CARES act and EEA and has applied and received full forgiveness on August 5, 2021, for the PPP loan, and on September 2, 2021, for the PPP2 loan. As such a gain on loan extinguishment of \$304,500 is included on the accompanying statements of income for the year ended December 31, 2021.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS (continued)

#### G. Leases

A lease provides the lessee the right to control the use of an identified asset for a period of time in exchange for consideration. Operating lease right of use assets and finance lease right of use assets (collectively “ROU assets”) represent the Company’s right to use an underlying asset for the lease term. Operating lease liabilities and finance lease liabilities (collectively, “lease liabilities”) represent the Company’s obligation to make lease payments arising from the lease. The Company determines if an arrangement is a lease at inception. ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. The Company excludes short-term leases having initial terms of 12 months or less from ROU assets and lease liabilities and recognizes rent expense on a straight-line basis over the lease term.

The Company leases buildings and equipment under non-cancelable leases. Most operating leases contain renewal options that provide for rent increases based on prevailing market conditions. The terms used to calculate the ROU assets and lease liabilities include the renewal options that the Company is reasonably certain to exercise.

The discount rate used to determine the commencement date present value of lease payments is the interest rate implicit in the lease, or when that is not readily determinable, the Company utilizes its secured borrowing rate. ROU assets include any lease payments required to be made prior to commencement and exclude lease incentives. Both ROU assets and lease liabilities exclude variable payments not based on an index or rate, which are treated as period costs. The Company’s lease agreements do not contain significant residual value guarantees, restrictions or covenants.

Total operating lease costs were \$133,566 for the year ended December 31, 2022, and are included in rent expense in the accompanying statements of income. Variable lease costs represent pro-rata common area maintenance allocated. Short term lease costs represent amounts paid for leases less than 12 months at the time of adoption.

For the year ended December 31, 2022, total finance lease costs for amortization of ROU assets was \$18,957. Interest on finance lease liabilities was \$2,337 for the year ended December 31, 2022, and is included in interest expense on the accompanying statements of income.

The components of operating lease costs for the year ended December 31, 2022, are as follows:

Fixed lease costs	\$ 9,207
Short term lease cost	98,559
Variable lease cost	<u>25,800</u>
Total operating lease costs	<u>\$ 133,566</u>

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### G. Leases – continued

Maturities of lease liabilities as of December 31, 2022, are as follows:

	<u>Finance Leases</u>	<u>Operating Lease</u>
2023	\$ 17,400	\$ 111,021
2024	17,400	114,352
2025	14,100	117,783
2026	13,800	121,316
2027	-	114,284
Total lease payments	<u>62,700</u>	<u>578,756</u>
Less present value discount	<u>(8,102)</u>	<u>(89,437)</u>
Lease liabilities	<u>\$ 54,598</u>	<u>\$ 489,319</u>

Weighted average lease term and discount rate as of December 31, 2022 are as follows:

Weighted average remaining lease term (years):	
Operating lease	4.92
Financing leases	3.75
Weighted average discount rate:	
Operating lease	7.00%
Financing leases	3.63%

During the year ended December 31, 2021, rent expense was \$149,633 and is included in rent expense on the accompanying statements of income.

#### H. Commitments and Contingencies

##### *Litigation*

From time to time, the Company may be involved in various other suits and claims arising in the normal course of business. In management's opinion, the ultimate outcome of these items will not have a material adverse effect on the Company's results of operations or financial position.

#### I. Related Party Transactions

##### *Transactions with Parent*

The Company and DSI frequently advance funds and pay expenses on behalf of one another for payment of general and administrative expenses. As of December 31, 2022 and 2021, the Company had an amount due from DSI of \$49,057 and \$21,237, respectively.

**D-BAT ACADEMIES, INC.**

**NOTES TO FINANCIAL STATEMENTS (continued)**

**I. Related Party Transactions – continued**

*Transactions with Affiliate*

In January 2019, the Company amended an unsecured promissory note from D-Bat, Inc. (“DBI”), a related company, in which DBI may borrow funds from the Company as needed and approved by the Board. The note bears interest at 3.5%, with all unpaid principal and accrued interest due at maturity. Throughout the life of the note, it has been extended several times, most recently extended through December 31, 2023. As of December 31, 2022 and 2021, the balance due to the Company under this note was \$789,298 and \$717,742, respectively.

**J. Subsequent Events**

The Company has evaluated subsequent events through April 25, 2023, the date the financial statements were available to be issued.

**D-BAT ACADEMIES, INC.**

**FINANCIAL STATEMENTS**

**For the Years Ended December 31, 2021 and 2020  
with Report of Independent Auditor's Report**

**D-BAT ACADEMIES, INC.**

**FINANCIAL STATEMENTS**

**For the Years Ended December 31, 2021 and 2020**

**Table of Contents**

Independent Auditor's Report .....	1
Financial Statements:	
Balance Sheets .....	3
Statements of Income.....	4
Statements of Changes in Stockholders' Deficit.....	5
Statements of Cash Flows.....	6
Notes to Financial Statements .....	7



## INDEPENDENT AUDITOR'S REPORT

To the Board of Directors of  
D-BAT Academies, Inc.

### Opinion

We have audited the financial statements of D-BAT Academies, Inc. (the "Company"), which comprise the balance sheet as of December 31, 2021, and the related statements of income, changes in stockholders' deficit, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America ("GAAP").

### Basis for Opinion

We conducted our audit 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 the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. 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 ended December 31, 2020, were audited by another auditor who expressed an unmodified opinion on those statements on July 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 GAAP, 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 the Company's ability to continue as a going concern for one year after the date that 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 there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the 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 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 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.

A handwritten signature in black ink that reads "Whitley Penn LLP". The signature is written in a cursive, flowing style.

Plano, Texas  
March 11, 2022

**D-BAT ACADEMIES, INC.****BALANCE SHEETS**

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 4,889,087	\$ 3,377,576
Due from related party	21,237	26,573
Note receivable - related party	717,742	587,357
Advances to franchisees	39,928	972
Notes receivable - franchisees	828	58,690
Prepaid expenses and other current assets	466,914	129,598
Deferred commission costs	54,378	44,848
Deferred costs	93,315	54,879
Total current assets	<u>6,283,429</u>	<u>4,280,493</u>
Property and equipment, net	189,275	234,787
Deferred commission costs, net of current portion	465,678	401,897
Deposits	3,101	3,101
Notes receivable - franchisees, net of current portion	<u>-</u>	<u>10,667</u>
Total assets	<u><u>\$ 6,941,483</u></u>	<u><u>\$ 4,930,945</u></u>
<b>Liabilities and Stockholders' Deficit</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 1,157,546	\$ 782,291
Due to franchisee	3,583	3,583
Line of credit	406,983	324,832
Current portion of long-term debt	-	119,755
Deferred revenue	387,335	513,396
Total current liabilities	<u>1,955,447</u>	<u>1,743,857</u>
Long-term liabilities:		
Long-term debt, net of current portion	-	36,745
Deferred revenue, net of current portion	5,307,717	4,101,033
Commitments and contingencies		
Stockholders' deficit	<u>(321,681)</u>	<u>(950,690)</u>
Total liabilities and stockholders' deficit	<u><u>\$ 6,941,483</u></u>	<u><u>\$ 4,930,945</u></u>

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**  
**STATEMENTS OF INCOME**

	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Revenues:		
Franchise fee revenue	\$ 384,881	\$ 328,023
Management fee revenue	7,665,067	4,384,463
Computer system fee revenue	69,547	306,509
Advertising fund revenue	497,299	302,887
Other fund revenue	39,000	250,056
Total revenues	8,655,794	5,571,938
Operating expenses:		
Costs of computer system fee revenue	228,558	331,398
Costs of other revenues	265,872	307,617
Advertising and marketing	190,291	55,791
Advertising fund expense	497,299	302,887
Depreciation	62,892	51,341
Personnel costs	2,607,988	1,190,056
Professional fees	159,078	100,952
Rent	149,633	139,131
Other general and administrative expenses	1,215,148	840,363
Total operating expenses	5,376,759	3,319,536
Income from operations	3,279,035	2,252,402
Other income (expense):		
Other income	26,878	21,920
Interest expense	(15,422)	(17,079)
Gain on forgiveness of PPP loans	304,500	-
Other expense	(15,982)	-
Total other income	299,974	4,841
Net income	\$ 3,579,009	\$ 2,257,243

