

FRANCHISE DISCLOSURE DOCUMENT

FITNESS 1440, INC.
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FITNESS1440[®]

The franchise offered is for the operation of a FITNESS 1440[®] specialty health and fitness club. The total investment necessary to begin operation of a FITNESS 1440, Inc. standard franchise is \$259,000 to \$1,591,000. This includes \$39,000 that must be paid to the franchisor or its affiliate. The total investment necessary to begin operation of a FITNESS 1440, Inc. conversion franchise is \$196,800 to \$921,750. This includes \$5,000 that must be paid to the franchisor or its affiliate. See notes in Item 7.

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 for you. To discuss the availability of disclosures in different formats, contact Steven D. Beach, Fitness 1440, Inc., 870 East Williams Field Road, Gilbert, AZ 85295, (724) 516-5824.

The terms of your contract will govern your franchise relationship. Do not 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, DC 20580. You can also visit the FTC’s home page at 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 19, 2021

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
How much can I earn?	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 B.
How much will I need to invest?	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.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit E includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only Fitness 1440 business in my area?	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What’s it like to be a Fitness 1440 franchisee?	Item 20 or Exhibit B lists current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	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 A.

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

Special Risks to Consider About *This Franchise*

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

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Arizona. 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 Arizona than in your own state.
2. **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. **Mandatory Minimum Payments.** You must make minimum royalty or advertising fund payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.
4. **Inventory Control.** You must purchase at least \$400 of approved garments and gear every month during the term of the Franchise Agreement from our preferred vendor, even if you do not need that much. Your inability to make these purchases or to maintain inventory levels at all times may result in termination of your franchise and loss of your investment.

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.

FITNESS 1440, INC.

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**ITEM 1:
THE FRANCHISOR AND ANY
PARENTS, PREDECESSORS AND AFFILIATES**

Franchisor:

To simplify the language in this Disclosure Document “we”, “us” “Fitness 1440” means Fitness 1440, Inc. “You” means the person who buys the franchise. If a corporation, partnership, limited liability company or other business entity buys the franchise, "you" also means each of the individual owners of the corporation, partnership, limited liability company or other business entity.

We are a Pennsylvania Corporation, incorporated on April 28, 2009. Our principal place of business is 870 East Williams Field Road, Gilbert, AZ 85295. Our telephone number is (724) 516-5824. We only do business under our corporate name Fitness 1440, Inc., the trade name and service mark "Fitness 1440®", URLs, domain names, website addresses, email addresses, digital cellular addresses, wireless web addresses and the like (“e-names”) and associated logos, designs, symbols and trade dress (collectively, the “Marks”).

Fitness 1440 is a franchising company which grants franchises under an agreement which licenses the franchisee to operate a retail store specializing in the operation of a specialty health and fitness club using Fitness 1440’s business and service methods and techniques and Fitness 1440’s Marks (“Franchised Business”). We are not engaged in other business activities.

We do not operate businesses of the type being franchised. We have never sold franchises in any other line of business. We began offering Fitness1440 franchises in July 2011.

Agent for Service of Process:

Our agent for service of process is Steven D. Beach, 870 East Williams Field Road, Gilbert, AZ 85295. Additional agents for service of process and applicable state agencies are listed in detail in Exhibit A, which is attached to this disclosure document.

Parent:

We do not have a parent.

Predecessor:

We do not have a predecessor.

Affiliates:

Phoenix 1440 Inc., an Arizona corporation, is our affiliate. Its principal business address is the same as ours. It operates a Fitness 1440 club in Gilbert, AZ, which also serves as a

training facility for our franchisees.

We have no other affiliates that offer franchises in this or any line of business or provide products or services to our franchisees.

The Business We Offer:

We franchise the operation of specialty health and fitness clubs, granting an exclusive right to operate within a specific geographic area (the “Franchise Territory”) to operate a Fitness 1440 franchised business in accordance with our unique and comprehensive system (the “System), pursuant to a Franchise Agreement (“Franchise Agreement” or “Agreement”), which is attached as Exhibit C. Your franchise will operate only one Fitness 1440 club within the territory. You must use our Marks as we prescribe. Our proprietary assets also include the client lists and other client information of each Franchised Business.

In select markets, we offer the opportunity for a franchisee to sign an area representative agreement for the right to solicit prospective franchisees and to provide certain training and support services to franchisees within a specific geographic area. The area representative franchise opportunity is offered through a separate disclosure document.

Market Competition:

The market for specialty health and fitness clubs is fully developed. You will be in competition with national and regional chains and local businesses, which sell similar products and services providing a range of health club services. In some cases, health club style training is conducted at off-site, remote locations, or even in the home. Related health and exercise programs also occur within the facilities of other existing businesses and organizations, and in hospitals and rehabilitation centers.

Government Regulation:

There are no federal regulations specific to operating a specialty health and fitness club. Some states have enacted legislation or regulations which do specifically apply, for example, state laws applying to licensing requirements; regulating fitness center contracts; health and sanitation codes; weight loss instruction; insurance requirements; and operational, financial or bonding requirements for businesses that operate health clubs or offer the sale of long term or prepaid memberships.

These regulations vary widely from state to state and could affect your operations. You must acquire any licenses and certification that the state or local municipalities may require. Many states have enacted legislation related to bonding requirements and Guaranty requirements for a business undertaking the sale of club memberships. You should consult an advisor in your area to determine applicable laws and regulations.

You must also consider that certain aspects of any health and fitness club are regulated by federal, state and local laws, rules and ordinances in addition to the laws, regulations and

ordinances applicable to businesses generally, for example, the Americans with Disabilities Act, Federal Wage and Hour Laws, and the Occupation, Health and Safety Act. If you provide food or drinks, the U.S. Food and Drug Administration, the U.S. Department of Agriculture, as well as state and local departments of health and other agencies have laws and regulations concerning preparation of food and sanitary conditions. State and local agencies routinely conduct inspections for compliance with these requirements. You may also be subject to comply with building and zoning regulations.

As of the issuance date of this disclosure document, many Fitness 1440 franchised and company-owned outlets are closed or operating at limited capacity as a result of government-imposed shelter-in-place orders and economic decline resulting from the COVID-19 pandemic. These events have and are likely to continue to significantly impact the potential performance of the franchised business. For example, these events have and are likely to result in certain levels of disruption in customer demand, supply chain, employee availability, and other aspects of operating a franchised business as well as an impact on operating costs.

ITEM 2: BUSINESS EXPERIENCE

Steven Beach - President

Steven Beach has been our President since our formation on April 28, 2009 (in Bend, Oregon from 2009 to 2019 and in Gilbert, Arizona since 2019). Mr. Beach is also Managing Member of our affiliate Fitness 1440one, Inc. since its formation on March 30, 2011 at the same locations as identified above. From 2006 to the present, Mr. Beach is Managing Member of 4CONI, LLC, located in Delmont, Pennsylvania.

Tessa Coryell – Operations Manager

Tessa Coryell has been our Operations Manager since 2014 (in Bend, Oregon from 2014 to 2019 and in Gilbert, Arizona since 2019).

Michael Barry – Regional Manager

Michael Barry has been our Regional Manager in Gilbert, Arizona since 2019. He was Sales Manager at Golds Gym in Gilbert, Arizona from 2013 to 2019.

ITEM 3: LITIGATION

No litigation is required to be disclosed in this Disclosure Document.

ITEM 4: BANKRUPTCY

No bankruptcy is required to be disclosed in this Disclosure Document.

ITEM 5: INITIAL FEE

The initial fees described below are uniform to all franchisees. You must pay the entire fee by a cashier's check for the territory at the time you sign a Franchise Agreement. The Initial Franchise Fee is fully earned by us at the time we execute the Franchise Agreement and is not refundable.

Two types of Franchises will be sold:

a) Initial Franchise - Unless an approved conversion franchise, the initial franchise fee is \$39,000.00.

b) Conversion Franchise - In the case of pre-existing and operating facilities that are adopting the Fitness 1440 franchise system, and upon the review and approval by us, the initial franchise fee is \$5,000.

The Conversion Franchise is only potentially available to existing health and fitness business operations, which have been in business for at least one year prior to the Licensing date. Approval will only be given on a case-by-case basis, in our complete discretion, after review of the experience and needs of the prospective franchisee for initial training and the level of assistance necessary in the conversion to a Fitness 1440 operation. The conversion franchise determination is meant for only those prospective franchisees that require a significantly reduced amount of initial start-up or conversion assistance and should be considered by only those who will bring considerable experience in the operation of a health club facility.

Discount for Veterans and First Responders

We offer a discount off our standard Initial Franchise Fee for veterans of the United States armed forces. The discount is \$3,000 per year of service in the U.S. armed forces, except that the Initial Franchise Fee will not be less than \$10,000. We also offer a 10% discount off our standard Initial Franchise Fee for first responders. If you are a first responder and a veteran, then only the veteran discount will apply. We reserve the right to modify or discontinue these discounts at any time.

Multiple Franchise Purchases

If you are purchasing multiple franchises simultaneously, then you will execute multiple Franchise Agreements at the same time along with the Multiple Franchise Purchase Addendum attached to each Franchise Agreement. You must pay the Initial Franchise Fee for each Franchise in full at the time you contemporaneously sign the multiple Franchise Agreements. The Initial Franchise Fees are not refundable under any circumstances.

The Fee for each type of Franchise includes training, which will be held prior to opening at a FITNESS 1440 located at or near our headquarters (currently in Gilbert, Arizona). Travel,

lodging, and food expenses incurred during training are the responsibility of the Franchisee.

**ITEM 6:
OTHER FEES**

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
^{1 & 9} Ongoing Monthly Royalty Fee	The greater of 6% of Gross Sales or \$2,495 per month	Tenth day of each month or other day of the month as we may designate.	See note 9.
Advertising Fund Contribution	2% of Gross Sales	First day of each month	Payable to us
² Local Advertising Expenditure	A minimum of 10% of Gross Sales or \$2,500 per month, whichever is greater	Monthly	You must spend this amount on Franchisor-approved local advertising and promotion (including, for example, social media advertising and marketing campaigns).
² Regional Advertising Fund Contribution	Up to 2% of your Gross Sales pursuant to a vote of the franchisees in the region	As voted and approved by your local advertising cooperative (only if franchisees in an advertising region vote to establish a Regional Advertising Fund).	See note 2.
Additional Training at Franchisee's Request	Then-current rates, currently \$500 per day. You are responsible for your and our transportation, meals and lodging (and wages for your employees).	Before or after you open your franchise for business.	See note 6.
Additional Training or Conventions Required or Offered by Franchisor	We may charge a training fee at our then-current rates, currently up to \$500 per day. You are responsible for your and our transportation, meals and lodging (and wages	Before or after you open your franchise for business.	See note 6.

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
	for your employees).		
Additional Training Required by Franchisor Based on Franchisee's Deficiency	Then-current rates, currently \$500 per day. You are responsible for your and our transportation, meals and lodging (and wages for your employees).	Before or after you open your franchise for business.	See Note 6.
Re-Inspection Fee	\$500 per re-inspection plus the costs of our inspector's transportation, meals and lodging	On demand	You pay this fee if we must re-visit your location for an inspection after you have already been notified of any deficiency or non-satisfactory condition.
³ Transfer Fee	50% of our then-current Initial Franchise Fee (or \$2,500 if the owners of an entity franchisee are transferring less than 20% of the ownership interest in the entity)	Upon execution of Agreement by Assignee. Non-refundable	Payable to us
Transfer Commission Fee	10% commission on the gross transfer price (excluding the price of real property)	Upon transfer	Paid to us if we obtain the transferee for you
Renewal Fee	25% of the then-current Standard Initial Franchise Fee	Upon execution of the Renewal documents at the end of each 5-year term	Payable to us
Relocation	You will reimburse us for our reasonable out-of-pocket costs concerning the relocation.	Before relocation of your Franchise Premises	
⁴ Software Programs	Approximately \$2,500 plus \$75 per month	Payable monthly	Not available or required at this time
⁵ Technology Fee	Then-current rates, currently \$299 per month	Payable monthly	Payable to us
Liquidated Damages Upon Termination	Lump sum amount equal to Royalty Fees,	Within 15 days following the date of	Payable if you default and we terminate your

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
	Advertising Fees, and other ongoing fees you should have paid, had the Franchise Agreement not been terminated, for the lesser of (a) 12 months or (b) the period the Franchise Agreement would have remained in effect but for Franchisee’s default. Such payment will be calculated based on the average Royalty Fees, Advertising Fees, and other ongoing fees Franchisee paid (or if unpaid, payable) during the immediately preceding 12-month period (or shorter period if you will have operated for less than 12 months).	termination	Franchise Agreement. See the State Law Addendum attached to the FDD for state-required revisions to the Franchise Agreement’s liquidated damages provisions.
Liquidated Damages for Violation of Covenants	\$50,000 for each violation of a Covenant (as defined in the Remarks column)	Immediately upon notice	Upon your breach or nonperformance of any of the covenants (each a “Covenant” in franchise Agreement Section 5.6 (Confidentiality Information), Section 5.7 (In-Term Non-Competition Covenant), or Section 6.7 (Post-Termination Non-Competition Covenant), you will pay us this amount for each violation as liquidated damages.
Liquidated Damages for Failure to Timely Return Signage Upon Termination or Expiration of Franchise	\$9,500	Immediately upon notice	Payable if you fail, within 30 days of expiration or termination of the Franchise Agreement,

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
Agreement			to return to us (at our headquarters or another location we designate) all exterior and interior signage of the Franchise in good condition at your sole cost and expense, unless we exercise our right to acquire your Franchise.
Enforcement Costs	The prevailing party is entitled to collect costs of enforcement	Upon determination	Payable to either us or franchisee upon determination
Late Charge	1.5% per month	Each month that amounts owed remain unpaid	You will not be compelled to pay late charges at a rate greater than the maximum allowed by applicable law.
Late Payment Penalty	5% of the amount due	As incurred	You will not be compelled to pay late payment penalty in an amount greater than the maximum allowed by applicable law.
Cost of Enforcement	As incurred	As incurred	We may recover from you the amount of our reasonable attorneys' fees and all other expenses we incur in enforcing your monetary and other obligations under the Franchise Agreement.
⁸ Other Payments Made Directly by Billing Company	As incurred	As incurred	See Note 8
Interim Management Fees	As incurred	As Incurred	You must pay us a reasonable management fee for management services if we step-in to operate your franchise pursuant to the Franchise Agreement. We will not be liable

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
			for any debts, losses, costs or expenses incurred in the operation of the Franchise during any interim management period.
Proposed Source Testing Costs	As incurred	As incurred	You must reimburse us for our out of pocket expenses and costs we incur to test new products or sources you request for approval (See Item 8 and Franchise Agreement Section 5.1).
Audit ⁷	Our reasonable costs for the audit if you understate Gross Sales by more than 2% or fail to deliver to us required reports on time	Immediately upon demand	
Indemnification	As incurred	As incurred	You must defend, indemnify and hold us harmless from all claims, losses, and expenses (including attorneys' fees) damages arising out of or connected with your Franchise and the business activities, acts or omissions (whether or not negligent or wrongful) of you and your employees and agents.

All fees are uniformly imposed by and payable only to us, unless otherwise noted in this Item. All fees are non-refundable.

Explanatory Notes:

¹ “Gross Sales” means all receipts generated by the franchise from any source including sales, exchanges, services, labor, service charges, etc. It includes all types of remuneration, gift, barter, charity, payment in kind, or any other benefit or value that is received or deferred to be received.

Credit sales shall be calculated as of the date of sale without deduction for uncollected credit accounts. The proceeds from any business interruption insurance you receive will be included in “Gross Sales.”

“Gross Sales” shall not include bona fide credits for returns, refunds, promotional discounts, and sales taxes.

You are required to use a billing and payment processing company (“Billing Company”) selected by us for the recordation and processing of any and all payments received and derived from all sources, and which shall accurately reflect your Gross Sales. The Billing Company shall have the right to automatically deduct from your account and pay to us any and all fees and payments required of you by the Franchise Agreement. This includes but is not limited to the Royalty Fee and Advertising Fund Contribution, which will be deducted from your account on or before the 10th day of each month (or such other timing as we may specify) during the term of Franchise Agreement.

² Local Advertising Expenditure – We reserve the right to direct the Billing Company to deduct from your account an amount equal to the minimum local advertising expenditure described in the table (the “Local Advertising Expenditure”) and to pay the funds directly to us or to our then-approved vendor(s) for social media advertising or other advertising we deem appropriate in your market area at our discretion.

Regional Advertising Cooperative - Subject to our prior written approval, if at any meeting of the franchisees in an advertising region, 75% of the franchisees vote to contribute to a regional advertising program, all franchisees within that region will be obligated to make a contribution to a regional advertising fund in the amount established by the vote. No advertising region may require any franchisee in that region to contribute to a Regional Advertising Fund in excess of 2% of that franchisee's Gross Sales. Your contributions to a Regional Advertising Fund will be credited towards your Local Advertising Expenditure.

³ Transfer Fee and Costs - The Transfer Fee is payable by you or the transferee if you transfer your franchise (see Franchise Agreement, Section 7.1). If you obtain a franchise by purchasing the business of one of our existing franchisees, then you may also incur certain costs associated with bringing your Franchised Business into compliance with our requirements.

⁴ FITNESS 1440 may develop custom proprietary software to aid you in the operation of your business. You will be given access to the software when it is available and at that point you must use it in your business at all times.

⁵ The Technology Fee is for technology such as maintenance and updates to our central website, proprietary software applications (if developed), and other technology. This fee is subject to reasonable increases at our discretion. .

⁶ Additional Training.

- a. *Requested by You.* Training requested by you will be at our headquarters or at other agreed upon locations. The duration and timing of this training is negotiable

- depending upon your needs and our availability.
- b. *Required or Offered by Us.* We may provide refresher training programs or seminars and may require that you or your managers attend and complete them to our satisfaction. These programs and seminars will be held at locations we designate.
 - c. *Additional Training Required by Franchisor Based on Franchisee's Deficiency.* We may require you to participate in additional training if you breach the Franchise Agreement or fail to meet our standards and specifications in the opening or operation of your Franchise as we determine at our discretion. This training will typically be held at our headquarters or your location at our discretion.
 - d. You will not receive any compensation for services rendered by the trainee during any training. We may designate qualified franchisees, area representatives, or third parties to conduct some or all of your training.

⁷ Audits - We may audit your reports, books, statements, business records, cash control devices, and tax returns at any time during normal business hours. Audits will be conducted at our expense unless you understate the Gross Sales for any reported period or periods by more than 2% or unless you fail to deliver any required report of Gross Sales or any required financial statement in a timely manner. In the event of an understatement or failure to deliver, you will reimburse us for all audit costs. These will include, among other things, the charges of any independent accountant and the travel expenses, room, board, and compensation of our employees incurred in connection with the audit. You will immediately pay all Royalty Fees, Advertising Fees, all other fees and late payment charges that the audit determines are owed (which we may deduct from payments we or our designated Billing Company collect from your clients). These payments will not prejudice any other remedies we may have under this Agreement or by law.

⁸ Other Payments Made Directly By Billing Company - If you fail to pay as and when due any obligation to any supplier or service provider (which may include us, our affiliates, and/or third parties), equipment lessor, real property landlord, utility provider, government entity, or any other person or entity in connection with your operation of the franchise, then we may direct the Billing Company to deduct from your account and pay amounts owed plus interest and penalties as directed by such person or entity. Notwithstanding the foregoing, we will not direct the Billing Company to pay your employees as it is solely your responsibility to pay your employees properly. In the Franchise Agreement, you release us and the Billing Company from any liability associated with us directing the Billing Company to make such deductions from your account.

⁹ You have no automatic right to continue operation of the Franchised Business following expiration or termination of this Agreement. If you continue to operate the Franchised Business with our express or implied consent following expiration or termination of this Agreement, the continuation will be a month-to-month extension of this Agreement. During such period of continuation, the Royalty Fee will increase to eight percent (8%) of Gross Sales or \$2,495 per month, whichever is greater. This Agreement will then be terminable by either party upon 30 days' written notice.

**ITEM 7:
ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT
(STANDARD FRANCHISE)**

(1) TYPE OF EXPENDITURE	(2) AMOUNT	(3) METHOD OF PAYMENT	(4) WHEN DUE	(5) TO WHOM PAYMENT IS TO BE MADE
¹ Initial Franchise Fee	\$39,000 for new franchise	Lump Sum	Upon execution of Agreement. Non-refundable	Payable to us
² Signage	\$3,500 to \$8,000	Lump Sum	Prior to opening. Non-refundable	Payable to vendors and suppliers, etc.
³ Initial Lease Deposit and Rent	Varies	As incurred	Upon signing Lease or as arranged	Payable to Lessor
⁴ Leasehold Improvements	\$50,000 to \$800,000	As incurred	Prior to Opening. Non-refundable	Payable to vendors and suppliers, etc.
⁴ Architect	\$25,000 to \$50,000	As incurred	As incurred prior to opening.	Payable to architect we approve
⁵ Business Licenses	\$250 to \$500	As incurred	When required Non-refundable	Payable to state and municipal agencies
Payment Processing Set-up	\$250 to \$2,000	As incurred	Prior to Opening. Non-refundable	Payable to vendor
⁶ P.O.S. System	\$2,500 to \$5,000	As incurred	As arranged	Payable to vendors, and approved suppliers, etc.
⁷ Initial Start-up Packages, Printing, etc.	\$5,000 to \$10,000	As incurred	As arranged	Suppliers
⁸ Legal and Accounting Fees	\$500 to \$6,500	As incurred	As arranged	Payable to attorneys and accountants
⁹ Initial Inventory and Equipment Package	\$40,000 to \$400,000	As incurred	As arranged	Payable to vendor, lender, or leasing firm
¹⁰ Grand Opening	\$10,000 to \$15,000	As incurred	Prior to opening.	Payable to vendors, suppliers, etc.
¹¹ Initial Advertising / Marketing of Franchised Unit	\$32,000 to \$50,000	As incurred	Prior to opening. Non-refundable	Payable to vendors, suppliers, etc.
¹² Insurance and Membership Bonds	\$1,000 to \$5,000	As arranged	As arranged and required	Payable to broker or insurance agency
Miscellaneous Opening Costs	\$5,000 to \$50,000	As required	As needed	Suppliers, utilities, etc.

(1) TYPE OF EXPENDITURE	(2) AMOUNT	(3) METHOD OF PAYMENT	(4) WHEN DUE	(5) TO WHOM PAYMENT IS TO BE MADE
¹³ Additional Funds – 12 Months	\$45,000 to \$150,000	As required	As needed	Payable to suppliers, payroll, etc.
Total ¹⁴	\$259,000 to \$1,591,000			

**YOUR ESTIMATED INITIAL INVESTMENT
(CONVERSION FRANCHISE)**

(1) TYPE OF EXPENDITURE	(2) AMOUNT	(3) METHOD OF PAYMENT	(4) WHEN DUE	(5) TO WHOM PAYMENT IS TO BE MADE
¹ Initial Franchise Fee	\$5,000 for conversion franchise	Lump Sum	Upon execution of Agreement. Non- refundable	Payable to us
² Signage	\$3,500 to \$8,000	Lump Sum	Prior to opening. Non-refundable	Payable to vendors and suppliers, etc.
³ Initial Lease Deposit and Rent	Varies	As incurred	Upon signing Lease or as arranged	Payable to Lessor
⁴ Leasehold Improvements	\$50,000 to \$200,000	As incurred	Prior to Opening. Non-refundable	Payable to vendors and suppliers, etc.
⁴ Architect	\$5,000 to \$15,000	As incurred	As incurred prior to opening.	Payable to architect we approve
⁵ Business Licenses	\$50 to \$250	As incurred	When required Non-refundable	Payable to state and municipal agencies
Payment Processing Set-up	\$250 to \$2,000	As incurred	Prior to Opening. Non-refundable	Payable to vendor
⁶ P.O.S. System	\$2,500 to \$5,000	As incurred	As arranged	Payable to vendors, and approved suppliers, etc.
⁷ Initial Start-up Packages, Printing, etc.	\$5,000 to \$10,000	As incurred	As arranged	Suppliers
⁸ Legal and Accounting Fees	\$500 to \$6,500	As incurred	As arranged	Payable to attorneys and accountants
⁹ Initial Inventory and Equipment Package	\$40,000 to \$400,000	As incurred	As arranged	Payable to vendor, lender, or leasing firm
¹⁰ Grand Re- Opening	\$10,000 to \$15,000	As incurred	Prior to opening.	Payable to vendors, suppliers, etc.

(1) TYPE OF EXPENDITURE	(2) AMOUNT	(3) METHOD OF PAYMENT	(4) WHEN DUE	(5) TO WHOM PAYMENT IS TO BE MADE
¹¹ Initial Advertising / Marketing of Franchised Unit	\$24,000 to \$50,000	As incurred	Prior to opening. Non-refundable	Payable to vendors, suppliers, etc.
¹² Insurance and Membership Bonds	\$1,000 to \$5,000	As arranged	As arranged and required	Payable to broker or insurance agency
Miscellaneous Opening Costs	\$5,000 to \$50,000	As required	As needed	Suppliers, utilities, etc.
¹³ Additional Funds – 12 Months	\$45,000 to \$150,000	As required	As needed	Payable to suppliers, payroll, etc.
Total ¹⁴	\$196,800 to \$921,750			

Explanatory Notes:

¹ Initial Franchise Fee. Unless an approved conversion franchise, the initial franchise fee is \$39,000.00 (subject to discounts for veterans and first responders as described in Item 5). In the case of pre-existing and operating facilities that are adopting the Fitness 1440 franchise system (“conversion franchise”) and upon the review and approval by Fitness 1440, existing operations may be granted a reduction of the fee. In such circumstances, the initial franchise fee is \$5,000.

² Signage. Signage expenses include the cost of exterior signs advertising the location of the franchised unit. These signs are to be installed upon or just before the opening of the franchised unit, and will remain our property, as they contain our trademarks described in Item 13.

³ Initial Lease Deposit and Rent. Your FITNESS 1440 business will require a location, which is central to your geographic area, which has from 3,000 to 20,000 square feet. Under current real estate market conditions, rentals range widely according to location factors such as highway access, density of surrounding population, age and condition of the premises, general local economic conditions, and type of building. We anticipate that the location will typically be a free-standing building or in a strip shopping center, and in an area with high population density. All of these factors exist in a state as highly divergent economically as this state and therefore no generally applicable rental rate prevalent in its many trading areas and sales markets can reliably be estimated by us. Typically, a landlord will require the first month’s rent and a deposit that is equal to the first month’s rent to enter into a long-term lease. You may also buy or build such a facility. For the holder of a “conversion Franchise,” existing facilities can be utilized, and amounts may not be needed for Initial Rent or Deposit.

⁴ Leasehold Improvements and Architect. You may require improvements including floor coverings, interior cosmetics, plumbing, electrical work, etc. The cost of the improvements will

vary from location to location. If the landlord makes all necessary leasehold improvements, it is possible that the costs will be included in or added to the monthly lease payment, and no front-end out-of-pocket expenses need to be paid by you. However, there is no guarantee the landlord would enter into such an agreement.