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**

**STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT**

**For the Years Ended December 31, 2021 and 2020**

	<u>Common Stock</u>	<u>Paid-in</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Capital</u>	<u>Deficit</u>	<u>Stockholders'</u>
	<u>Amount</u>	<u>Deficit</u>	<u>Deficit</u>	<u>Deficit</u>
Balance at December 31, 2019	400,000	\$ -	\$ (1,121,880)	\$ (1,121,880)
Net income	-	-	2,257,243	2,257,243
Distributions to stockholders	-	-	<u>(2,086,053)</u>	<u>(2,086,053)</u>
Balance at December 31, 2020	400,000	-	(950,690)	(950,690)
Net income	-	-	3,579,009	3,579,009
Distributions to stockholders	-	-	<u>(2,950,000)</u>	<u>(2,950,000)</u>
Balance at December 31, 2021	<u>400,000</u>	<u>\$ -</u>	<u>\$ (321,681)</u>	<u>\$ (321,681)</u>

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**

**STATEMENTS OF CASH FLOWS**

	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Operating Activities:</b>		
Net income	\$ 3,579,009	\$ 2,257,243
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for bad debt expense	1,508	61,774
Depreciation	62,892	51,341
Loss on sale of assets	15,982	-
Gain on forgiveness of Paycheck Protection Program loans	(304,500)	-
Changes in operating assets and liabilities:		
Due from related party	3,828	(10,334)
Advances to franchisees	(38,956)	(1,328)
Prepaid expenses and other current assets	(337,316)	(109,044)
Deferred commission costs	(73,311)	(148,482)
Deferred costs	(38,436)	256,039
Accounts payable and accrued expenses	375,255	227,909
Deferred revenue	1,080,623	2,477
Net cash provided by operating activities	4,326,578	2,587,595
<b>Investing Activities:</b>		
Purchases of property and equipment	(42,362)	(104,526)
Proceeds from sale of assets	9,000	-
Net activity on note receivable - related party	(130,385)	(6,905)
Issuance of notes receivable - franchisees	(56,589)	(28,323)
Collections on notes receivable - franchisees	125,118	117,417
Net cash used in investing activities	(95,218)	(22,337)
<b>Financing Activities:</b>		
Net activity on line of credit	82,151	(4,644)
Proceeds from long-term debt	148,000	156,500
Distributions to stockholders	(2,950,000)	(2,086,053)
Net cash used in financing activities	(2,719,849)	(1,934,197)
Net increase in cash and cash equivalents	1,511,511	631,061
Cash and cash equivalents, beginning of year	3,377,576	2,746,515
Cash and cash equivalents, end of year	\$ 4,889,087	\$ 3,377,576
<b>Supplemental Disclosure of Cash Flow Information</b>		
Interest paid	\$ 16,488	\$ 15,968

See accompanying notes to financial statements.

**D-BAT ACADEMIES, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**December 31, 2021 and 2020**

**A. Organization and Operations**

**Description of Business**

D-BAT Academies, Inc. (the “Company”) is a corporation operating under the laws of the State of Texas. The Company was formed in March of 1993 under the name CMNS Properties, Inc., and changed its name to D-BAT Academies, Inc. and began operations in October of 2007.

The Company operates a franchising business that sells franchise licenses for the operation of baseball facilities and pro shops. All franchisee facilities operation under the terms and conditions of a franchise agreement. Franchisees operate under the trademark “D-BAT”, which has been registered by D-BAT Sports, Inc. (“DSI”), a related party, under a nonexclusive perpetual, royalty-free licensing agreement (the “Intercompany License”). The Intercompany License grants the Company the right to use this trademark and the proprietary information related to the facility and pro shop system, such as the know-how and the manuals, for the purpose of licensing them to franchisees.

The Company has 1,000,000 authorized shares of no-par value common stock. As of December 31, 2021 and 2020, the Company had 400,000 shares issued and outstanding.

During the years ended December 31, 2021 and 2020, 12 and 18 franchised outlets were opened, respectively, and no franchised outlets closed. As of December 31, 2021 and 2020, were 112 and 100 franchised outlets in operation, respectively.

**B. Significant Accounting Policies**

**Basis of Accounting**

The accounts are maintained, and the financial statements have been prepared using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

**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. Estimates are used for the following, among others: revenue recognition, valuation of acquired assets, and useful lives for depreciation of long-lived assets. Actual results could differ from those estimates.

**D-BAT ACADEMIES, INC.**

**NOTES TO FINANCIAL STATEMENTS (continued)**

**B. Significant Accounting Policies – continued**

**Cash and Cash Equivalents**

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company maintains deposits in one financial institution, which may at times exceed amounts covered by insurance provided by the U.S. Federal Deposit Insurance Corporation (“FDIC”). The Company has not experienced any losses related to amounts in excess of FDIC limits.

**Notes Receivable**

Notes receivables are carried at original agreement amount less an allowance for doubtful notes based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful notes by identifying troubled accounts and my using historical experience applied to an aging of accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for doubtful notes. There was no allowance for doubtful notes as of December 31, 2021 or 2020. Interest income on notes receivable is recognized in the period earned.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives of the respective asset:

	<u>Estimated Useful Life</u>
Computer equipment	3 to 5 years
Furniture and fixtures	7 years

Leasehold improvements are amortized using the straight-line method over the shorter of the remaining lives of the respective leases or the service lives of the improvements. 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.



## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS (continued)

#### B. Significant Accounting Policies – continued

##### Impairment of Long-lived Assets – continued

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 2020, no impairment charges were recognized related to long-lived assets.

##### Revenue Recognition

The Company generates revenues and earns fees from franchised facilities. The Company provides the use of trademarks, system, training, pre-opening assistance, and facility operating assistance in exchange for initial franchise fee and management fee-based on a facility's sales.

A franchise agreement establishes a facility developed in one or multiple defined geographic area and provides for a 10-year initial term with renewals of 5-year terms. An area development agreement establishes the number of multiple stores that must be developed in a defined geographic area and the deadlines by which these stores must open. The area development agreement can be terminated by the Company, if among other reasons, the area developer fails to open stores on schedule.

Initial franchise fees and area development agreement fees are recorded as deferred revenue when received and are recognized as revenue over the contractual term of the franchise agreement, when a franchised facility is opened. Transfer and renewal fees are recognized as revenue over the contractual term of the franchise agreement. The Company receives continuing management fee revenue for providing billing and collection services on behalf of its franchisees and recognizes the revenue in the period earned. Computer system fee revenue and other revenues are recognized when the products have been shipped or services provided. The Company accounts for shipping and handling costs as expenses within the caption of costs of other revenues, in the statements of income. Advertising fund revenue is contributed by franchisees based on a percentage of membership fee and is recognized as earned.

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 fee revenue	\$ -	\$ 384,881	\$ 384,881
Management fee revenue	-	7,665,067	7,665,067
Computer system fee revenue	69,547	-	69,547
Advertising fund revenue	-	497,299	497,299
Other revenues	<u>39,000</u>	<u>-</u>	<u>39,000</u>
Total revenues	<u>\$ 108,547</u>	<u>\$ 8,547,247</u>	<u>\$ 8,655,794</u>

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### B. Significant Accounting Policies – continued

##### Revenue Recognition – continued

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 fee revenue	\$ -	\$ 328,023	\$ 328,023
Management fee revenue	-	4,384,463	4,384,463
Computer system fee revenue	306,509	-	306,509
Advertising fund revenue	-	302,887	302,887
Other revenues	<u>250,056</u>	<u>-</u>	<u>250,056</u>
Total revenues	<u>\$ 556,565</u>	<u>\$ 5,015,373</u>	<u>\$ 5,571,938</u>

##### *Contract Costs*

Contract assets consist of deferred costs resulting from commission amounts incurred when the franchise rights are sold to franchisees. The Company classifies the contract costs as deferred commission costs in the balance sheets. Contract assets were \$520,056 at December 31, 2021, \$446,745 at December 31, 2020, and \$298,263 at January 1, 2020.

##### *Contract Liabilities*

Contract liabilities consist of deferred revenue resulting from initial franchise fees, area development fees, and transfer fees, paid by franchisees, which are recognized on a straight-line basis over the term of the franchise agreements. Contract liabilities also consist of software fee, construction management, and on-site training fee, which are recognized when the products are shipped or services are provided. Contract liabilities were \$5,695,052 at December 31, 2021, \$4,614,429 at December 31, 2020, and \$4,611,952 at January 1, 2020.

##### **Advertising Costs**

All costs associated with advertising and marketing are expensed in the period incurred. Company advertising costs are included in advertising and marketing. Franchising advertising costs are included in advertising fund expense.

##### **Personnel Costs**

Personnel costs include all salaries, wages, commissions, contract labor costs, and bonuses paid to employees and contract laborers. Personnel costs also include various payroll taxes.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### **B. Significant Accounting Policies – continued**

##### **Income Taxes**

The Company elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code (the “Code”), effective January 1, 2009. Under those provisions, the Company does not pay federal corporate income taxes on its taxable income. Instead, the stockholders are taxed on their proportionate share of the Company’s taxable income. Accordingly, no provision has been made for federal income taxes in the accompanying financial statements. In certain instances, the Company is subject to state taxes on income arising in or derived from the state tax jurisdictions in which it operates.

State income tax positions are evaluated in a two-step process. The Company first determines whether it is more likely than not that a tax position will be sustained upon examination. If a tax position meets the more likely than not threshold, it is then measured to determine the amount of expense to record in the financial statements. The tax expense recorded would equal the largest amount of expense related to the outcome that is 50% or greater likely to occur. The Company classifies any potential accrued interest recognized on an underpayment of income taxes as interest expense and classifies any statutory penalties recognized on a tax position taken as operating expense. Management of the Company has not taken a tax position that, if challenged, would be expected to have a material effect on the financial statements as of or for the years ended December 31, 2021 or 2020.

The Company did not incur any penalties or interest related to its state tax returns during the years ended December 31, 2021 or 2020.

##### **Recent Accounting Pronouncements**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2016-02, *Leases* (Topic 842), as amended by multiple updates to the standard. This update requires lessees to recognize a lease liability and a lease asset for all leases, including operating leases, with a term greater than 12 months on its balance sheet and requires lessors to classify leases as a sales-type, direct financing, or operating lease. The update also expands the required quantitative and qualitative disclosures surrounding leases. In June 2020, the FASB issued ASU 2020-05, *Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities*. ASU 2020-05 defers the effective date of Accounting Standards Codification (“ASC”) 842 for private companies and private not-for-profit entities for one year. The updated guidance is effective for fiscal years beginning after December 15, 2021, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2016-02 on its 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*, and subsequent amendments to the initial guidance, ASU 2019-10. This accounting standard changes the methodology for measuring credit losses on financial instruments, including trade accounts receivable, and the timing of when such losses are recorded. ASU No. 2016-13 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2022. The Company is currently evaluating the impact of adopting ASU No. 2016-13 on its financial statements.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### B. Significant Accounting Policies – continued

##### Recent Accounting Pronouncements – continued

Management 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 adoptions.

#### C. Notes Receivable – Franchisees

The Company holds notes receivable from franchisees. These notes are payable based on the terms and conditions agreed at the time of sale. The notes range in length from 1 to 3 years and bear interest at rates ranging from 3.00% to 6.00%. The Company recognizes interest income from these notes in the period earned.

Notes receivable consist of the following at December 31,:

	<u>2021</u>	<u>2020</u>
Notes receivable – franchisee	\$ 828	\$ 69,357
Less: current portion of notes receivable	<u>(\$828)</u>	<u>(58,690)</u>
Notes receivable – franchisees, net	<u>\$ -</u>	<u>\$ 10,667</u>

For the years ended December 31, 2021 and 2020, bad debt expense related to notes receivable was \$0 and \$58,648, respectively.

#### D. Property and Equipment

The principal asset classifications, at cost, are as follows at December 31,:

	<u>2021</u>	<u>2020</u>
Computer equipment	\$ 58,329	\$ 95,601
Furniture and fixtures	173,537	204,918
Leasehold improvements	127,013	107,119
Less Accumulated depreciation	<u>(169,604)</u>	<u>(172,851)</u>
Property and equipment, net	<u>\$ 189,275</u>	<u>\$ 234,787</u>

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### **E. Line of Credit**

The Company has a revolving credit agreement with a bank, which provides a line of credit up to \$500,000 through November 29, 2022. Interest is payable monthly, and the outstanding principal balance and any accrued and unpaid interest is due upon maturity. The line provides for interest at 0.75% over the prime-lending rate, with a floor of 3.50%, and is secured by substantially all assets of the Company and a stockholder's personal guaranty. The interest rate at December 31, 2021 and 2020, was 4.00%. At December 31, 2021 and 2020, the line of credit had an outstanding balance of \$406,983, and \$324,832, respectively.

#### **F. Long Term Debt**

##### *Paycheck Protection Program Loans*

On March 27, 2020, the U.S. federal government enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which included provision for a Paycheck Protection Program ("PPP") administered by Small Business Administration ("SBA"). The PPP allows qualifying business to borrow up to \$10 million calculated based on qualifying payroll costs. PPP loans bear a fixed interest rate of 1% over a two-year term, are guaranteed by the federal government, and do not require collateral. Payments of principal and interest are deferred until 10 months from the date of the loan, and prepayments may be made at any time without penalty. The loans may be forgiven, in part or whole, if the proceeds are used to retain and pay employees and for other qualifying expenditures. The Company applied for a PPP loan in the amount of \$156,500, which was approved by the SBA on April 17, 2020.

On December 27, 2020, the U.S. federal government enacted the Hard-Hit Small Businesses, Nonprofits, and Venues Act ("Economic Aid Act" or "EAA"), which included provision for the Second Draw Paycheck Protection Program ("PPP2") administered by SBA. The PPP2 allows qualifying businesses to borrow up to \$2 million calculated based on qualifying payroll costs and other criteria as prescribed in the EAA. PPP2 loans bear a fixed interest rate of 1% over a two-year term, are guaranteed by the federal government, and do not require collateral. Payments of principal and interest are deferred until 16 months from the date of the loan, and prepayments may be made at any time without penalty. The loan may be forgiven, in part of whole, if the proceeds are used to retain and pay employees and for other qualifying expenditures. The Company applied for and received a PPP2 loan in the amount of \$148,000 on May 5, 2021.

The Company has elected to account for the PPP and PPP2 loans in accordance with ASC 470 – *Debt*. As such, the outstanding PPP loan is reflected within debt on the accompanying balance sheet as of December 31, 2020. The Company used the proceeds of the PPP and PPP2 loans in accordance with the provisions of the CARES act and EEA and has applied and received full forgiveness on August 5, 2021, for the PPP loan and on September 2, 2021, for the PPP2 loan. As such a gain on loan extinguishment of \$304,500 is included on the accompanying statements of income for the year ended December 31, 2021.

## D-BAT ACADEMIES, INC.

### NOTES TO FINANCIAL STATEMENTS *(continued)*

#### G. Commitments and Contingencies

##### *Leases*

The Company has an operating lease for office space with a related party that expires in October of 2022. Additionally, the Company leased office equipment under an operating lease that expires in December 2026. Future minimum payments under the non-cancelable operating leases consisted of the following at December 31, 2021:

2022	\$ 103,153
2023	13,800
2024	13,800
2025	13,800
2026	<u>13,800</u>
Total	<u>\$ 158,353</u>

##### *Litigation*

From time to time, the Company may be involved in various other suits and claims arising in the normal course of business. In management's opinion, the ultimate outcome of these items will not have a material adverse effect on the Company's results of operations or financial position.

#### H. Related Party Transactions

##### *Transactions with Parent*

The Company and DSI frequently advance funds and pay expenses on behalf of one another for payment of general and administrative expenses. As of December 31, 2021 and 2020, the Company had an amount due from DSI of \$21,237 and \$26,573, respectively.

##### *Transactions with Affiliate*

In January 2019, the Company amended an unsecured promissory note from D-Bat, Inc. ("DBI"), a related company, in which DBI may borrow funds from the Company as needed and approved by the Board. The note bears interest at 3.5%, with all unpaid principle and accrued interest due at maturity. On December 31, 2020, the Company extended the promissory note agreement through December 31, 2021 and then extended once more on January 1, 2022 to December 31, 2022. As of December 31, 2021 and 2020, the balance due to the Company under this note was \$717,742 and \$587,357, respectively.

#### I. Subsequent Events

The Company has evaluated subsequent events through March 11, 2022, the date the financial statements were available to be issued.

**EXHIBIT G**  
**GENERAL RELEASE**

**GENERAL RELEASE**

RELEASOR, hereby releases and discharges D-BAT Academies, Inc. and its parents, subsidiaries, and affiliates, and each of their respective present and former officers, directors, shareholders, members, attorneys, servants, agents, representatives, successors, assigns, managers and employees (in their individual and corporate capacities) (“RELEASEES”), and their respective heirs, successors and assigns (collectively, the RELEASEES), from any and all actions, causes of action, suits, debts, dues, demands, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or equity, known or unknown, vested or contingent, which RELEASOR has, had, or claims to have against any of the RELEASEES which arise out of or relate to RELEASOR’S Facility(ies), the franchise agreement(s) between RELEASOR and D-BAT Academies, Inc., any other agreements between any of the RELEASORS and any of the RELEASEES, including the offer and sale of the D-BAT® Facility and including, without limitation, claims arising under federal, state and local laws, rules and ordinances.

If RELEASOR is domiciled or has his/her/its principal place of business in the State of California, then RELEASOR hereby expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative as of the date indicated below.

**FRANCHISOR**  
**D-BAT ACADEMIES, INC.**  
a Texas corporation

**FRANCHISEE**  
\_\_\_\_\_  
a/an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[This General Release will be modified as necessary for consistency with any state law regulating franchising.]