You must hire an architect for work related to cosmetic design and layout of the interior space for your Franchise Premises in compliance with our design guide specifications and to acquire permitting for the construction to be performed at your location, etc. Your choice of architect is subject to our reasonable prior approval. The cost of your architect may vary widely based on your chosen site.

⁵ Business Licenses. Several local business licenses may be needed in order to open the Franchised Business or you may already be covered under business licenses you now hold. The costs of the business licenses will vary from location to location and are estimated to be \$25 to \$500.

⁶ P.O.S. System. The P.O.S. System is subject to a minimum monthly fee based on the number of transactions generated (number of client members).

⁷ Initial Start-up Packages, Printing, Etc. Printing and graphics costs will vary depending upon location and the amount of initial stock of material that you have printed with your local FITNESS 1440 number. The printing and supply package must conform to the artwork and layout approved by FITNESS 1440 and includes business cards, flyers, contract forms, brochures, sales forms and invoices. For the sake of consistency of names, marks and quality control, the printing and supply package must conform to the artwork and layout approved by FITNESS 1440.

⁸ Legal and Accounting Fees. Legal and accounting fees may include forming your company and setting up its books and records. These estimates include monies needed to create the new Franchise Owner's business entity and to set up its books and records. The Franchise Agreement has considerable detail relating to the record keeping requirements. You will be required to keep accurate records of customer inquiries, sales, marketing activities, closeout sheets, payroll, and accounts payable in accordance with the standard accounting system described by FITNESS 1440 in the Manual.

⁹ Initial Inventory and Equipment Package. Your equipment, initial inventory, supplies and related items must be acquired and on hand prior to the location opening. We recommend leasing all equipment. Most lease companies will require first and last month's payment before delivering your equipment. We collect information about your operations electronically for business analysis and billing purposes and we require an approved Point of Sale or cash register system. The amount of this estimate for inventory and equipment is based upon a lease contract. Upon our approval, Conversion Franchisees may utilize existing fitness equipment.

¹⁰ Grand Opening. FITNESS 1440 requires that you hold an official grand opening in connection with the opening of your location. You must spend at least \$10,000 on grand opening marketing and promotion prior to and within the first three months of your franchised operations. Subject to the aforementioned minimum, the amount spent on a grand opening will vary from one market to another. FITNESS 1440 estimates that the grand opening expenditure will be from \$10,000 to

\$15,000.

¹¹ Initial Advertising/Marketing of Franchised Unit. You must spend \$4,000 per month during the first four months of operations (with a minimum expenditure of \$2,000 per month on social media marketing), then at least 6% of Gross Sales subject to a \$2,000 per month minimum expenditure on social media marketing. If you purchase a conversion franchise, the \$4,000 per month minimum during the first four months does not apply, but you must spend at least 6% of Gross Sales subject to a \$2,000 per month minimum expenditure on social media marketing. We reserve the right to change the type(s) of required advertising expenditure(s). The low-end of this estimate assumes spending the minimum required amount.

¹² Insurance and Membership Bonds. You are required to obtain insurance protecting FITNESS 1440, its officers, directors, shareholders, partners and employees and yourself against any loss, liability, personal injury, death, property damage or expense arising or occurring upon or in connection with your operations. You are required to name us as an additional insured on all such policies.

¹³ Additional Funds. We estimate that the initial phase covered by the “Additional Funds” estimate to be approximately 12 months. Additional funds are provided only as estimates and apply only to your initial 12 months of operations of your first franchise. The estimate does not include any amounts to cover your personal living expenses. The amounts of “Additional Funds” used in this Disclosure Document table are based upon estimates only and will vary for each franchised business. The estimates are based on our affiliate’s experience in opening and operating similar businesses.

¹⁴ Total. You should expect to incur these expenses for each separate franchise you purchase. The estimates do not include your obligations for ongoing fees under the Franchise Agreement.

Additional Notes: FITNESS 1440 does not offer financing of any of the initial investment. Except as provided in Item 5 above, fees you pay to us or our affiliates are non-refundable. Fees you pay to third parties may or may not be refundable depending upon the agreements you have with them.

ITEM 8: RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Required Purchases:

To ensure high quality and uniformity of product, you must purchase all exercise and spa equipment from approved suppliers in accordance with the standards and specifications we have established and as they are developed in the future. In addition, all items bearing our trademark, service marks and logos must be obtained only from our licensed suppliers. You are not authorized to create or obtain promotional materials, clothing, or promotional items or other items bearing our trademarks, service marks or logo(s). We reserve the right to designate a single source of supply for any item or service, which may include us and/or our affiliates.

You are required to purchase at least \$400 of approved garments and gear every month

during the term of the Franchise Agreement from our preferred vendor. We reserve the right to reasonably increase this minimum expenditure amount periodically. Such increases will be effective upon written notice to you.

You are required to utilize a billing and payment processing company selected by us for the recordation and processing of any and all payments received and derived from all sources, and which shall accurately reflect your Gross Sales.

We also require that you utilize an approved Point of Sale system(s) and computer program(s) in your operations, including specifically point of sale systems and programs which monitor your sales and management activities, membership records and participation data.

Any promotional items bearing our trade names, trademarks and logos that you use in your operation may only be obtained from our approved licensed suppliers.

Authorized Suppliers and Specifications:

Our criteria for approving suppliers are available to you. In the case of exercise equipment, you are not permitted to contract with alternative equipment line manufacturers unless they have been reviewed and approved by us. One of our criteria for selecting equipment manufacturers is to create uniform quality of equipment used in the franchise system. However, individual equipment will be reviewed if a proposal for use is provided to us. A decision will be made within 90 days of submission. We may withhold our approval at our sole discretion.

Except as otherwise provided in this Item if applicable, we and our affiliates do not currently act as approved suppliers. We and our affiliates reserve the right to do so in the future.

Unless we designate one or more mandatory suppliers, and except as otherwise provided in this Item, you may request our approval of an alternate supplier, manufacturer or distributor you propose. We may require you to give us sufficient information, photographs, drawings, samples, and other data to allow us to determine whether the items from these other sources meet our specifications and standards, as established from time to time. These specifications and standards will typically relate to quality, durability, value, composition, strength, finish and appearance, and the supplier's capacity and facility to supply your needs in the quantities, at the times, and with the reliability necessary for efficient operation. FITNESS 1440 may require an inspection of the supplier's facility and/or that samples from the supplier be delivered to FITNESS 1440 or to our independent consultant for testing. You or the supplier must pay the reasonable cost of the inspection and the actual cost of the testing. We will notify you of the approval or disapproval of any supplier you propose within 90 days of our receipt from you of your written request for approval and supporting documentation. We will have the right to grant or withhold our approval at our sole discretion.

FITNESS 1440 may re-inspect the facilities and products of the approved suppliers and to revoke its approval upon supplier's failure to continue to meet any of FITNESS 1440's criteria for standards and specifications. FITNESS 1440 in no way guarantees the performance of any approved supplier through its approved supplier program.

We estimate that your purchases from us, our designees, or suppliers we approve, or under our specifications, will be from 55% to 70% of the total purchases you make to establish your franchise. We estimate that your purchases from us, our designees, or suppliers we approve, or under our specifications, will be from 20% to 25% of the total purchases you make to operate your franchise.

You must set up your own accounts and payment arrangements with approved suppliers.

Purchasing and Distribution Arrangements and Cooperatives:

We attempt to negotiate purchase arrangements, including pricing terms, with suppliers. We do not have a purchase or distribution cooperative.

Site and Lease Approval:

You must select the site for the Premises. The site must meet applicable standards for environmental impact, demographic characteristics, traffic patterns, parking, predominant character of the neighborhood, competition from other businesses and the nature of such businesses, size, appearance, and other physical characteristics of the site, and any other factors we may consider relevant to approving or disapproving a site. Your lease or sublease of the Premises must have certain provisions described in the Franchise Agreement and be approved by us. If you want to purchase the site, you must submit the purchase agreement to us for our approval.

P.O. S. System:

FITNESS 1440 requires that you utilize a pre-approved Point of Sale System that is compatible with our recommended software. You may purchase any P.O.S. Systems or cash register, which has the capability of keeping your sales records as well as being compatible with the many credit card readers that are available to you. The P.O.S. System or cash register should include cash drawers, point-of-sale terminals, receipt printers, credit-card swipe readers, and other hardware, software and peripherals and related services.

Web Hosting/Editing:

We collect a required payment from you to cover web hosting and editing. We consolidate these payments into a lump sum and pay a third-party contractor to maintain and edit the FITNESS 1440 web presence and update the site as needed.

Insurance:

You must maintain at your own expense the insurance coverage that we periodically require from acceptable underwriters and brokers we have approved. Insurance policies are subject to our approval.

1. You must, at your own cost and expense, acquire and maintain at all times while you are a franchisee, with carriers satisfactory to us, sufficient insurance to adequately protect the respective interests of the parties, including your indemnity obligations under the Franchise Agreement. Specifically during the term of the Franchise Agreement, you must maintain in force policies of insurance with the following minimum limits of coverage for each Franchise:

- A. Broad form commercial general liability coverage, on an occurrence form (including premises and operations, products and completed operations, personal & advertising injury, broad form contractual, and employers liability) against claims for bodily injury, personal injury, including death, and property damage with minimum limits of not less than \$2,000,000 per occurrence and \$3,000,000 aggregate for each coverage;
- B. All risk property insurance including equipment breakdown for the full replacement cost sufficient to cover all business personal property including contents, leasehold improvements, furniture, fixtures, equipment, and signs;
- C. Loss of income including extra expense insurance with sufficient limits to cover all ongoing expenses, including, future profits, royalty fees, advertising contributions, ordinary payroll for competent personnel and other fixed expenses for a minimum of 24 months from the date of loss;
- D. Plate glass insurance (if applicable);
- E. Worker's compensation and employer's liability insurance in statutory amounts;
- F. Employment practices liability insurance with minimum limits of not less than \$1,000,000 per occurrence/aggregate;
- G. Unemployment insurance and state disability as required by governing laws;
- H. Business automobile liability, including bodily injury and property damage coverage for all owned, non-owned and hired vehicles, with limits of not less than \$1,000,000 for injuries to persons resulting from any one accident, and \$500,000 for property damage resulting from any one accident;
- I. Commercial umbrella liability insurance with limits not less than \$4,000,000 each occurrence. The umbrella liability will be on a following form basis of the underlying policies (commercial general liability, premises and operations, products and completed operations, personal and advertising injury, automobile and employers liability);
- J. Blanket employee dishonesty coverage with minimum limits of not less than \$50,000;
- K. Monies and securities (crime) coverage with limits of not less than \$10,000 inside limit and \$5,000 outside limit; and
- L. Cyber and privacy liability with minimum limits of \$25,000, including crisis management and data extortion expense.

2. You must also maintain such additional insurance as is necessary to comply with all legal requirements concerning insurance as well as any other insurance required by your landlord. We may periodically increase the amounts of coverage required under such insurance policies and require different or additional kinds of insurance at any time (upon 60 days' advance notice), including higher liability limits, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances.

3. Each insurance policy shall: (1) name franchisor and each of its affiliates, directors, agents and employees (as we may specify to you) as additional insureds (except for worker's compensation, employer's liability insurance, employment practices liability insurance, and other employer-related insurance coverage) on a primary, non-contributory basis and provide a waiver of subrogation rights against us; (2) provide for 30 days' prior written notice to us of any material modification, cancellation, or expiration of the policy; and (3) provide that coverage applies separately to each insured. In the case of property insurance, the franchisor parties must be named as their interests may appear. Insurance carriers must be authorized to do business in the state where your Franchise Premises is located, be rated at least A-X with A.M. Best and approved by us. At our discretion, we may require you to purchase your insurance from a specific insurance carrier. Upon request, you must provide us with proof of insurance in compliance with the Franchise Agreement.

Architect, Contractors and Construction:

You or your Landlord must prepare a site plan and plans and specifications adapting our standard plans and specifications to your approved location and to applicable laws and lease requirements and restrictions and market conditions.

You must hire an architect for work related to cosmetic design and layout of the interior space for your Franchise Premises in compliance with our design guide specifications and to acquire permitting for the construction to be performed at your location, etc. Your choice of architect is subject to our reasonable prior approval. The cost of your architect may vary widely based on your chosen site.

You and/or your Landlord must comply with all zoning, signage, seating capacity, parking requirements and storage requirements. Any material modification to the standard plans and specifications must be approved by us. You must obtain professional supervision, satisfactory to us, where applicable, for preparing the site layout and plan and over construction of the Premises.

Revenues Derived from Required Purchases and Leases:

We and our affiliate may derive revenue from providing products and services directly to our franchisees. During fiscal year 2020, neither we nor our affiliate received any such revenue.

As of the issuance date of this disclosure document, we receive rebates from approved suppliers of the following goods/services: billing, equipment, supplements, and clothing. These rebates are based on franchisee purchases and range from 5% to 7% of the purchase price.

We do not provide material benefits to you based upon your purchase of particular goods and services or use of designated or approved sources. However, to renew or transfer your franchise or purchase additional franchises, you must be in compliance with your Franchise Agreement, which includes compliance with supplier standards that are contained in our Operations Manual.