**EXHIBIT H**  
**LIST OF CURRENT AND FORMER FRANCHISEES**

**List of Current Franchisees  
As of December 31, 2022**

**Franchise Agreement Signed—D-BAT® Facility Opened**

State	Franchisee	Address	Phone Number
Alabama	Estes Sports LLC	131 W Oxmoor Rd Ste.131 Homewood, Alabama 35209	(205) 843-3228
Arizona	Diamond Dreams Elite, LLC	1050a N Fairway Dr. Avondale, Arizona 85323	(833) 777-3228
	Per Ardua Athletics, Inc.	1455 South Stapley Dr. Mesa, Arizona 85204	(480) 588-2282
	Per Ardua Athletics, Inc.	8716 W. Ludlow Dr. Suites 17 & 18 Peoria, Arizona 8538	(632) 412-3228
	Per Ardua Athletics, LLC	9109 E Talking Stick Way Suite 1A Scottsdale, Arizona 85250	(480) 591-3228
	A & B Casey, Inc.	4439 N Oracle Rd. Tucson, Arizona 85705	(870) 663-4800
Arkansas	Dingers of Fort Smith	4800 Regions Park Dr. Fort Smith, Arkansas 72916	(479) 397-3228
	VFG Sports Performance Little Rock LLC	4209 S. Shackleford Rd. Little Rock, Arkansas 72204	(501) 725-2727
	Natural Star Ventures LLC	400 Skyler Street Springdale, Arkansas 72762	(479) 344-3228
	VFG Sports Performance SEARK, LLC	1380 Claud Rd. Whitehall, Arkansas 71602	(870) 663-4800
California	2P Diamondsports, LLC	12539 Jomani Dr. #B Bakersfield, California 93312	(661) 573-3228
	Markley Baseball, LLC	26201 Ynez Road Suite B Temecula, California 92590	(951) 216-5959
Colorado	Eli Lily 24, LLC	8265 Jamboree Cir. Colorado Springs, Colorado 80920	(719) 627-3228
	Hustle, Head and Heart LLC	555 Aspen Ridge Dr A-1 Lafayette, Colorado 80026	(720) 821-3228
	Pastime Ventures, LLC	7395 Greendale Rd Windsor, Colorado 80550	(970) 292-8678
Connecticut	Lukabella Enterprises Inc.	62 Douglas St Bloomfield, Connecticut 06002	(475) 480-3228
	Sportsandszuch, LLC	613 W Johnson Ave. Cheshire, Connecticut 06410	(475) 244-3228
	Lou Bunosso	30 Nutmeg Dr. Trumbull, Connecticut 06611	(475) 441-3228
Delaware	Play Like A Champion LLC	34 Executive Dr Newark, DE 19702	(302) 877-3228
Florida	All Line Drives, LLC	14609 Six Mile Cypress Pkwy Fort Myers, Florida 33912	(239) 202-2910
	Impact ZTK, LLC	3030 Powers Ave. Jacksonville, Florida 32207	(904) 518-5915
	Bases Loaded Orlando LLC	200 Technology Park Suite 1030 Lake Mary, Florida 32746	(407) 573-3228
	Collier Sports and Recreation LLC	351 30th St. NE, Ruskin, Florida 33570	(813) 645-3228
	SBSC Enterprises, LLC	30553 Commerce Dr. San Antonio, Florida 33576	(813) 553-3228

State	Franchisee	Address	Phone Number
Georgia	TOCA Impact, LLC*	2345 Adams Drive NW Atlanta, Georgia 30318	(404) 355-9700
	TOCA Impact, LLC*	3039 Amwiler Road, Suite 130 Atlanta, Georgia 30360	(678) 459-2457
	TOCA Impact, LLC*	106 Somerset Place Carrollton, Georgia 30116	(678) 664-1700
	TOCA Impact, LLC*	1292 John Belt Dr. #210 Douglasville, Georgia 30134	(678) 715-1472
	CMC 116 LLC	705 N Belair Rd Evans, Georgia 30809	(706) 426-8670
	TOCA Impact, LLC*	3246 Odeon Way Kennesaw, Georgia 30144	(678) 496-7777
	TOCA Impact, LLC*	1666 Roswell Road Marietta, Georgia 30062	(404) 355-9700
	BCMh Baseball PTC LLC	297 Dividend Dr Peachtree City, Georgia 30269	(770) 731-0661
	TOCA Impact, LLC*	3985 Lakefield Court, Suite 201-204 Suwanee, Georgia 30024	(404) 335-9700
	DACA Sports LLC	120 Tommy Stalnaker Dr. Warner Robins, Georgia 31088	(478) 353-3228
Idaho	L&E Enterprises, LLC	6663 S Eisenman Rd Ste 150 Boise, Idaho 83716	(208)-516-3228
Illinois	Past Prime Pastime LLC	9905 S 78th Ave Hickory Hills, Illinois 60457	(708) 934-3228
	Rock Valley Sports, LLC	8185 Commerce Dr. Loves Park, Illinois 61111	(815) 800-3228
	1100 Walkoff LLC	9950 West 190th Street Mokena, Illinois 60448	(708) 852-3228
	5Tool, Inc	270 W North Avenue, Suite 23 Villa Park, Illinois 60181	(630) 480-0061
Indiana	JTP Enterprises, LLC	7508 Beechwood Centre Rd #700 Avon, Indiana 46123	(463) 266-3228
	ZTDC Bats, LLC	4411 Wyland Dr, Elkhart, Indiana 46516	(574) 500-3228
Iowa	Touch Em All LLC*	1783 Red Fox Way Marion, Iowa 52302	(319) 409-9000
Kansas	Curt Lowry and Kirk Kiser	16150 West 110 <sup>th</sup> Street Lenexa, Kansas 66219	(785) 521-3228
Kentucky	Bats & Balls, LLC	542 Three Springs Rd Bowling Green, Kentucky	(270) 715-3643
	HD Academy LLC	1403 Mercer Rd Lexington, Kentucky 40511	(859) 681-3228
Louisiana	12:24 Sports, LLC	14565 Barringer Ct, Baton Rouge, Louisiana 70809	(225) 535-3228
	Buck Kingrey Academy, LLC	308 W. Prien Lake Rd. Lake Charles, Louisiana 70601	(337) 602-8080
	G&R Athletics, LLC	2511 Washington Street Monroe, Louisiana 71201	(318) 699-3228
	Hit And Run Inc	1604 Industrial Dr Ruston, Louisiana 71270	(318) 788-3228
	B&C Sports LLC	1217A Shreveport-Barksdale Hwy I Shreveport, Louisiana 71105	(318) 461-1728

State	Franchisee	Address	Phone Number
Maryland	DMV Ballers LLC	8777 Snouffer School Rd. Gaithersburg, Maryland 20879	(240) 588-3030
Michigan	All-American Sports LLC	5849 Enterprise Dr. Lansing, Michigan 48911	(517) 999-6000
	TOCA Impact, LLC*	51691 10 Mile Rd. South Lyon, Michigan 48178	(248) 940-3228
Minnesota	True North Athletics LLC	4430 19 <sup>th</sup> St NW Rochester, Minnesota 55901	(507) 722-2042
Mississippi	MM&A Hattiesburg LLC	4600 Hardy Street Suite #32 Hattiesburg, Mississippi 39402	(601) 438-3228
	Paradigm Sports, LLC	5706 US-80 Pearl, Mississippi 39208	(601) 706-3228
Montana	B-Wood Baseball, LLC	300 S 24th Street West Unit #A01A, Billings Montana 59102	(406) 510-3228
Nebraska	PSRC LLC	1115 Libra Dr. Lincoln, Nebraska 68512	(402) 882-3228
New Jersey	Rocket Baseball Mountainside NJ, LLC	1124 Globe Avenue Mountainside, New Jersey 07092	(908) 957-2409
North Carolina	Impact ZTK, LLC	1262 Hendersonville Rd. Asheville, North Carolina 28803	(404) 661-2345
	Swing It Boys 29, LLC	12703 Commerce Station Dr Suite 400 Huntersville, North Carolina 28078	(980) 990-3228
	J&J Indian Trail, LLC	13708 E Independence Blvd. Indian Trail, North Carolina 28079	(980) 368-3228
Ohio	Elevating Baseball Lineups LLC	650 Taylor St. Gahanna, Ohio 43230	(614) 946-0822
	Performance Baseball Academies, LLC	459 Orange Point Dr Suite E Lewis Center, Ohio 43035	(740) 953-7010
	Neo Baseball Academy Inc.	6908 Engle Rd. Middleburg Heights, Ohio 44130	(216) 810-3228
	Freedom Etc, LLC	339 E Maple Stl, Suite 225 North Canton, Ohio 44720	(330) 993-3228
	Walk-Off Holdings LLC	29001 Solon Rd., Unit 1 Solon, Ohio 44139	(440) 732-3228
Oklahoma	Dallas Barracudas, LLC	420 SE Larrence Street Lawton, Oklahoma 73501	(580) 585-1080
	BB Academy OKC North, LLC	01 NW 122ND St. Oklahoma City, Oklahoma 73114	(405) 694-4448
	Believers Baseball of Tulsa, Inc.	13679 E. 61 <sup>st</sup> St. Tulsa, Oklahoma 74012	(918) 286-3700
Oregon	Base Knock NW, LLC	11131 SW Greenburg Rd Tigard, Oregon 97223	(503) 506-5020
Pennsylvania	Snaptober, LLC	3200 Industrial Blvd Bethel Park, Pennsylvania 15102	(412) 790-3228
South Carolina	Play Makers Zone, LLC	4350 St. Andrews Rd. Columbia, South Carolina 29210	(803) 756-3228
South Dakota	Sweetwater Academy LLC	1300 E Benson Rd. Sioux Falls, South Dakota 57104	(605) 306-2287
Tennessee	TopBaseball LLC	4857 Geminus Dr. Chattanooga, Tennessee 37416	(423) 702-3228
	Say-BAM LLC	1650 N Shelby Oaks Dr Memphis, Tennessee 38134	(901) 625-3228