**ITEM 9:
FRANCHISEE'S OBLIGATIONS**

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

<u>Obligation</u>	<u>Section in Franchise Agreement (“FA”)</u>	<u>Disclosure Document Item</u>
a. Site selection and acquisition or lease	FA Section 1.1, 1.2 & 1.3	Items 6 & 12
b. Pre-opening purchases and leases	FA Sections 4.1, 5.1 & 8.2	Items 7 & 8
c. Site development and other pre-opening requirements	FA Sections 1.4, 3.1, 4.1 & 5.1	Items 7, 8 & 12
d. Initial and ongoing training	FA Sections 3.1, 3.2 & 3.3	Items 6 & 11
e. Opening	FA Sections 4.1 and 5.1	Item 11
f. Fees	FA Sections 2, 6.1, & 7.1	Items 5, 6 & 17
g. Compliance with standards & policies/Operations Manual	FA Sections 5 & 6.3	Items 11 & 17
h. Trademarks and proprietary information	FA Sections 1.1, 5.1, 5.3, 5.4, 5.5, 5.8, 5.9, 6.5, 9.2 & 9.10	Items 13, 14 & 17
i. Restrictions on products and services offered	FA Sections 1.1, 1.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.8, 5.9, 6.3, 6.5	Items 8, 12, 13, 16 & 17
j. Warranty and customer service requirements	FA Sections 5.1, 5.2, 5.5 & 5.14	Item 11
k. Territorial development and sales quotas	FA Sections 1.1 & 1.11	Items 7 & 12
l. Ongoing product & service purchases	FA Sections 2.11, 5.1, 5.2, 5.5, 5.10, 5.13 & 8.2	Items 7 & 8
m. Maintenance, appearance and remodeling requirements	FA Sections 1.4, 1.5, 5.1, 5.2, 5.5 & 6.5	Items 7, 11 & 17
n. Insurance	FA Section 8.2	Items 7 & 8
o. Advertising	FA Sections 2.5, 5.1, 5.2, 5.3, 5.4, 5.5 & 6.5	Items 9 & 11
p. Indemnification	FA Sections 6.7 & 8.1	Item 6
q. Owner's participation/management/ staffing	FA Sections 2.11, 3, 4.1, 5, 6.5, 6.7, 7, 9.3, 9.10, 9.12 & 9.14	Items 11, 15 & 17
r. Records and reports	FA Sections 2.9, 5.1, 5.2 & 5.5	Items 6, 11 & 17
s. Inspections and audits	FA Sections 2.10, 5.1, 5.2 & 5.5	Items 6, 11 & 17
t. Transfer	FA Section 7	Item 17
u. Renewal	FA Section 6.1	Item 17
v. Post-termination obligations	FA Sections 5.8, 5.9, 6.5, 6.6, 6.7, 9.9, 9.10	Item 17
w. Non-competition covenants	FA Sections 5.8, 5.9, 6.5, 6.6, 6.7, 9.9, 9.10	Item 17
x. Dispute resolution	FA Sections 9.7 & 9.8	Item 17

<u>Obligation</u>	<u>Section in Franchise Agreement</u> <u>("FA")</u>	<u>Disclosure Document Item</u>
y. Other: Personal Guaranty	FA Section 9.15 and Exhibit I	Item 15

**ITEM 10:
FINANCING**

We do not offer direct or indirect financing. We do not guarantee 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 Assistance:

Before you open your franchise, we will:

- 1) Approve or disapprove of proposed sites for the Franchise Premises and the lease for the Franchise Premises, if any. (Franchise Agreement, Section 1.3) The factors we may consider in approving proposed site selections include the following: general location and neighborhood; traffic patterns; parking; physical characteristics of existing buildings; lease terms; population density; and population demographics. However, we may choose to approve a site without conducting any such analysis. It is ultimately your responsibility to conduct such analysis as you deem necessary and appropriate. If we do conduct market analysis or other analysis related to a proposed site, you acknowledge and agree that any location we approve will be with the understanding that it only meets our minimum acceptable criteria based upon our general business experience. It is solely your responsibility to find a site that is acceptable to you (subject to our right of approval).
- 2) Designate your Franchise Territory. (Franchise Agreement, Section 1.1) The exact determination of the Franchise Territory will depend upon your approval and our market analysis, market penetration plans and franchise placement strategies. Among the factors we consider to determine the feasibility of possible franchise territories are population demographics and competition.
- 3) Provide initial orientation and training to you and your designated manager(s). (Franchise Agreement, Section 3.1)
- 4) Loan you a copy of the confidential Operations Manual. (Franchise Agreement, Section 5.1). The table of contents for our Operations Manual as of the date of this disclosure document is found in this Item 11 below.
- 5) Provide written standards and specifications regarding your equipment, fixtures, inventory, supplies, and décor (as applicable). (Franchise Agreement, Section 5.1)
- 6) Give you a list of approved or designated suppliers. (Franchise Agreement, Section 5.1)

We do not provide assistance with conforming your premises to local ordinances and building codes and obtaining any required permits, or hiring and training employees.

If requested, we may choose to provide reasonable advice and input related to your selection of a site for the Franchise Premises. You will pay for all our reasonable expenses related to any such requested services, including our travel and lodging expenses. Our rendering such services is based upon our availability. (Franchise Agreement, Section 1.3)

Opening

You will typically open your business operations within six to eight months after signing a Franchise Agreement. The factors that may affect this are the ability to obtain a lease; timing for leasehold improvements; timing for delivery of equipment from suppliers; timing for installation of equipment, fixtures and signs; local ordinances; and weather conditions. You must open for business within 12 months of signing the Franchise Agreement. If you do not open by this deadline, we will have the right to terminate your Franchise Agreement. Any delay must be approved by FITNESS 1440 in writing. (Franchise Agreement, Section 4.1).

Continuing Assistance:

During the operation of your business, we will:

- 1) Administer our advertising program and formulate and conduct national and/or regional promotion programs/activities with respect to any Advertising Fees we collect. (Franchise Agreement, Section 2.5).
- 2) Provide additional training to you upon your request and subject to our availability as described below. (Franchise Agreement, Section 3.2).

At our discretion, we may inspect the Franchise Premises and conduct activities to ensure compliance with the terms of the Franchise Agreement and Operations Manual to ensure consistent quality and service throughout our franchise system. (Franchise Agreement, Section 5.2).

At our discretion, we may inspect the facilities of your manufacturers, suppliers and distributors and notify you and the manufacturers, suppliers, and distributors in writing of any failure to meet our specifications and standards. (Franchise Agreement, Sections 2.11 and 5).

We may provide other supervision, assistance, or services, although we are not bound by the Franchise Agreement or any related agreement to do so. These may include, among other things, advertising materials, literature, additional assistance in training, promotional materials, bulletins on new products or services, and new sales and marketing developments and techniques.

Advertising and Promotion:

You must pay to us 2% of your total Gross Sales each month for the preceding month as an Advertising Fee. We will administer the funds we receive for Advertising Fees. We will direct all regional and national advertising programs with sole discretion over the creative ideas, materials, endorsements, placement and allocation of overhead expenses. We may use Advertising Fees to develop our brand through any medium we choose, such as print, online, other technologies, and public relations. We may use Advertising Fees for website updates and maintenance, marketing, advertising, social media maintenance and marketing fees, development of new technologies, and other expenses we deem reasonable at our sole discretion for development of the brand. We may use the Advertising Fees to maintain, administer, direct, prepare, and review national, regional, or local brand development activities and programs as we deem proper at our sole discretion.

For brand development, we may use an in-house advertising department or outside regional or national advertising agencies. We may provide to you advertising materials and point of sales aids for you to use in your local advertising and promotional efforts.

We are under no obligation to administer the use of Advertising Fees to ensure that expenditures are proportionate to contributions of franchisees for any given market area or that any franchise benefits directly or proportionately from brand development activities.

We may spend in any fiscal year an amount greater or less than the aggregate Advertising Fees collected from all franchisees in that year, and we may apply contributions to past expenditures and carry over any surplus or deficit to future years.

Our expenditures of Advertising Fees we collect are not audited. Upon reasonable request, we will make an accounting of the Advertising Fees available to you within 120 days after our next fiscal year end.

(Franchise Agreement, Section 2.6)

While advertising materials may note that franchises are available from us, no Advertising Fees are used for advertising that is principally a solicitation for the sale of franchises.

Our company or affiliate-owned Fitness 1440 operations offering products and services similar to our franchisees may or may not be required to pay Advertising Fees.

We may create an advertising council made up of franchisees selected by us or by vote of franchisees as we determine. We will have the power to form, change, or dissolve the advertising council. The council will serve in an advisory capacity only.

Summary of Advertising Fee Contributions and Expenses for Fiscal Year 2020

Expenses:	Administrative Expenses	\$0	0%
	Production	\$0	0%
	Media Placement	\$0	0%
Total expenses:		\$0	100%
Advertising fund contributions:		\$0	100%
Excess of expenses over contributions:		\$0	0%

In addition to your contributions to the Advertising Fund, each calendar month you must spend, at a minimum, an amount equal to 10% of your Gross Sales for the prior month or \$2,500, whichever is greater, on Franchisor-approved local advertising and promotion (including, for example, social media advertising and marketing campaigns). Upon our request, and no less than annually, you must provide to us proof that you have complied with this requirement. We reserve the right to direct the Billing Company to deduct the Local Advertising Expenditure from your account and to pay the funds directly to us or to our then-approved vendor(s) for social media advertising or other advertising in your market area at our discretion. (Franchise Agreement, Section 2.5)

You must advertise the franchise opportunity using the type(s) of advertising that we will designate. This may include, for example, prominently displaying in-store signage that advertises the franchise opportunity.

Advertising Approval / Webpage / Social Media

Promotional Materials and Local Advertising. We may provide to you an advertising packet with advertising templates we approve for you to use in your local advertising and promotional efforts. Otherwise, you will submit to us all advertising copy and other advertising and promotional materials before you use them in your local advertising program. You will not use any advertising copy or other promotional material until we approve it.

We have established and will maintain a website to advertise and promote our brand. We will provide you with a listing within our website. You must give us the information and materials we request to develop, update, maintain and modify the listing. You will not have the right to create an independent website that includes our Marks or promotes your franchise.

Your use of social media and other online mediums using our brand or promoting your franchise must be in strict compliance with our standards as outlined in our Operations Manual. Such online mediums include but are not limited to Facebook, Instagram, LinkedIn, Twitter, Wikipedia, YouTube, blogs, Yelp, Google, Trip Advisor, etc. We reserve the right to require you to get our prior approval of proposed venues and content for social media and other online mediums. We reserve the right to restrict or completely prohibit your use of social media and other online mediums using our brand or promoting your franchise (Franchise Agreement, Section 2.5)

Computer Systems:

You must purchase specific point of sale and back office hardware and software (collectively the “POS” system) from our designated supplier. The POS system is for transaction processing, accounting, communications, and record-keeping. We estimate the initial cost for your POS system to be between \$2,500 to \$5,000.

We are not obligated to provide ongoing maintenance repairs, upgrades or updates to this system. These will remain your responsibility and cost. Throughout the operation of your franchise, you may be required to update or upgrade your POS system as determined by us. There are no limitations imposed upon us as to the cost or frequency of these updates or upgrades. We estimate the costs of such repairs, upgrades and updates to be between \$250 and \$1,000 per year.

Our system does provide independent access to information generated on the POS system. This information will include the membership dues and payment data related to the collection of the same. We are not limited in our ability to access this information.

Web Hosting/Editing:

We collect a required payment from you to cover web hosting and editing. We consolidate these payments into a lump sum and pay a third-party contractor to maintain and edit the FITNESS 1440 web presence and update the site as needed.

Operations Manual:

A copy of the Table of Contents of the current Fitness 1440 Operations Manual as of the last fiscal year is attached hereto as Exhibit D. The Operations Manual is confidential and remains our property. It contains mandatory and suggested specifications, standards and procedures. We may modify the Operations Manual.

Mandatory Initial Training:

We make training available to you and up to one additional management level employee. You must attend and successfully complete training to FITNESS 1440's satisfaction prior to opening for business. Training shall consist of classroom and on-the-job training. We reserve the right to provide some or all of the training via webcast or other technology. The training sessions will take place within approximately 60 days before the opening of your Franchised Business. The training program will cover certain material aspects of the operation of the Franchised Business, including introduction and orientation to the System, financial controls, promotion and advertising methods, other marketing techniques, merchandising procedures, inventory control, service and operational techniques, retail systems and methods, deployment of labor, and maintenance of quality standards. You are responsible for all expenses incurred by you and your employees in attending such program, including, without limitation, travel, room and board expense, shall be the sole responsibility of Franchisee.

As of the issuance date of this disclosure document, our training instructor is Michael

Barry. He has been our Regional Manager since 2019. His experience in the subjects he teaches at training dates back to at least 2013. We may also use current or former franchise owners of a FITNESS 1440 franchise as instructors for training new owners. Minimum experience of current or former franchise owners conducting all areas of training is no less than five years. Instructors received their training as outlined above. The extent of training given in each subject area is determined by the instructor conducting the training and is based upon the experience of each franchisee.

The charge for the training program is included in your initial franchise fee. Any of your personnel expenses associated with attending the training program are fully and solely your responsibility.

The subjects covered during training and the duration of training are subject to change. The following table outlines our approximate training program as of the issuance date of this disclosure document.

TRAINING PROGRAM

(1) SUBJECT	(2) HOURS OF CLASSROOM TRAINING	(3) HOURS OF ON-THE-JOB TRAINING	(4) LOCATION
Concept Overview	1		At or near our headquarters (currently in Gilbert, Arizona)
Vendor Ordering and Equipment	2		
Staffing Overview and Duties	2		
Price Presentation Sheet	1		
Sales Philosophy and Process	2		
Operations Manual Review	6		
Marketing	2		
Effective Social Media Strategy	2		
Goal Setting	1		
Reports/Data	1		
On-the-Job Training to learn the sales process, computer software, customer service, and staff management		20	At a Fitness 1440 location we designate (typically at or near our headquarters)
TOTALS	20	20	

Training classes are held during the period immediately preceding the initial start-up of your business. We use the franchise operations manual as instructional material. You are responsible to pay the travel and living expenses of any persons (“enrollees”) attending on behalf of your organization. You and your management personnel must complete the training to our satisfaction, and it must be completed prior to your opening date. If we determine in our sole discretion that you are unable to satisfactorily complete the training program, we shall have the right to terminate the Franchise Agreement. Should this occur we shall return to you the Initial Franchise Fees paid minus the expenses incurred by us as of the date your training concluded, and other expenses incurred by us.

Additional Training:

Requested by You. At your option and upon not less than 30 days’ prior written notice to us, you may receive additional training at our headquarters or at other agreed upon locations. All expenses of this training will be borne by you, including your transportation, lodging, meals, compensation, and our reasonable costs and expenses including a reasonable training fee at our then-current rates. The duration and timing of this training is negotiable depending upon your needs and our availability.

Required or Offered by Us. We may provide refresher training programs or seminars and may require that you or your managers attend and complete them to our satisfaction. These programs and seminars will be held at locations we designate. We may charge a reasonable training fee at our then-current rates. You will be responsible for your transportation, meals and lodging, and wages for your employees.

Additional Training Required by Franchisor Based on Franchisee’s Deficiency. We may require you to participate in additional training if you breach the Franchise Agreement or fail to meet our standards and specifications in the opening or operation of your Franchise as we determine at our discretion. This training will typically be held at our headquarters or your location at our discretion. We will charge a reasonable training fee at our then-current rates. You will be responsible for your and our transportation, meals and lodging, and wages for your employees.

(Franchise Agreement, Section 3.2)

**ITEM 12:
TERRITORY**

You will be granted a business location within a specified territory (the “Franchise Territory”) described in the Franchise Agreement. The Franchise Territory will typically be a 2- to 5-mile radius from the center of the site location of the Franchise Premises. However, the Franchise Territory may vary in size and dimensions, based on population, growth trends, affluence of nearby population, topography, geography, density and demographics. One primary factor considered by us is the *potential member base*, which is the estimated number of potential members living or working within the franchise area and traveling by or near the proposed location. Sources from which population data may be derived include voters' registrations and demographic publications issued by the Chamber of Commerce.

We will grant you an exclusive territory. For purposes of this disclosure document, this means that as long as the Franchise Agreement remains in effect and you are not in breach or default of its terms, we will not do either of the following: (1) grant to any other person a franchise to conduct a health and fitness club licensed to use the FITNESS 1440's name or system of operation at any location within the Franchise Territory, or (2) establish a company-owned unit within the Franchise Territory. We reserve all other rights as further described below.

Neither the area nor the specific location of the franchise business premises may be changed without our prior approval, and the Franchise Territory may not be modified by us during the term of the Franchise Agreement without your consent. You may establish additional franchised outlets only upon the terms of a newly executed Franchise Agreement.

Development Area for Multiple Franchise Purchases

If you sign the Multiple Franchise Purchase Addendum to purchase multiple Franchises simultaneously, then we will designate a development area (the "Development Area") in which you will open your Franchises. We will grant you an exclusive Development Area. For purposes of this disclosure document, this means that as long as the Franchise Agreement and Multiple Franchise Purchase Addendum remain in effect and you are not in breach or default of any of their terms, we will not do either of the following: (1) grant to any other person a franchise to conduct a health and fitness club licensed to use the FITNESS 1440's name or system of operation at any location within the Development Area, or (2) establish a company-owned unit within the Development Area. We reserve all other rights as further described below.

Upon the opening of your last Franchise, or upon the deadline for opening your last Franchise, under your Development Schedule (described in the Multiple Franchise Purchase Addendum), your rights with respect to the Development Area will automatically terminate. If you do not comply with the Development Schedule, we will have the right to terminate your Development Area and any of your Franchise Agreements representing Franchises that have not yet opened for business. Thereafter, we and our affiliates will have the right to operate or grant to others the right to operate outlets within the Development Area. However, your Franchise Territory (defined above) for each of your operating unit Franchises will remain in force.

Rights We Reserve

We retain all rights not specifically granted to you in the Franchise Agreement. For example, we and our affiliates reserve the right to use other channels of distribution, such as the online sale of products, catalog sales, telemarketing, or other direct marketing sales, to make sales within your Franchise Territory using our principal trademarks or different trademarks. We may place FITNESS 1440 establishments in airports and other limited access environments in your Franchise Territory and regardless of the location of other FITNESS 1440 operations. We may place present and future FITNESS 1440 products for sale in retail outlets at any location, whether or not within the Franchise Territory or within close proximity to a FITNESS 1440 franchise.

The Internet is a channel of distribution reserved exclusively to us, and you may not independently market on the Internet or conduct e-commerce except as otherwise allowed by us in writing. We are not required to pay you for any such sales inside your Franchise Territory.

Marketing and Providing Services

We may provide you with referral members/customers through a national accounts system. You must service these customers according to the provisions in the FITNESS 1440 Manuals concerning national accounts. What constitutes a “regional account” or “national account” will be at our sole reasonable discretion. We may designate revenue sharing between us and the franchisee(s) that service(s) the account.

You must comply with policies in our Operations Manual regarding the handling and transferring of customer payments and customer memberships when members join one club but check-in at one or more other clubs (and other issues involving customers who deal with more than one club).

You may not advertise in any media whose primary circulation is outside the Franchise Territory, except with our prior written permission and the prior written consent of any of our franchisees whose territory is reached by that media. You may not use other channels of distribution (other than the right to offer and sell approved services and products from the Franchise Premises) to make sales outside or inside your Franchise Territory.

Neither we nor any affiliate operates, franchises, or has plans to operate or franchise a fitness club under a different trademark that sells or will sell goods or services similar to those you will offer. However, we reserve the right to do so.

Relocation

Any relocation of your franchised unit will be approved only at our sole discretion. Any relocation will be at your sole expense. You must satisfy our then-current franchise placement and demographics criteria as may be expressed in the Operations Manual.

No Right of First Refusal

You do not receive the option, right of first refusal, or any similar rights to acquire additional franchises.


Miscellaneous

Notwithstanding the foregoing, we may purchase or be purchased by, or merge or combine with, competing businesses, wherever located.

Continuation of your territorial rights and Franchise Territory is not dependent on meeting sales quotas or other requirements related to sales or growth of the business.

**ITEM 13:
TRADEMARKS**

We have registered the following principal marks with the U.S. Patent and Trademark Office (“USPTO”):

Mark	Registration Date	Registration Number
	June 11, 2019	5,773,997
FITNESS 1440	September 28, 2010	3,851,922
Target 24	March 17, 2015	4,703,620
Fit Number	April 28, 2015	4,726,719
1440	September 1, 2015	4,803,731

We have applied to register the following marks with the USPTO:

Mark	Application Date	Application Serial Number
TAN 1440	July 31, 2018	88059703
COLOR ME FIT	November 18, 2019	88696911

We claim common law rights to certain other marks, logos, designs, and/or slogans.

We have filed all required affidavits in respect to registrations of our principal marks with the USPTO. We plan to file all required registration renewals as they come due.

No other mark, name, logo or other commercial symbol of Fitness 1440 has been registered in any state in which the franchised business may be located.

You must use all Marks in full compliance with rules of trademark usage prescribed from time to time by us. You are not licensed to use any name containing the name "Fitness 1440", or any other proprietary mark in or as part of your firm or corporate name. You must use these names in the operation and promotion of your retail store.

There are no currently effective material determinations of the USPTO, Trademark Trial and Appeal Board, the trademark administrator of any state or court; pending infringement, opposition or cancellation proceedings; or pending material litigation involving our principal Marks.

There are no agreements currently in effect or contemplated that would significantly limit our right to use or license the use of our principal marks listed in this Item 13 in a manner material to the franchise.

You must report to us any unauthorized use of our Marks that may come to your attention

and to cooperate with us in preventing such unauthorized use at our request and expense. All proceedings shall be at our discretion and under our control. We are not contractually obligated to indemnify you for damages or expenses incurred, or to participate in your defense in any action involving a name, mark, or commercial symbol licensed by us to you.

We may change or discontinue any part of the Marks at any time in our sole discretion. You will modify or discontinue use of any franchise names or Marks, or will use one or more substitute names or marks, if we so direct in writing at any time. You will bear all costs and expenses that may be reasonably necessary because of these changes or modifications. Under no circumstances will we be liable to you for any damages, costs, losses, rights, or detriments related to any modification, discontinuance, or substitution. All obligations or requirements imposed upon you relating to the Marks will apply with equal force to any modified or substituted names or marks.

There are no infringing uses actually known to us that could materially affect your use of such trademarks, service marks, trade names, logotypes or other commercial symbols in this state or any other state in which the franchised business is to be located.

ITEM 14: PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

We do not own any patents or copyright registrations that are material to you. You do not receive the right to use an item covered by a patent or copyright registration, but you may use our proprietary property to operate the Franchised Business. FITNESS 1440 considers that various components of its business are proprietary in nature. The proprietary property includes Confidential Information. “Confidential Information” includes the FITNESS 1440 Operations Manual, equipment lists, customer information, training, promotion and marketing aids, business forms and procedures, informational bulletins and equipment, supply and inventory lists, and any knowledge, know-how, technologies, processes, techniques, and any other information that we designate as confidential, proprietary, or trade secrets or that is not readily available in the public domain through any breach of duty to us. Confidential Information includes your customer lists and accounts.

As required in the Franchise Agreement, you must agree to use our methods, procedures and Confidential Information only in conjunction with the operation of your health and fitness facility franchised and licensed under the Franchise Agreement, and to cease using them following termination of the Franchise Agreement.

The FITNESS 1440 Manual is described in Item 11. Although we have not filed an application for a copyright registration for the FITNESS 1440 Manual, we claim copyright in it and the information in it is proprietary.

You must promptly tell us when you learn about unauthorized use of our Confidential Information. We are not obligated to take any action but will respond to this information as we think appropriate. You may not make any demand against any alleged infringer, prosecute any claim or settle or compromise any claim by a third party without our prior written consent. In any defense or prosecution of any litigation relating to the copyrighted materials undertaken by us, you

must cooperate with us, execute any and all documents, and take all actions as may be desirable or necessary in the opinion of our counsel, to carry out such defense or prosecution. We need not indemnify you for losses arising from your use of our Confidential Information.

We do not know of any prior rights or infringing uses that could materially affect your use of our copyrighted materials.

We may change or discontinue any part of the copyrighted materials at any time at our sole discretion. You will modify or discontinue use of any copyrighted materials, or will use one or more substitute copyrighted materials, if we so direct in writing at any time. You will bear all costs and expenses that may be reasonably necessary because of these changes or modifications. Under no circumstances will we be liable to you for any damages, costs, losses, rights, or detriments related to any modification, discontinuance, or substitution. All obligations or requirements imposed upon you relating to the copyrighted materials will apply with equal force to any modified or substituted copyrighted materials.

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

The Franchise Agreement requires the manager's day-to-day on-site supervision. The manager must devote, on a full-time basis, his or her best efforts to managing and operating the Franchised Business. The manager must be the Franchise Owner unless we permit otherwise in our complete discretion by approving your identified manager or designee. The "Franchise Owner" is:

1. If the Franchisee is an individual or a sole proprietor, that individual;
2. If the Franchisee is a corporation, the individual who owns a majority of the voting and ownership interests in such corporation;
3. If the Franchisee is a partnership, any individual who is, or owns a majority of the voting and ownership interests in an entity that is a general partner of such partnership; or
4. If the Franchisee is a limited liability company, the individual who owns a majority of the voting and ownership interest in such limited liability company.

We do require that you, or your identified and acceptable on-site manager or designee, complete our training program, and that qualified management be at the franchise unit at all times. Furthermore, even if we permit your manager or designee as supervisor of day to day operations, it is essential that you spend substantial time in the actual, direct supervision of the business, and that a qualified manager be on-site at the franchised business unit premises during business hours. It is also the responsibility of management of the franchise to establish and maintain personnel and procedures to assure, through appropriate inspection and otherwise, that its facilities meet high standards of safety, sanitation, cleanliness, and service; that the premises and personnel present a generally pleasant appearance; and that all operations comply with all applicable local, state and/or

federal laws and regulations.

All of your owners must sign the Franchise Agreement directly or sign a Personal Guaranty in the form attached as Exhibit I such that they agree to be personally bound by, and personally liable for the breach of, each and every provision in the Franchise Agreement and its exhibits, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including but not limited to provisions related to confidentiality and non-disclosure of confidential information, non-competition, monetary obligations, dispute resolution, and indemnification. We do not require the owners' spouses to sign the Franchise Agreement or personal guarantees.

All of your owners must sign the Franchise Agreement directly or sign a Confidentiality and Non-Competition Agreement in the form attached as Exhibit J. To the full extent permitted by applicable law, your managers must sign confidentiality and non-competition agreements containing substantially the same protections as provided in relevant clauses in the Franchise Agreement. You are responsible for ensuring the adequacy and enforceability under local law of any sample form we provide in this regard.

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

You may sell only goods and services we have approved. You must agree also to operate the franchised FITNESS 1440 store in conformity with our business system, as established periodically by us and communicated in advance to you. Generally, modifications of the standard business and service format require our advance approval, as does the use of the franchised business premises for any purpose other than the operation of a FITNESS 1440 store. (See Item 8 of this Disclosure Document.)

You may not prepare or sell any products other than those from approved product lines unless you receive our prior written permission to do so. You must offer all products and services that we designate as required by our franchisees. We may modify our approved product line at any time and for any reason.