State	Franchisee	Address	Phone Number
	Conrad Jordan, LLC	7006 Westbelt Dr. Nashville, Tennessee 37209	(615) 866-3228
Texas	Battery Baseball, LLC	3329 Maple Abilene, Texas 79602	(325) 232-7578
	Wartman & Townsend Baseball, Inc.	15605 Wright Brothers Drive Addison, Texas 75001	(972) 387-3228
	Allen Baseball Holdings, LLC	505 Century Parkway, #150 Allen, Texas 75013	(214) 383-4489
	Wine Baseball LLC	11817 I-27 Amarillo, Texas 79119	(806) 622-2287
	Thee Six Ventures, LLC	921 W Mayfield Rd, #112 Arlington, Texas 76015	(817) 668-3228
	Grind and Rise Inc	5548 N Main St Baytown, Texas	(346) 522-3228
	ECJ Athletics, LLC	28 Worth Dr. Boerne, Texas 78006	(830) 336-2622
	GRBD TX, LLC	2205 Bomber Dr Bryan, Texas 77801	(979) 985-3228
	VFG Sports Performance Cedar Park, LLC	1200 BMC Drive Cedar Park, Texas 78613	(512) 540-3228
	Wartman & Townsend Baseball LLC	5101 Gus Thomasson Dallas, Texas 79907	(972) 629-9446
	90 Feet Sports, LLC	1003 Shady Oaks Denton, Texas 76205	(940) 891-3228
	Arcane Industries, LLC	8455 Gran Vista, Suite B El Paso, Texas 79907	(915) 591-3228
	Andy Powers Texas Pitching Institute LLC	4545 Osborne El Paso, Texas 79922	(915) 990-3228
	Five FourThree 3, LLC	5900 Park Vista Circle Fort Worth, Texas 76244	(817) 337-3228
	GH Baseball, Inc.	2600 Alameda St Fort Worth, TX 76108	(817) 560-3228
	GH Baseball, Inc.	3709 Cockrell Ave. Fort Worth, Texas 76110	(817) 708-2760
	Foster Baseball, Inc.	10875 John W. Elliott Drive, Suite 100 Frisco, Texas 75034	(972) 335-4487
	Hit Right, LLC	101 Patriot Way Georgetown, TX 78626	(512) 886-3228
	Perfect Practice, LLC	4310 Brittmoore Houston, Texas 77041	(713) 460-3228
	Go Yard Baseball, LLC	11821 S Sam Houston Pkwy W Houston, Texas 77031	(281) 616-6011
GMK Complete Game Investments LLC	3505 FM 1960 E Humble, Texas 77338	(281) 721-4862	
High & Tight, LLC	1600 N Main Street Joshua, Texas 76058	(682) 400-3228	
Sluggers Baseball, LLC	1150 Katy Ford Bend Road Katy, Texas 77493	(281) 394-0022	
BTP Baseball Ventures	111 Home Run Dr. Kerrville, Texas 78028	(830) 955-8232	
Texas Sluggers, LLC	1500 Fairway Drive, Suite 1201 Lewisville, Texas 75057	(972) 353-3322	

State	Franchisee	Address	Phone Number
	28 Training LLC	3520 McCann Rd Suite 101 Longview, Texas	(903) 753-3228
	Quezada D-BAT Inc.	6104 45 <sup>th</sup> Street Lubbock, Texas 79407	(806) 788-1402
	TOCA Impact, LLC*	201 Sentry Dr. Mansfield, Texas 76063	(817) 539-9933
	Melissa Baseball, LLC	3059 Champions Way Ste. 300 Melissa, TX 75454	(214) 386-3228
	Coach's Kid, LLC	2122 Tx-49 Mount Pleasant, Texas 75455	(903) 575-1615
	3RBaseball LLC	2147 Wald Rd. New Braunfels, Texas 78132	(830) 310-6715
	Texas Diamond Sports, LLC	27309 Spectrum Way Oak Ridge North, Texas 77385	(281) 694-4444
	4 Wilson Management LLC	12110 West County Rd 100 Odessa, Texas 79765	(432) 741-3228
	P2Austin, LLC	3813 Helios Way Bld. B/Ste. 240 Pflugerville, Texas 78660	(512) 251-4487
	Aledsio, LLC	2502 Lawning Lane Rowlett, Texas 75088	(972) 463-3228
	IMM Saldivar, LLC	6033 TX-306 Loop San Angelo, Texas 76905	(325) 451-3228
	B & H Baseball Ventures, LLC	8134 Tezel Rd San Antonio, Texas 78250	(210) 684-3228
	B & H Baseball Ventures, LLC	2250 Chipley Circle San Antonio, Texas 78217	(210) 826-3228
	Tidwell Sports Properties, LLC	4113 North Frisco Rd. Sherman, Texas 75090	(903) 228-3228
	LF Baseball, LLC	2870 Market Loop Southlake, Texas 76092	(817) 251-4902
	CNH Baseball LLC	4715 Candy Lane Tyler, Texas 75701	(903) 939-2771
	VFG Sports Performance Waco LLC	7524 Bosque Blvd. Waco, Texas 76712	(254) 655-8500
	L&B Barrel Up, LLC	3523 S Hwy 287 Waxahachie, Texas 75165	(469) 322-3511
	RBI Academy Inc.	1314 South Main St. Weatherford, Texas 76087	(817) 968-3228
	DRPM Athletics LLC	20251 Gulf Freeway Unit D Webster, TX 77598	(713) 360-3228
	BDGP Training Facility, LLC	7455 Seymour Highway Wichita Falls, Texas 76310	(940) 244-3228
Utah	Dream Big Enterprises LLC	15856 So. Porter Point Cove Herriman, Utah 84065	(801) 218-3228
Virginia	The Edge Sports LLC	5258A Fairfield Shopping Center Virginia Beach, Virginia 23464	(757) 467-1111
Washington	D-BAT Seattle LLC*	18421 Bothell-Everett Hwy, Suite 150 Bothell, Washington 98012	(425) 448-3228
	TR Consulting and Training LLC	6416 West Hood Place, Suite 150 Kennewick, Washington 99336	(509) 940-3228
	Mager Sports LLC	200 Valley Mall Way Mount Vernon, Washington 98273	(360) 854-3228