You may not advertise in any media whose primary circulation is outside the Franchise Territory, except with our prior written permission and the prior written consent of any of our franchisees whose territory is reached by that media. You may not use other channels of distribution (other than the right to offer and sell approved services and products from the Franchise Premises) to make sales outside or inside your Franchise Territory.

You must permit members from other Fitness 1440 locations to access your Franchise Premises and services in the same manner as your own members based on the appropriate type of membership.

You must adhere to our standards and specifications regarding membership formats, including membership names, types of memberships, the manners in which memberships are presented to members, etc.

All online marketing is part of our marketing programs described in the Operations Manual and defined in the Franchise Agreement, and must be coordinated through us and approved by us. You do not receive the right to sell products online.

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

THE FRANCHISE RELATIONSHIP

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

<u>Provision</u>	<u>Section in Franchise Agreement (“FA”) or Other Agreement</u>	<u>Summary</u>
a. Length of the franchise term	FA Section 1.1	10 years
b. Renewal or extension of term	FA Section 6.1	If you are in good standing, you may renew for periods of 10 years under the terms of our then-current Franchise Agreement forms that may have materially different terms and conditions than your original contract.
c. Requirements for franchisee to renew or extend	FA Section 6.1	“Renewal” means that you, upon the expiration of the original term of the Franchise Agreement, have the right to enter into a new agreement according to our then-current Franchise Agreement forms that may have materially different terms and conditions than your original contract. You must give notice at least three and not more than six months before expiration of the initial term; faithfully perform under the initial agreement; refurbish, remodel, and replace the Franchise Premises (if commercial location), fixtures, equipment, and signage to conform to the then-current Operations Manual and System standards; sign general release (subject to state law); sign a new agreement that may contain materially different terms and conditions from the original contract; pay a renewal fee; and go through retraining (if we require it).

<u>Provision</u>	<u>Section in Franchise Agreement ("FA") or Other Agreement</u>	<u>Summary</u>
d. Termination by franchisee	FA Section 6.2	Upon 30 days' notice only for material breach by us. However, if such breach cannot reasonably be cured within 30 days after delivery of notice of breach, then we must undertake within 10 days after delivery of such notice of breach and continue, until completion, efforts to cure such breach. Post-termination covenants still apply.
e. Termination by franchisor without cause	None	
f. Termination by franchisor with cause	FA Section 6.3	We can terminate only if you default. Any material violation or breach of the Franchise Agreement is deemed a material breach of any other franchise or other agreement between you and us. The non-breaching party then will be entitled to enforce the penalties of or to terminate the Franchise Agreement and any relevant addenda and any or all of such other Franchise Agreements.
g. "Cause" defined – curable defaults	FA Section 6.3.1	You have 30 days to cure any default not listed in Section 6.3.
h. "Cause" defined – non-curable defaults	FA Section 6.3.2	Bankruptcy and insolvency, abandonment, repeated default, misrepresentations, levy of execution, criminal conviction, noncompliance with laws, non-payment of fees, repeated under reporting of sales, disclosure of confidential information, violation of non-competition covenants, and other defaults listed in Section 6.3.2.
i. Franchisee's obligations on termination or nonrenewal.	FA Section 6.5 & 6.7	De-identification, return of manuals, release of phone numbers and listings, de-identification of your franchise equipment and premises, payment of sums owed, confidentiality, and non-competition.
j. Assignment of contract by franchisor	FA Section 7.1	There are no restrictions on our right to transfer.

<u>Provision</u>	<u>Section in Franchise Agreement ("FA") or Other Agreement</u>	<u>Summary</u>
k. "Transfer" by franchisee – defined	FA Section 7.1	Restrictions apply if you sell, transfer, assign, encumber, give, lease, or sublease (collectively called "transfer") the whole or any part of the Franchise Agreement, substantial assets of the franchise, or ownership or control of you.
l. Franchisor's approval of transfer by franchisee	FA Section 7.1	We have the right to approve all transfers.
m. Conditions for franchisor approval of transfer	FA Section 7.1	The transferee must qualify as a franchisee, assume your obligations, and successfully pay for and complete the mandatory training. You may not be in default, must sign a general release (subject to state law), and you or the transferee must pay the Transfer Fee. You or the transferee must refurbish, remodel, and replace the Franchise Premises (if commercial location), fixtures, equipment, and signage to conform to the then-current Operations Manual and System standards.
n. Franchisor's right of first refusal to acquire franchisee's business	FA Section 7.5	If you receive an offer, we will have the right to purchase on the same terms and conditions as offered to you, 30-day notice and right to decide.
o. Franchisor's option to purchase franchisee's business	FA Sections 6.5, 7.3 and 7.4	<p>You will give us the right of first purchase before soliciting offers from a third party if you choose to sell your franchise business. We will have the right of first purchase to purchase some or all of your franchise business assets upon expiration or termination of the Franchise Agreement. We will have the right of first purchase to purchase your franchise if a suitable transferee purchaser is not found within 180 days from the date of your death, disability or incapacity.</p> <p>Notwithstanding the foregoing, upon our termination of your Franchise Agreement based on your default, we shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30)</p>

<u>Provision</u>	<u>Section in Franchise Agreement (“FA”) or Other Agreement</u>	<u>Summary</u>
		<p>days after termination, to do the following (and you will have the following obligations):</p> <ol style="list-style-type: none"> 1. Because most or all equipment at the Franchise Premises is leased, and because significant assets of the Franchised Business are proprietary to us, such as signage and other items bearing the Marks and customer data, at our discretion we will have the right (but not the duty) to assume your interest in the Franchise, the Franchise Premises, and all related equipment, fixtures, signs, real estate leases, equipment leases and personal property without any obligation to make payment to you. 2. If we exercise our option described above, we will not assume any liabilities related to the Franchised Business or its assets (other than assumption of lease obligations from the date of assumption of the leases) as all such liabilities will remain with you. For example, you will have no further right and title to or interest in the Franchise Premises lease or equipment leases, but you will remain liable to the Franchise Premises landlord and equipment lessors for any past due rental payments or other charges. If we determine (at our sole discretion) to cure your past due rental payments or other charges, then you will remain liable to us for the same.
p. Death or Disability of franchisee	FA Section 7.3	Within 180 days, your heirs, beneficiaries, devisees or legal representatives may apply to continue to operate the franchise, or transfer Franchise interest.
q. Non-Competition Covenants During the Term of the Franchise	FA Sections 5.7 & 5.8	Subject to state law, you shall not disclose confidential information, divert business or customers, or compete.
r. Non-Competition Covenants	FA Sections 5.7, 5.8	Subject to state law, you will not divert

<u>Provision</u>	<u>Section in Franchise Agreement (“FA”) or Other Agreement</u>	<u>Summary</u>
After the Franchise is Terminated or Expires	& 6.7	<p>business or customers for a period of two years after expiration or termination of the Franchise Agreement.</p> <p>Subject to state law, no competition is allowed for two years within the Territory, within a 25-mile radius of the Territory, and within a 25-mile radius of any location or territory where we operate or have granted the franchise to operate a FITNESS 1440 business.</p>
s. Modification of the Agreement	FA Sections 5.5 and 9.7	We may modify the Operations Manual. Modifications to the language of the Franchise Agreement require the signed written agreement of the parties.
t. Integration/Merger Clause	FA Sections 5.1, 5.5, & 9.7	<p>Only the terms of the Franchise Agreement and Operations Manual are binding subject to state law. Any representations or promises outside of the Franchise Disclosure Document and other agreements may not be enforceable. Nothing in the Franchise Agreement is intended to disclaim the representations we made in the franchise disclosure document that we delivered to you.</p>
u. Dispute Resolution by Arbitration or Mediation	FA Section 9.8	Subject to state law, before taking any other legal action, the parties agree to mediate disputes.
v. Choice of Forum	FA Section 9.8	<p>Subject to state law, mediation and litigation must be in the county in which our headquarters are then located (currently Maricopa County, Arizona). Some states do not allow franchisees to give up their right to bring or defend lawsuits in the courts of their state. See the State Law Addendum to the Franchise Agreement and this disclosure document for state-specific addenda to this Item.</p>
w. Choice of Law	FA Section 9.8	Arizona law applies except as otherwise provided in the Franchise Agreement and subject to state law. See the State Law

<u>Provision</u>	<u>Section in Franchise Agreement (“FA”) or Other Agreement</u>	<u>Summary</u>
		Addendum to the Franchise Agreement and this disclosure document for state-specific addenda to this Item.

See the State Law Addendum attached to this disclosure document for additional disclosures required by specific states.

**ITEM 18:
PUBLIC FIGURES**

FITNESS 1440 has no arrangement of any kind with any public figures. There is no compensation or other benefit given or promised to a public figure for the use of a public figure in the name or symbol of the franchise or the endorsement or recommendation of the franchise by a public figure in advertisements. Furthermore, you do not have any right to use the name of a public figure or celebrity in your promotion of the Fitness 1440 franchise except with our advance written approval.

**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.

We do not make any representations about a franchisee’s future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Steven Beach, FITNESS 1440, INC., 870 East Williams Field Road, Gilbert, AZ 85295; phone number (724) 516-5824, the Federal Trade Commission, and the appropriate state and regulatory agencies.

**ITEM 20:
OUTLETS AND FRANCHISEE INFORMATION**

Table No. 1				
System-wide Outlet Summary				
For years 2018, 2019 and 2020				
Column 1	Column 2	Column 3	Column 4	Column 5
Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2018	25	29	+4
	2019	29	31	+2
	2020	31	35	+4
Company Owned	2018	2	1	-1
	2019	1	3	+2
	2020	3	3	0
Total Outlets	2018	27	30	+3
	2019	30	34	+4
	2020	34	38	+4

Table No. 2		
Transfers of Outlets from Franchisees to New Owners		
(Other than the Franchisor) for years 2018, 2019 and 2020		
Column 1	Column 2	Column 3
STATE	YEAR	NUMBER OF TRANSFERS
Florida	2018	1
	2019	0
	2020	0
Georgia	2018	2
	2019	1
	2020	2
Tennessee	2018	0
	2019	0
	2020	1
Totals	2018	3
	2019	1
	2020	3

Table No. 3
Status of Franchised Outlets
For Years 2018, 2019 and 2020

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired by Franchisor	Col. 8. Ceased Operations- Other Reasons*	Col. 9 Outlets at End of Year
AL	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
AZ	2018	0	0	0	0	0	0	0
	2019	0	1	0	0	0	0	1
	2020	1	4	0	0	0	0	5
CA	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	1	0
	2020	0	0	0	0	0	0	0
CO	2018	1	0	0	0	0	0	1
	2019	1	1	0	0	0	1	1
	2020	1	0	0	0	0	0	1
FL	2018	5	0	0	1	0	1	3
	2019	3	0	0	0	0	1	2
	2020	2	0	0	0	0	1	1
GA	2018	4	2	0	0	0	0	6
	2019	6	2	0	0	0	0	8
	2020	8	2	0	0	0	1	9
IN	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
MS	2018	0	0	0	0	0	0	0
	2019	0	1	0	0	0	0	1
	2020	1	0	0	0	0	0	1
MA	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	1	0
	2020	0	0	0	0	0	0	1
NJ	2018	0	0	0	0	0	0	0
	2019	0	0	0	0	0	0	0
	2020	0	1	0	0	0	1	0
OR	2018	5	1	0	0	0	0	6
	2019	6	0	0	0	1	0	5
	2020	5	0	0	0	0	0	5
PA	2018	4	0	0	1	0	0	3
	2019	3	0	0	0	0	0	3
	2020	3	1	0	0	0	1	3
TN	2018	1	3	0	0	0	0	4
	2019	4	0	0	0	0	0	4
	2020	4	0	0	0	0	0	4
TX	2018	1	1	0	0	0	0	2

Table No. 3 Status of Franchised Outlets For Years 2018, 2019 and 2020								
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8.	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons*	Outlets at End of Year
	2019	2	2	0	0	0	0	4
	2020	4	0	0	0	0	0	4
Totals	2018	25	7	0	2	0	1	29
	2019	29	7	0	0	1	4	31
	2020	31	8	0	0	0	4	35

* Column 8 includes franchises that were mutually terminated by agreement of the parties.

Table No. 4 Status of Company-Owned Outlets For Years 2018, 2019 and 2020							
Col. 1	Col. 2	Col. 3	Col. 4	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of Year
Oregon	2018	1	0	0	0	1	0
	2019	0	0	1	0	0	1
	2020	1	0	0	0	0	1
Arizona	2018	0	0	0	0	0	0
	2019	0	1	0	0	0	1
	2020	1	0	0	0	0	1
Virginia	2018	1	0	0	0	0	1
	2019	1	0	0	0	0	1
	2020	1	0	0	0	0	1
Totals	2018	2	0	0	0	1	1
	2019	1	1	1	0	0	3
	2020	3	0	0	0	0	3

Table No. 5			
Projected Openings			
As of December 31, 2020 (Through December 31, 2021)			
State	Franchise Agreements Signed but Outlet Not Opened	Projected New Franchised Outlet in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Arizona	1	0	1
Colorado	1	0	0
Florida	1	0	0
Wisconsin	1	0	0
Wyoming	1	0	0
Totals	5	0	1

A listing of names and addresses of all franchises under Franchise Agreements with us as of December 31, 2020, is attached as Exhibit B.

A list of the names, city, state, current business telephone, or if unknown, the last known home telephone number of every franchisee who has had their franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under their Agreement during fiscal year ending December 31, 2020 is attached at Exhibit B-1. There are no franchisees who have not communicated with FITNESS 1440 within ten weeks of the disclosure document issuance date.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with our franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you. For example, some former franchisees have signed mutual termination and release agreements that prohibit the former franchisees from disparaging us, our brand, or our franchise system. We also sign agreements with current and former franchisees that include confidentiality clauses that protect our intellectual property and our proprietary information. The confidentiality clauses in these agreements may also relate to specific negotiated franchise agreement terms and conditions.

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

There are not any trademark-specific franchisee organizations associated with the franchise system being offered which we have created, sponsored, or endorsed.

There are not any independent franchisee organizations that have asked to be included in this disclosure document.

**ITEM 21:
FINANCIAL STATEMENTS**

Attached to this Disclosure Document as Exhibit E are our audited financial statements as of our fiscal year end dated December 31, 2018, December 31, 2019, and December 31, 2020. Our fiscal year end is December 31.

Also attached are our unaudited financial statements as of March 31, 2021. The attached unaudited 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. Since they have not been audited they do not reflect the corrections or adjustments an audit might require.

**ITEM 22:
CONTRACTS**

The following agreements are attached as Exhibits:

Exhibit C	Standard Franchise Agreement (and Attachments)
Exhibit F	Form of General Release
Exhibit G	SBA Addendum to Franchise Agreement
Exhibit H	Franchise Agreement and FDD State Law Addendum
Exhibit I	Personal Guaranty
Exhibit J	Confidentiality and Non-Competition Agreement

**ITEM 23:
RECEIPTS**

Our copy and your copy of the Franchise Disclosure Document Receipt are located on the last two pages of this Disclosure Document as Exhibit M.

EXHIBIT A
LIST OF STATE AGENTS FOR SERVICE OF PROCESS AND
APPLICABLE STATE AGENCIES

Listed below are the names, addresses and telephone numbers of the state agencies having responsibility for the franchising disclosure/registration laws as well as any state agencies that are also our Agent for Service of Process as indicated:

STATE	AGENCY	AGENT FOR SERVICE OF PROCESS, IF DIFFERENT
California 1-866-ASK-CORP	Commissioner of Financial Protection and Innovation Los Angeles 320 West 4th Street, Suite 750 Los Angeles, CA 90013 Sacramento 2101 Arena Boulevard Sacramento, California 95834-2036 San Diego 1455 Frazee Road, Suite 315 San Diego, CA 92108 San Francisco 1 Sansome Street, Suite 600 San Francisco, CA 94104	
Hawaii	Commission of Securities 335 Merchant Street, Room 203 Honolulu, HI 96813	Commissioner of Securities 335 Merchant Street, Room 203 Honolulu, HI 96813
Illinois	Franchise Division Office of Attorney General 500 South Second Street Springfield, IL 62706	
Indiana	Franchise Section Indiana Securities Division Secretary of State, Room E-111 302 W. Washington Street Indianapolis, IN 46204	Administrative Office of the Secretary of State 201 State House Indianapolis, IN 46204
Maryland	Office of Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202-2021	Maryland Securities Commissioner 200 St. Paul Place Baltimore MD 21202-2021
Michigan	Consumer Protection Division Antitrust and Franchise Unit Michigan Department of Attorney General 670 G. Mennen Williams Building 525 West. Ottawa Lansing, MI 48933	
Minnesota	Commissioner of Commerce	

STATE	AGENCY	AGENT FOR SERVICE OF PROCESS, IF DIFFERENT
	Minnesota Department of Commerce 85 7 th Place East, Suite 500 St. Paul, MN 55101-2198	
New York	New York State Department of Law Bureau of Investor Protection and Securities 120 Broadway, 23rd Floor New York, NY 10271	Secretary of State State of New York One Commerce Plaza 99 Washington Avenue Albany, NY 12231-0001
North Dakota	Office of Securities Commissioner 600 East Boulevard Avenue State Capital 5 th Floor Bismarck, ND 58505-0510	North Dakota Securities Department 600 East Boulevard Avenue State Capital 5th Floor Dept 414 Bismarck, ND 58505-0510
Oregon	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, OR 97310	
Rhode Island	Division of Securities Department of Business Regulations Bldg. 69, 1st Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, RI 02920	
South Dakota	Department of Labor and Regulation Division of Securities 124 S Euclid, Suite 104 Pierre, SD 57501	
Virginia	Ronald W. Thomas, Administrator State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, VA 23219	Clerk of the State Corporation Commission 1300 East Main Street, 1 st Floor Richmond, VA 23219
Washington	Department of Financial Institutions Securities Division PO Box 9033 Olympia, WA 98507	Department of Financial Institutions Securities Division 150 Israel Road SW Tumwater, WA 98501
Wisconsin	Securities and Franchise Registration Division of Securities 4th Floor 345 W. Washington Avenue Madison, WI 53703	

EXHIBIT B

**FITNESS 1440, INC.
LIST OF FRANCHISED OUTLETS
(As of December 31, 2020)**

ALABAMA	
John Lemak 2801 Allison-bonnett Memorial Drive Hueytown, AL 35023 (205) 744-3333	
ARIZONA	
Crossover Fitness LLC Contact: 1020 W Southern Ave Mesa, AZ 85210 (480) 464-6380	Jeremy McDaniel 13437 N Litchfield Rd Surprise, AZ 85379 (623) 215-4563
Michael Hermann 1927 N Gilbert Rd Mesa, AZ 85203 (714) 227-5898	Michael Hermann 740 S Cooper Rd Gilbert, AZ 85233 (714) 227-5898
Michael Hermann 4658 S Higley Rd Suite 101 Gilbert, AZ 85297 (714) 227-5898	
COLORADO	
Matt Mauch 651 Mitchell Way Erie, CO 80516 (720) 480-9649	
FLORIDA	
Blaise Defrances 2930 South McCall Road, Unit A Englewood, FL 34224 (941) 681-2767	
GEORGIA	
James Williams 4949 Lanier Islands Parkway Buford, GA 30158 (770) 945-1004	Norma Shipp 1609 Milstead Rd Conyers, GA 30012 (770) 285-6335
Brandon Wilkinson HERO FIT GEORGIA LLC 4075 Charles Hardy Parkway, #137 Dallas, GA 30157 (404) 360-4190	Dwayne Hampton 816 Walnut Square Blvd, Suite E Dalton, GA 30721 (615) 568-4265

Lee A. Davis and Eronie Etienne RED SPRING ENTERPRISES LLC 3908 Winder Highway Flowery Branch, GA 30542 (678) 267-1096	Mo Makkani Allied International LLC 1880 Braselton Hwy. Lawrenceville, GA 30043 (678) 910-6881
GACO FITNESS LLC Byron Gatewood 2745 Sandy Plains Road Marietta, GA 30066 (678) 744-2853	Robbie Warren 294 Racetrack Rd. McDonough, GA 30252 (678) 770-5255
Marcus Heflin 126 Goodview Way Gallatin, TN 37066 (615) 642-7047	
INDIANA	
Ben and Amanda Wisler 2012 E. Tipton St. Seymour, IN 47274 (812) 524-2582	
MISSISSIPPI	
Flint Minshew 1201 US 49, Suite 26 Richland, MS 39218 601-397-6130	
OREGON	
Nathaniel Bamford 1569 NE 2 nd Street Bend, OR 97701 (541) 389-2009	Coty and Catherine Richardson 2101 Bailey Hill Road Eugene, OR 97405 (541) 844-1643
Travis and Jenny Strong Forest Grove Fitness 1440, LLC 2329 Pacific Ave. Forest Grove, OR 97116 (503) 746-7819	Qile Lakey Clubone, Inc. 2225 South Main Rd. Lebanon, OR 97355 (541) 258-1983
Mac Brookman 3853 SW 21st St. Redmond, OR 97756 (541) 504-6050	
PENNSYLVANIA	
Jim Shaw 58 Glocker Way Pottstown, PA 19465 (732) 331-3027	Rob Wagner Body Mechanics Fitness Systems 2, LLC 2580 Constitution Blvd. Beaver Falls, PA 15010 (724) 581-5200
Greg Edens 3627 & 3629 E. Market St.	

York, PA 17402 (717) 855-2305	
TENNESSEE	
Beast Mode Investment Group, LLC Contact: Dwayne Hampton 4110 N. Mt. Juliet Rd. Mt. Juliet, TN 87122 (615) 642-7047	Nelson Boren 411 Metroplex Dr. Nashville, TN 37211 (615) 454-6401
Rob Henger and Brian Weeks 190 University St. Martin, TN 38237 (731) 281-4171	Nelson Boren 61 E. Thompson Ln. Nashville, TN 37211 (615) 454-6401
TEXAS	
Stephanie Downing 103 W. Loop 281 Longview, TX 75605 (903) 663-8998	Jordyn and Jacob Walker 9910 W Loop 1604 N #117 San Antonio, TX 78254 (210) 643-9616
Al Gonzalez 6600 N Mesa St., Suite 200 El Paso, TX 79912 (915) 543-0111	Chris Deleon 4001 Sunset Dr. Suite 1230 San Angelo, TX 76904 (830) 370-5572

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

FITNESS 1440, INC.
LIST OF COMPANY-OWNED OUTLETS*
(As of December 31, 2020)

Name	Address	Phone Number
Phoenix 1440, Inc. Contact: Steve Beach	870 East Williams Field Road Gilbert, AZ 85295	(724) 516-5824
SJK, Inc. Contact: Steve Beach	30 N. Hwy 101 Warrenton, OR 97146	(503) 861-0688
Scott Wohl	570 Celebrate Virginia Pkwy. Fredericksburg, VA 22406	(540) 752-7643

* Owned and operated by us, our affiliates, one or more of our owners, individuals listed in Item

2 of the Franchise Disclosure Document, or entities owned by such individuals.

Following is a list of franchisees who had signed Franchise Agreements but had not yet opened for business as of December 31, 2020:

Name	Address	Phone Number
John Weidner	Scottsdale, AZ	952-250-1642
Jeremy McDaniel and Robert Wassell	Brighton, CO	303-913-8816 and 720-560-4225
Peter Fernandez	Tampa, FL	813-240-5885
JP Kinder	Sterling Ponds Corporate Park 3552 Casey St. River Falls, WI 54022	612-206-1820
Harbans Singh Hans	Rock Springs, WY	307-575-4936

EXHIBIT B-1

LIST OF FRANCHISED OUTLETS WHO HAVE LEFT THE SYSTEM

The following is a list of franchisees who had an outlet terminated, cancelled, transferred, not renewed or otherwise voluntarily or involuntarily ceased to do business under a franchise agreement during the most recently completed fiscal year or who had not communicated with us within 10 weeks of the Disclosure Document issuance date. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

Michael Carnevale and Jillian Gilbert
Plantation, Florida
(954) 584-1081

Ricardo Valeus
Cumming, Georgia
(770) 896-3131

Natalie and Rob Kumar
Livingston, New Jersey
(862) 222-5189

Tom Acosta
Delmont, Pennsylvania
(724) 461-7124

Transferred to New Owners:

Ricardo Valeus
Flowery Branch, Georgia
(770) 896-3131

Jason Alles
Marietta, Georgia
(404) 207-3748

Marcus Heflin
Mt. Juliet, Tennessee
(615) 642-7049

EXHIBIT C

**FITNESS 1440, INC.
FRANCHISE AGREEMENT**

FITNESS 1440, INC. FRANCHISE AGREEMENT

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FRANCHISE AGREEMENT

This Franchise Agreement (this “**Agreement**”) has been entered into effective _____ (the “**Effective Date**”). It is by and between FITNESS 1440, INC., a Pennsylvania corporation (“**Franchisor**”, “**we/us**” or “**FITNESS**”) and _____ and _____ (jointly and severally “**Franchisee**” or “**you**”).

RECITALS

A. For purposes of this Agreement “you” may include an individual, corporation, partnership, limited liability company or other legal entity. “You” includes any corporation, partnership, limited liability company, individual, combination of individuals, or other legal entity that owns a majority interest of you, or in which you own a majority interest. The term “you” will include all persons who succeed to your interest by transfer or by operation of law.

B. We have certain rights to, have registered in various jurisdictions, and intend to continue to develop names, trademarks, service marks, logos, commercial symbols, and styles. These include, but are not limited to, FITNESS 1440® and related logos (the “**Marks**”). We own valuable goodwill and have valuable expertise, Confidential Information (defined below), methods, procedures, techniques, uniform standards, operations manuals, inventory control guidelines, systems, layouts, merchandise, and materials (the “**System**”). These are connected with the establishment and operation of businesses that offer specialty health and fitness clubs to the public under the Marks.

C. As a franchisee, you are in an independent contractor relationship with us. You independently own and operate your Franchise. While we establish standards and recommendations for desired outcomes to protect our systems and brand, as an independent contractor franchisee, you generally determine the means to accomplish such outcomes. You are responsible for the day-to-day operation of your Franchise.

D. You desire us to train you and to authorize you to operate a high-caliber FITNESS 1440 franchise and to use our System and Marks. We are willing to grant you such a franchise on the terms and conditions set forth in this Agreement.

AGREEMENT

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1 GRANT OF FRANCHISE AND FRANCHISE TERRITORY

1.1 Grant of Franchise and Franchise Territory. We grant to you, and you accept from us, the right to use the Marks, the System, and merchandise bearing the Marks, for ten (10) years from the date of this Agreement (the “**Franchise**”). This grant is solely for the operation by you of one FITNESS 1440 Franchise at an authorized location (the “**Franchise Premises**”) in a designated territory (the “**Franchise Territory**”). The Franchise Premises and Franchise Territory will be designated in Exhibit 1.