\* Area Developer

**Franchise Agreement Signed—D-BAT® Facility Not Open as of December 31, 2022**

State	Franchisee	Address	Phone Number
Alabama	BSJ Sports, LLC	17439 Watercress Dr, Athens, Alabama 35611	(256) 497-9564
Alabama	A-O Baseball and Softball, LLC	1690 Piedmont Dr, Auburn, Alabama 36830	(401) 829-2443
Alabama	ET Investments, LLC	11145 Cripple Creek Road Berry, Alabama 35546	(205) 454-1380
Alabama	22 Seams, LLC	99 Amanda Dr, Columbus, Mississippi 39702	(518) 210-5863
Alabama	Bat Intentionz, LLC	194 Sarah Way Kimberly, Alabama	(205) 283-0470
Alabama	Hidden Hill Sports, Inc.	4 Hidden Hills Shoal Creek, Alabama	(205) 218-6118
Alabama	S5 Ventures, LLC	4037 US Hwy 231 Ste A Wetumpka, Alabama 36093	(334) 319-2317
Alaska	JT Sjostrand, LLC	19350 Verdant Circle Eagle River, Alaska 99577	(907) 230-5097
California	ThrillPlay, Inc.	28908 Hollowbrook Avenue, Agoura Hills, California 91301	(310) 801-1103
California	Collopy Sports Training, LLC	6057 Mt. Olympus Dr, Castro Valley, California 94552	(510) 512-8727
California	Hoop Labz LLC	4840 Tusk Way Elk Grove, California 95757	(650) 823-3769
California	Triple Training Academy, LLC	908 Gabrielle Place Ripon, California 95366	(209) 834-7301
California	RBS Academy LLC	7835 Westpark Dr. Riverside, California 92506	(951) 544-3366
Colorado	Sluggers Colorado, LLC	9819 Bluestar Drive Parker, Colorado 80138	(720) 308-5255
Colorado	5280 Sports Academies, LLC	8730 Norwich St Westminster, Colorado 80031	(720) 412-5873
Delaware	Play Like A Champion, LLC	100 Harrogate Drive Landenberg, Pennsylvania 19350	(302) 377-7567
Florida	Tampa Batting Academy LLC	889 Symphony Isles Blvd, Apollo Beach, Florida 32233	(863) 899-8048
Florida	Three and One Count Inc	2233 Seminole Rd, Atlantic Beach, Florida 32233	(904) 703-7298
Florida	Six-Four-Three, LLC	4650 SE 3 <sup>rd</sup> Ave Keystone Heights, Florida 32656	(904) 334-1598
Florida	RHR Ventures, LLC	415 Richard Jackson Blvd. Suite 417 Panama City Beach, Florida 32407	(850) 866-8075
Florida	Capps Corner, LLC	12050 Moss Ranch Rd, Pinecrest, Florida 33156	(786) 376-3211
Georgia	Future Prospects, LLC	3153 Perimeter Circle Buford, Georgia 30519	(770) 713-9814
Idaho	Localsports1, LLC	6525 Soldier Creek Ave. Rathdrum, Idaho 83858	(208) 277-5164
Illinois	11 Rings, LLC	3221 Nobel Dr, Champaign, Illinois 61822	(815) 355-4529
Illinois	Past Prime Pastime, LLC	11201 S. Drake Avenue Chicago, Illinois 60655	(708) 263-7827

State	Franchisee	Address	Phone Number
Illinois	Platinum Triple Play, LLC	8541 S 79th Avenue, Justice, Illinois 60458	(708) 372-0115
Illinois	Spamoni, LLC	430 San Carlos Rd, Minooka, Illinois 60447	(815) 258-5403
Indiana	Twenty Five Eleven LLC	12762 W 27th Pl Beach Park, Illinois 60099	(847) 219-6723
Indiana	C & E Recreation, LLC	6725 West Saint Joseph Rd Evansville, Indiana 47720	(812) 639-9295
Indiana	Diamond Legacy Investments, LLC	16636 Girvan Way Fishers, Indiana 46037	(563) 349-9627
Indiana	S.E. Hamilton Enterprises LLC	20002 Western Avenue Olympia Fields, Illinois 60461	(312) 848-2988
Iowa	TouchEm All 2, LLC*	2613 Navajo Ave SW Cedar Rapids, Iowa 52404	(319) 693-1673
Kansas	Wicks Baseball Company	26950 Old KC Road Paola, Kansas 66071	(913) 220-3790
Kansas	GM Baseball, LLC	16264 W 172nd Terrace Olathe, Kansas 66062	(913) 488-4382
Kentucky	Homeplate Enterprises LLC	1450 Stone Trail Ln Cross Roads, Texas 76227	(214) 914-1512
Louisiana	Heyward & Tichenor Holdings, LLC	5700 Dyer Dr Alexandria, Louisiana 71302	(318) 229-8161
Louisiana	Swing Batter, Inc	612 Three Prong Rd Brandon, Mississippi 39047	(601) 597-2596
Louisiana	Big Sticks NOLA LLC	6600 Plaza Dr Suite 307 New Orleans, Louisiana 70127	(504) 919-6711
Maryland	Full Count LLC	433 Big Elk Chapel Rd Elkton, Maryland 21921	(443) 350-6163
Michigan	Best Bats LLC	755 W. Big Beaver Rd Suite 2020 Troy, Michigan 48084	(248) 519-2373
Minnesota	TOCA Training Centers – Burnsville, LLC	3601 W 145 <sup>th</sup> Street Burnsville, Minnesota 55306	(770) 262-9280
Minnesota	Diamond Drives Corporation	7201 61st Street S Cottage Grove, Minnesota 55016	(972) 890-3100
Minnesota	Rub Some Dirt on it Training, LLC	13700 Riverview Drive NW Elk River, Minnesota 55330	(612) 282-2167
Mississippi	MM&A Gulf Coast, LLC	10 Lamar Blvd Hattiesburg, Mississippi 39402	(601) 296-0802
Missouri	KC Sports Group LLC	19412 E 8th Street Ct S Independence, Missouri 64056	(918) 408-9771
Missouri	Roknfire LLC	600 N White Oak Ln. Nixa, Missouri 65714	(501) 912-7167
Nebraska	Odessa Capital Partners, LLC	7901 Red Oak Road Lincoln, Nebraska 68516	(402) 440-6606
Nevada	SMAAK LLC	15191 Miami Road Apple Valley, California 92307	(760) 912-6725
New Jersey	Lotta Hum, LLC	3 Grant Court Metuchen, New Jersey 08840	(848) 248-3755
New Mexico	6-4-3 Investments LLC	1755 Deer Ridge Ct. Las Cruces, New Mexico 88007	(575) 496-4109
New York	Recreational Sports Management Group LLC	28 Challedon Dr Wilton, New York 12831	(518) 852-4043



State	Franchisee	Address	Phone Number
North Carolina	Bryant-Fairecloth Athletics LLC	49 Downs Lake Dallas, Texas 75230	(469) 863-0215
North Carolina	Next Level Athletes, LLC	1020 Arroyo Vista, Ln Matthews, North Carolina 28104	(980) 622-5636
North Carolina	Batshore LLC	1440 Tacketts Pond Raleigh, North Carolina 27614	(919) 625-5487
Ohio	Bremmz Sports LLC	4400 Ashfield Place Mason, Ohio 45040	(412) 443-3354
Oklahoma	TA Sluggers, LLC	1320 N Mayside Dr Oklahoma City, Oklahoma 73127	(405) 314-2260
Oklahoma	BMP Rake Supply LLC	123 Aster Trail San Antonio, Texas 78256	(210) 872-0818
Oregon	Z Sports LLC	62000 Quail Run Place Bend, Oregon 97701	(209) 401-9328
Oregon	Complete Game LLC	6283 Haverhill West Linn, Oregon 97068	(503) 502-5660
Pennsylvania	Twin Life LLC	6500 Plowman Ridge Harrisburg, Pennsylvania 17112	(717) 514-8500
Pennsylvania	BDS Baseball, LLC	532 Stonybrook Rd. Nazareth, Pennsylvania 18064	(610) 533-4999
South Carolina	Six-Four-Three, LLC	3301 Ringtail Dr Waxhaw, North Carolina 28173	(509) 833-0772
Tennessee	Bats & Balls LLC*	8458 Pettus Rd Eagleville, Tennessee 37060	(615) 714-8199
Tennessee	4M Baseball and Softball Training Center LLC	940 Brantley Dr Knoxville, Tennessee 37923	(864) 884-0921
Texas	KENCAL LLC	8811 Cullen Ln Austin, Texas 78748	(512) 497-8031
Texas	Haines Capital LLC	12909 Appaloosa Chase Drive Austin, Texas 78732	(520) 248-9941
Texas	D. Herrmann Investments LLC	632 Langham Rd. Beaumont, Texas 77707	(409) 833-6692
Texas	AllStar Bats, LLC	1503 Marshall Dr Duncanville, Texas 75137	(214) 605-4779
Texas	DRPM Athletics, LLC	2404 Prairie Mist Ln Friendswood, Texas 77546	(303) 587-2756
Texas	Travis Washmon	1801 McCord Way Frisco, Texas 75033	(361) 232-9415
Texas	Eastleigh Holdings, LLC	13841 James Ranch Ct Justin, Texas 76247	(940) 393-5519
Texas	Sieres-Timmons Holdings LLC	3409 Pebble Beach Lane Pearland, Texas 77584	(713) 392-2627
Texas	Sprenzel Holdings LLC	4083 Emil Street Robstown, Texas 78380	(361) 771-5986
Texas	23 Steal, LLC	3038 Laura Lee Way San Antonio, Texas 78223	(210) 421-6804
Texas	DB San Marcos LLC	415 N Guadalupe Street Suite 400 San Marcos, Texas 78666	(214) 282-8970
Texas	Kirkland Training Academy LLC	31311 Mallards Pond Ct Spring, Texas 77386	(713) 677-4418
Texas	Plus Count LLC	1123 Arnold Ln Texarkana, Texas 75503	(903) 278-0220

State	Franchisee	Address	Phone Number
Texas	VTX-FB Training LLC	204 Cobble Stone Ct. Victoria, Texas	(361) 772-2770
Utah	Cedar City Sandlot, LLC	1549 N Northfield Rd 48 Cedar City, Utah 84721	(435) 893-5617
Utah	HP2 Properties LLC	2301 E Fieldstone Circle St. George, Utah 84790	(801) 419-6850
Utah	Rich Sports and Training LLC	2623 W 3375 West Haven, Utah 84401	(385) 519-7594
Virginia	CHPT IN, LLC	2128 Teasdale Dr Virginia Beach, Virginia 23454	(757) 287-5192
Washington	Sandlot Academy LLC	6825 47th Loop NE Olympia, Washington 98516	(360) 280-2746
Washington	The Cage, LLC	914 S. Harmony Rd Spokane, Washington 90196	(208) 216-9896
Washington	Renovated Ventures, LLC	4028 167 <sup>th</sup> St NW Stanwood, Washington 98292	(425) 232-8234
Washington	Rocking U, LLC	63 Big Sky Ln Yakima, Washington 98901	(509) 833-0772
Wisconsin	Great lakes Sports & Entertainment, LLC	2350 Woodmoor Lane Brookfield, Wisconsin 53045	(219) 405-0725
Wisconsin	Train Today Not Tomorrow, LLC	N2850 North Rd Hortonville, Wisconsin 54944	(920) 277-7001

\*Area Developer

**List of Former Franchisees  
As of December 31, 2022**

The following is a list of former franchisees who were terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during our most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this Franchise Disclosure Document.

**Voluntarily Ceased to Do Business Under a Franchise Agreement after a Transfer – Where Outlet Was Open:**

Franchisee Name	City	State	Phone Number
Freedom Baseball, INC	Little Rock	AR	501-725-2727
Mesa Baseball, LLC	Mesa	AZ	623-412-3228
Mesa Baseball, LLC	Peoria	AZ	623-412-3228
Collier Sports and Recreation LLC	Ruskin	FL	813-731-7555
DJOC Enterprises, LLC	South Lyon	MI	734-642-8593
Go Yard Sports, LLC	Asheville	NC	404-661-2345
B&M Baseball LLC	Cedar Park	TX	512-797-9080
Behind the Dish, LLC	Southlake	TX	469-585-1422

**Voluntarily Ceased to Do Business Under a Franchise Agreement after a Transfer – Where Franchise Agreement was Signed but Outlet Not Yet Open:**

<b>Franchisee Name</b>	<b>City</b>	<b>State</b>	<b>Phone Number</b>
2RL Holdings, LLC	Pearland	TX	281-485-8017

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

**EXHIBIT I**  
**LETTER OF INTENT**



[Date]

Re: Letter of Intent

Dear \_\_\_\_\_,

The purpose of this letter ("Letter") is to memorialize certain nonbinding understandings and certain binding agreements between you and D-BAT Academies, Inc., a Texas corporation ("D-BAT"), with respect to the grant of franchise rights within the "u," defined more particularly below. Additionally, the parties to this Letter wish to exchange a nonrefundable earnest money payment for in exchange for certain assistance related to real estate and location assessment services (as set forth below) during which Franchisee shall endeavor to obtain financing, conduct due diligence, and/or research possible site locations for the proposed D-BAT® franchise baseball and softball academy.

**PART ONE -- NONBINDING PROVISIONS.**

The numbered paragraphs of this Letter (collectively, the "Nonbinding Provisions") reflect our mutual understanding of the matters described in them, but each party acknowledges that the Nonbinding Provisions are not legally binding obligations between the parties or their respective principals, and neither party nor its respective principals shall have any liability to the other with respect to the Nonbinding Provisions until fully-integrated and the franchise agreement ("Franchise Agreement") is executed and delivered by the parties. If the Franchise Agreement is not executed and delivered for any reason, neither party will have any liability to the other based upon, arising from, or relating to the Nonbinding Provisions.

**A. Description of the Proposed Transaction.**

1. D-BAT has developed and owns a proprietary business system for the operation of businesses featuring a baseball and softball training academy and retail pro shop under the trade name and service mark "D-BAT®." D-BAT has acquired from its affiliate, D-BAT Sports, Inc., the right to use and to sublicense the use of the mark D-BAT® and other trademarks, service marks, logos, trade dress and other indicia of origin that serve to identify these businesses (collectively, the "Marks"). D-BAT also has acquired from D-BAT, Inc. the right to use and to sublicense the use of certain copyrighted materials ("Copyrights") and proprietary business system (collectively, "Proprietary Information") relating to the operation of these businesses. The Marks, the Copyrights, and the Proprietary Information are referred to collectively as the ("System.")

2. Franchisee is \_\_\_\_\_ or a legal entity of which he is the owner of ("Franchisee").

3. The parties are exploring the viability of a franchise relationship whereby Franchisee would acquire the right to open and operate a D-BAT® franchise baseball and softball academy within the Territory.

**B. Franchise Agreement. The term “Franchise Agreement” as used in this Letter includes all applicable Attachments and Amendments.**

1. The Franchise Agreement shall provide the following:
  - a. The initial term of the Franchise Agreement shall be for a period of 10 years;
  - b. The right to operate the franchise may be renewed for two additional five-year terms;
  - c. The “Site Selection Area” shall include the following geographic area:  
\_\_\_\_\_;
  - d. The “Initial Franchise Fee” shall be: the standard Initial Franchise Fee of \$45,000;
  - e. The Territory shall include the following geographic area: The area within a 5-mile radius from the front door of your Academy’s location.
  - f. All disputes between the parties shall be resolved by litigation in the county in which D-BAT maintains its principal headquarters or the U.S. District Court for the Northern District of Texas; provided that D-BAT shall have the right to take any action necessary to protect the Marks, Copyrights or Proprietary Information in any court or tribunal having jurisdiction, wherever located.
  - g. The Franchise Agreement will contain other standard provisions, representations and covenants (including confidentiality and in-term and post term noncompete obligations).
  - h. All direct and indirect owner in the Franchisee entity will personally guarantee Franchisee’s obligations under the Franchise Agreement and be personally bound by the confidentiality and noncompete provisions contained therein.

**PART TWO -- BINDING PROVISIONS.**

Upon execution by D-BAT of this Letter or counterparts hereof, the following lettered paragraphs of this Letter (collectively, the “Binding Provisions”) will constitute the legally binding and enforceable agreements of the parties, in recognition of the significant costs to be borne by the parties in pursuing this proposed transaction and in further consideration of their mutual undertakings as to the matters described herein.

**A. Earnest Money Payment.** Franchisee shall pay to D-BAT a nonrefundable earnest money payment in the amount of \$20,000 (the “Earnest Money Payment”) upon countersignature of this LOI. If the Franchise Agreement is signed on or before \_\_\_\_\_ (“**Execution Deadline**”), the amount of the Earnest Money Payment will be applied toward payment of the Initial Franchise Fee. If the Franchise Agreement is not signed by the Execution Deadline, the Earnest Money Payment will be considered fully earned and nonrefundable in consideration for the services provided in paragraph B below.

**B. Services.** In exchange for the Earnest Money Payment, D-BAT will provide to you D-BAT’s requirements for Facility size and location, and provide you with the assistance D-BAT provides to its franchisees when reviewing proposed Facility locations and accepting or rejecting the same.

**C. Confidentiality.** Each party to this Letter will receive and hold in strict confidence all information it receives with respect to the other’s business or affairs and will not use for its own account or disclose to any other individual or business entity any such information, except in accordance with the provisions of the Franchise Agreement. This provision will survive the termination of this Letter and be binding on both parties for an indefinite period. Neither party to this Letter will announce the existence of this Letter or otherwise disclose the fact or contents of the parties’ proposed relationship without the express consent and joint participation of the other party.

**D. Nonassignable.** D-BAT may, but you may not, assign or transfer any of rights, or delegate any obligations, under this Letter of Intent. D-BAT will only assign its rights hereunder to another party assuming D-BAT's obligations under this LOI as well.

**E. Governing Law.** This Letter will be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to its conflicts of laws principles.

If this Letter accurately states your understanding of the proposed transactions, please sign and date it in the space provided below to confirm our mutual nonbinding understandings and binding agreements, as set forth in this Letter. After you have signed, please return a copy to the undersigned. This Letter may be executed in counterparts.

Very truly yours,  
D-BAT Academies, Inc.

By: \_\_\_\_\_  
Kyle Griffis, President

**ACCEPTED AND AGREED:**

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**EXHIBIT J**  
**FRANCHISEE COMPLIANCE QUESTIONNAIRE**



**D-BAT ACADEMIES, INC.**  
**FRANCHISEE COMPLIANCE CERTIFICATION QUESTIONNAIRE**

**THIS COMPLIANCE QUESTIONNAIRE AND ITS RESPONSES, IF COMPLETED, ARE VOID AS TO CALIFORNIA, HAWAII, ILLINOIS, INDIANA, MARYLAND, MICHIGAN, MINNESTOA, NEW YORK, NORTH DAKOTA, RHODE ISLAND, SOUTH DAKOTA, VIRGINIA, AND WASHINGTON, WISCONSIN FRANCHISEES. Do not sign this Questionnaire if you are a resident of Maryland or the franchise is to be operated in Maryland.**

As you know, D-BAT Academies, Inc. (the “Franchisor”) and you are preparing to enter into a Franchise Agreement for the establishment and operation of a D-BAT® Facility (the “Facility”). The purpose of this Questionnaire is to determine whether any statements or promises were made to you that the Franchisor has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Have you received and personally reviewed the Franchise Disclosure Document (“Disclosure Document”) that was provided to you?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Did you sign a receipt for the Disclosure Document indicating the date you received it?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Have you received and personally reviewed the Franchise Agreement, including all Attachments?  
Yes \_\_\_\_\_ No \_\_\_\_\_
5. Do you understand all of the information contained in the Franchise Agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_
6. Have you discussed with an attorney the benefits and risks of establishing and operating a D-BAT® Facility as a franchised business?  
Yes \_\_\_\_\_ No \_\_\_\_\_

**If No, do you wish to have more time to do so?**

- Yes \_\_\_\_\_ No \_\_\_\_\_
7. A) Have you, in fact, discussed the Disclosure Document, the agreements, and the benefits and risks of operating a D-BAT® franchise with an attorney?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, name of attorney: \_\_\_\_\_  
If No, do you wish to have more time to do so?  
Yes \_\_\_\_\_ No \_\_\_\_\_
  - B) Have you discussed the benefits and risks of operating a D-BAT® Facility any other professional advisor?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, name and profession of advisor: \_\_\_\_\_  
\_\_\_\_\_
  - C) Did you discuss the benefits and risks of operating a D-BAT® Facility with an existing D-

BAT® franchisee?

Yes \_\_\_\_\_ No \_\_\_\_\_

8. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the actual or possible revenues, profits, or operating costs of a “D-BAT® Facility” franchised business operated by the Franchisor or any of its franchisees, that is contrary to the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) regarding the amount of money you may earn in operating the Facility as a franchised business, that is contrary to the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the total amount of revenue the Facility as a franchised business will or may generate, that is contrary to the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

11. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) regarding the costs you may incur in operating the Facility as a franchised business, that is contrary to or different from, the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

12. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning your likelihood to succeed in operating the Facility as a franchised business?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. Has any employee or other person speaking on behalf of the Franchisor made any statement, agreement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

14. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, is the agreement you entered into D-BAT’s standard form of Letter of Intent?

Yes \_\_\_\_\_ No \_\_\_\_\_

15. Have you paid any money to the Franchisor—*OTHER THAN* an Earnest Money Payment under an executed Letter of Intent—concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, date you inserted on Receipt page of Disclosure Document received: \_\_\_\_\_

Date money was paid: \_\_\_\_\_

Purpose of money paid: \_\_\_\_\_

16. Do you understand that the territorial rights you have been granted are subject to limitations and exceptions?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. Do you understand that Franchisor and its affiliates and subsidiaries retain the right, directly or through others, to develop and franchise other similar franchises (under different trademarks) or different franchise systems (whether under the same or different trademarks) inside or outside of your territory?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. Do you understand that the Franchise Agreement contains the entire agreement between you and the Franchisor concerning the franchise rights for the Facility, meaning that any prior oral or written statements not set out in the Franchise Agreement will not be binding?

Yes \_\_\_\_\_ No \_\_\_\_\_

19. I signed the Franchise Agreement and Amendments (if any) on \_\_\_\_\_, 20\_\_\_\_, and acknowledge that no Agreement or Amendment is effective until signed and dated by the Franchisor.

**YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO THE FRANCHISOR AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.**

**THIS COMPLIANCE QUESTIONNAIRE MAY BE COMPLETED AND SIGNED WITH FULL FORCE AND EFFECT USING ELECTRONIC FIELD INPUTS AND SIGNATURES:**

**FRANCHISEE**

**OWNER/GUARANTOR**

\_\_\_\_\_  
a/an \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**  
**STATE EFFECTIVE DATES**

## STATE EFFECTIVE DATES

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:

State	Effective Date
California	Pending
Illinois	June 12, 2023, as amended _____, 2023
Indiana	May 23, 2023, as amended _____, 2023
Maryland	Pending
Michigan	May 24, 2023
Minnesota	Pending
New York	Pending
North Dakota	Pending
Virginia	May 31, 2023, as amended _____, 2023
Washington	Pending
Wisconsin	May 23, 2023, as amended _____, 2023

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

**EXHIBIT L**  
**RECEIPT**

## RECEIPT

This Franchise Disclosure Document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this Franchise Disclosure Document and all agreements carefully. If D-BAT Academies, Inc. offers you a franchise, we must provide this Franchise Disclosure Document to you 14 calendar days before you sign a binding agreement or make a payment to the franchisor or an affiliate in connection with the proposed franchise sale.

Applicable state law in Michigan requires us to provide you the disclosure document at least 10 business 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 us to provide you the disclosure document at the earlier of the first personal meeting or 10 business 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.

If D-BAT Academies, Inc. does not deliver this Franchise Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and your state agency listed in Exhibit B of this Franchise Disclosure Document.

The franchise seller for this offering is:

Name	Principal Business Address	Telephone Number
Cade Griffis	2101 Midway Road, Suite 300, Carrollton, Texas 75006	972-398-1000
Eli Mahan	2101 Midway Road, Suite 300, Carrollton, Texas 75006	972-398-1000

Issuance Date: May 18, 2023, as amended June 21, 2023

The names of our agents for service of process are identified in Exhibit C of this Disclosure Document.

I have received a Franchise Disclosure Document dated May 18, 2023, as amended June 21, 2023, including the following Exhibits:

### STATE SPECIFIC ADDENDA

EXHIBIT A Table of Contents of Manuals  
EXHIBIT B List of State Administrators  
EXHIBIT C Agents for Service of Process  
EXHIBIT D Franchise Agreement  
EXHIBIT E Area Development Agreement  
EXHIBIT F Financial Statements

EXHIBIT G General Release  
EXHIBIT H List of Current and Former Franchisees  
EXHIBIT I Letter of Intent  
EXHIBIT J Franchisee Compliance Questionnaire  
EXHIBIT K State Effective Dates  
EXHIBIT L Receipt

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

If signing on behalf of a corporation or other entity, please complete the following:

\_\_\_\_\_  
Name of Entity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Keep this copy for your records.**

**RECEIPT**

This Franchise Disclosure Document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this Franchise Disclosure Document and all agreements carefully. If D-BAT Academies, Inc. offers you a franchise, we must provide this Franchise Disclosure Document to you 14 calendar days before you sign a binding agreement or make a payment to the franchisor or an affiliate in connection with the proposed franchise sale.

Applicable state law in Michigan requires us to provide you the disclosure document at least 10 business 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 us to provide you the disclosure document at the earlier of the first personal meeting or 10 business 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.

If D-BAT Academies, Inc. does not deliver this Franchise Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and your state agency listed in Exhibit B of this Franchise Disclosure Document.

The franchise seller for this offering is:

Name	Principal Business Address	Telephone Number
Cade Griffis	2101 Midway Road, Suite 300, Carrollton, Texas 75006	972-398-1000
Eli Mahan	2101 Midway Road, Suite 300, Carrollton, Texas 75006	972-398-1000

Issuance Date: May 18, 2023, as amended June 21, 2023

The names of our agents for service of process are identified in Exhibit C of this Disclosure Document.

I have received a Franchise Disclosure Document dated May 18, 2023, as amended June 21, 2023, including the following Exhibits:

STATE SPECIFIC ADDENDA

- EXHIBIT A Table of Contents of Manuals
- EXHIBIT B List of State Administrators
- EXHIBIT C Agents for Service of Process
- EXHIBIT D Franchise Agreement
- EXHIBIT E Area Development Agreement
- EXHIBIT F Financial Statements
- EXHIBIT G General Release
- EXHIBIT H List of Current and Former Franchisees
- EXHIBIT I Letter of Intent
- EXHIBIT J Franchisee Compliance Questionnaire
- EXHIBIT K State Effective Dates
- EXHIBIT L Receipt

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

If signing on behalf of a corporation or other entity, please complete the following:

\_\_\_\_\_  
Name of Entity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Please sign this copy of the Receipt, date your signature, and return it to  
D-BAT ACADEMIES, INC.  
2101 Midway Road, Suite 300, Carrollton, Texas 75006**