1.1.1 Franchise Territory. So long as this Agreement is in force, and you are not in default in any material provision, and except as otherwise provided in this Agreement, we will not establish or license to or allow others to establish any business of the type franchised to you under this Agreement using the Marks and the System within the Franchise Territory without your prior written consent. However, we may

purchase or be purchased by, or merge or combine with, competing businesses, wherever located.

1.1.2 **Marketing Within Territory.** Except with our prior written permission, you shall not offer or sell products or services from any location other than the Franchise Premises. While you may solicit prospective customers outside of your Franchise Territory, you may not place advertisements or otherwise solicit customers in the franchise territory of another FITNESS 1440 franchisee or company-owned outlet. This includes, but is not limited to, internet, catalog sales, telemarketing or other direct marketing. You may not advertise in any media whose primary circulation is outside the Franchise Territory, except with our prior written permission and the prior written consent of any of our franchisees whose territory is reached by that media.

All internet marketing is part of our marketing programs described in the Operations Manual and defined in the Franchise Agreement, and must be coordinated through us and approved by us. You shall not acquire an independent internet domain name or website.

1.1.3 **Additional Locations.** You may not establish or operate any other FITNESS 1440 establishment without executing a separate Franchise Agreement for that operation. Among other things, we may require as a condition to our approval of your purchase of an additional franchise that you sign a general release in a form we prescribe, following applicable law, to release us from any claims you may have against us.

1.1.4 **Co-Branding.** Some FITNESS 1440 franchises may be placed at a location where another, separate business is operated under another business name. If the Franchise Premises is at that type of location, it will be deemed “co-branded” for the purposes of this Agreement. If the Franchise Premises is located in a co-branded location, the exact basis and calculation of gross revenue will follow the requirements and procedures we outline in the Operations Manual. If the Franchise Premises is in a co-branded location, you will obtain and keep, or make arrangements for us to have access to, a complete and accurate set of books and records of the operation of all businesses operated at and all business done through the co-branded location, although Gross Sales will be limited to FITNESS 1440 related receipts. If the Franchise Premises is located in a co-branded location, we may enter upon the Franchise Premises at reasonable times to interview co-branded partners and to inspect and copy any books, records and documents related to the co-branded location in order to verify your compliance with the terms of the Franchise Agreement. The Operations Manual may contain additional information about co-branded locations.

1.2 **One Location for Franchise.** You will operate the Franchise only at the Franchise Premises. If not determined when this Agreement is executed, you are responsible for selecting the site for the Franchise Premises within the Search Area defined in Exhibit 1 and in accordance with this Agreement.

1.3 **Assistance in Site Location.**

1.3.1 You are solely responsible for finding a location for the Franchise Premises that is acceptable to you (subject to our approval). If you request assistance in selecting a site for the Franchise Premises, we may (but are not required to) provide reasonable assistance in finding a location acceptable to you. If requested, you will pay for all reasonable out-of-pocket expenses related to any such site selection assistance, including travel and lodging expenses we incur to help you locate sites. Any on-site assistance is subject to our availability. You will bear all other site selection and lease negotiation expenses.

1.3.2 We may choose to approve a site without conducting any analysis. It is ultimately your responsibility to conduct such analysis as you deem necessary and appropriate. If we do conduct market

analysis or other analysis related to a proposed site, you acknowledge and agree that any location we approve, and any lease we approve, will be with the understanding that it only meets our minimum acceptable criteria based upon our general business experience. Neither we nor any of our employees have special expertise in selecting sites; we make no representations that your Franchise will be profitable or successful by being located at the approved Franchise Premises. Any site recommendation or approval we make is not a representation that any particular site is available or legally appropriate for use as a franchise site. It is your responsibility to investigate all applicable zoning, licensing, leasing and other requirements for any proposed site. You must ensure that the site you select complies with these requirements.

1.3.3 The location for the Franchise Premises must meet our minimum square footage requirements and comply with standards outlined in our Operations Manual.

1.3.4 We will have no liability with respect to the selection or approval of a location or any lease for the Premises, nor liability with respect to any site recommendations we make.

1.3.5 Before you enter a lease or purchase agreement for the Franchise Premises, you will submit the lease or purchase documents to us for approval. However, you acknowledge that you are responsible for reviewing and determining the appropriateness and desirability of the lease. Lease documents must include the Lease Addendum attached in Exhibit 2 or include substantially similar provisions at our discretion. You will deliver to us a true copy of the lease and any additions or amendments to it promptly after they are executed.

1.3.6 If we cure any breach by you under the lease or sublease, the total amount of all costs and payments we incur in effecting the cure will be immediately due and owing by you to us.

1.4 **Franchise Development.**

1.4.1 You will be responsible to furnish and equip the Franchise. We will furnish to you a schedule of equipment packages for the Franchise. Any modifications you propose must be approved in writing by us. All approvals will be solely within our discretion to maintain a uniform image consistent with FITNESS 1440 franchise system concepts.

1.4.2 You will comply with the standards and specifications we establish for design, layout, fixtures, furnishings, and equipment, among other things. Modifications or variations require our prior written consent.

1.4.3 You will comply within a time we deem reasonable with any requirement we impose to modify the layout, furnishings, fixtures, and equipment.

1.4.4 All equipment will conform to our equipment specifications. We may require reasonable changes in or additions to equipment. If we require any changes in or additions to equipment, you will modify, replace or add to your existing equipment at your sole expense.

1.4.5 You or your landlord must prepare a site plan and plans and specifications adapting our standard plans and specifications to your approved location and to applicable laws and lease requirements and restrictions and market conditions. You and/or your landlord must comply with all zoning, signage, seating capacity, parking requirements and storage requirements. Any material modification to the standard plans and specifications must be approved by us. You must obtain professional supervision, satisfactory to us, where applicable, for preparing the site layout and plan and over construction of the Franchise Premises.

1.4.6 You must hire an architect for work related to cosmetic design and layout of the interior space for your Franchise Premises in compliance with our design guide specifications and to acquire permitting for the construction to be performed at your location, etc. Your choice of architect is subject to our reasonable prior approval. The cost of your architect may vary widely based on your chosen site.

1.5 **Relocation of the Franchise.** You will not relocate the Franchise Premises without our prior written approval. Any relocation will be at your sole expense. This Agreement will govern your operations at any replacement Franchise Premises. Relocation will be subject to the following conditions:

- A. You are not in breach of this Agreement;
- B. You evidence to our satisfaction your ability to obtain and commence operations at the new location within a time we deem reasonable after you vacate the original location;
- C. You develop, furnish, and equip, at your sole expense, the new location according to our then-current specifications and standards;
- D. You pay all reasonable out-of-pocket expenses we incur because of the relocation. In this Agreement, "Franchise Territory" and "Franchise Premises" will include the new location;
- E. You sign a general release of claims against us; and
- F. You satisfy our then-current franchise placement and demographics criteria.

1.6 **Existence of Divergent Forms of Franchise Contracts.** You acknowledge that we have offered franchises to others in the past the terms of which may have varied materially from those set forth in this Agreement.

1.7 **Rights We Reserve.** We retain all rights not specifically granted to you under this Agreement. We retain the right, in our sole discretion and without granting any right to you:

A. to use or license the use of the Marks or any other trademarks, service marks, logos or commercial symbols to anyone, and for any purpose, and at any location (subject only to your Territorial protections described in Section 1.1.1 above entitled "Franchise Territory").

B. to sell products or services anywhere, including within the Franchise Territory, using the Marks or different marks, through channels of distribution other than the FITNESS 1440 franchise granted to you by this Agreement. We will have no obligation to compensate you for any such sales made within your Franchise Territory. For example, we may place FITNESS 1440 establishments in airports and other limited access environments in your Franchise Territory and regardless of the location of other FITNESS 1440 operations. We may place present and future FITNESS 1440 products for sale in retail outlets at any location, whether or not within the Franchise Territory or within close proximity to a FITNESS 1440 franchise.

C. to reserve the exclusive right to use the internet to promote the Marks and to offer and sell products and services related to our Marks. You may not independently market on the internet or conduct e-commerce except as otherwise allowed by us in the Operations Manual.

D. to locate FITNESS 1440 company-owned and franchised locations anywhere outside of your Franchise Territory.

1.8 **Pricing.** FITNESS is not obligated to develop specific pricing arrangements with suppliers. FITNESS shall have the right to establish minimum and maximum pricing on the goods and services you sell through the Franchise to the extent permitted by applicable law. Also, FITNESS may from time to time provide information concerning suggested retail prices. Nothing contained herein shall be deemed a

representation by FITNESS that the use of prices within the ranges required or suggested by FITNESS will in fact optimize profits.

2 PAYMENT OF FEES AND OTHER FINANCIAL REQUIREMENTS

2.1 **Initial Franchise Fee.** The Initial Franchise Fee is \$39,000 and is payable upon signing this Agreement. The Initial Franchise Fee is paid in consideration of our sales expenses, administrative overhead, return on investment, and start-up costs related to the execution of this Agreement and the opening of the Franchise and for our lost or deferred opportunity to sell franchises in the Franchise Territory to others. The Initial Franchise Fee is deemed earned upon receipt and is non-refundable under any circumstances.

2.2 **Royalty Fee.** You will pay to us the greater of 6% of your Gross Sales or \$2,495 each month for the preceding month as a “**Royalty Fee.**” The precise timing and method of payment for the Royalty Fee will be as described in our Operations Manual.

2.3 **Advertising Fee.** You will pay to us 2% of your total Gross Sales each month for the preceding month as an “**Advertising Fee.**” The precise timing and method of payment for the Advertising Fee will be as described in our Operations Manual.

2.3.1 Advertising Fee payments are in addition to and exclusive of any sums that you may decide to spend on local advertising and promotion. We have sole discretion over the creative ideas, materials, endorsements, media, placement, and allocation of monies related to use of the Advertising Fee.

2.3.2 You recognize the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the FITNESS 1440 system and the System. We may use all contributions and any earnings from the Advertising Fees we receive from you in local, regional, national, internet, or international advertising for:

- A. maintaining, administering, researching, directing, preparing and placing advertising and promotional activities (including, among other things, the costs of preparing and conducting internet pay-per-click campaigns; social media marketing; television; radio; magazine and newspaper advertising campaigns; public relations programs and press releases);
- B. marketing research and development;
- C. marketing surveys and public relations activities;
- D. development and maintenance of any internet or e-commerce programs;
- E. marketing materials;
- F. decor and promotional materials;
- G. artwork;
- H. advertising services;
- I. training related to marketing, customer service and sales augmentation;
- J. production and distribution of periodic newsletters to provide you with industry news, suggestions, and advice on franchise operations;
- K. maintaining and updating our website; and
- L. our reasonable salaries, accounting, collection, legal and other costs related to all of the above.

Our internal artwork, advertising, promotion and newsletter production costs and associated administrative costs are paid from the Advertising Fees. These will be calculated at our cost as established from time to

time.

2.3.3 We will use your Advertising Fees to place advertising in geographic areas, in media, at times and using products and services we deem to be in the best interest of our franchisees and our franchise system.

2.3.4 We may spend in any fiscal year an amount greater or less than the aggregate Advertising Fees collected from all franchisees in that year, and we may apply contributions to past expenditures and carry over any surplus or deficit to future years.

2.4 **Collection of Client Payments and Remittance of Fees.**

2.4.1 You must use a billing and payment processing company ("**Billing Company**") we designate to process all payments received and derived from all sources (including client payments) in connection with your Franchise. You agree that the Billing Company has the right to automatically deduct from your account and pay to us any and all fees and payments required of you under this Agreement. This includes but is not limited to the Royalty Fee and Advertising Fee, which will be deducted from your account on or before the 10th day of each month (or such other timing as we may specify) during the term of Franchise Agreement. The Billing Company may be affiliated with us or may be a company in which we or our owners otherwise have ownership or control. The Billing Company will have the right to pass on to you the merchant processing costs and fees, and the Billing Company's reasonable fees, associated with processing your clients' payments.

2.4.2 We reserve the right to change how client payments are collected and how you are required to make payments under this Agreement. For example, we reserve the right to require payments by automatic account withdrawal or other automatic processes. If we attempt a draw or other process that is returned unsatisfied for any reason, we may charge you a \$50 fee for each unsatisfied attempt.

2.5 **Advertising Standards.**

2.5.1 **Your Obligation to Advertise Locally.** In addition to your obligation to pay Advertising Fees to us, each calendar month you shall spend, at a minimum, an amount equal to ten percent (10%) of your Gross Sales for the prior month or \$2,500, whichever is greater, on Franchisor-approved local advertising and promotion (including, for example, social media advertising and marketing campaigns) (the "**Local Advertising Expenditure**"). Upon our request, and no less than annually, you must provide to us proof that you have complied with this requirement.

We reserve the right to direct the Billing Company to deduct the Local Advertising Expenditure from your account and to pay the funds directly to us or to our then-approved vendor(s) for social media advertising or other advertising in your market area at our discretion.

Franchisee shall advertise the franchise opportunity using the type(s) of advertising that Franchisor shall designate. This may include, for example, prominently displaying in-store signage that advertises the franchise opportunity.

2.5.2 **Approval of Your Local Advertising.** We may provide to you an advertising packet with advertising templates we approve for you to use in your local advertising and promotional efforts. Otherwise, you will submit to us all advertising copy and other advertising and promotional materials, public relations programs and press releases, radio and television advertising, and specialty and novelty items, before you use them in your local advertising program. You will not use any advertising copy, public

relations program, press release or other promotional material until we approve it. Your failure to conform to our provisions or requirements and subsequent non-action by us to require you to cure or remedy your failures and defaults will not be deemed a waiver of future or additional failures and defaults by you under this provision or any other provision of this Agreement.

2.5.3 Our Website. We have established and will maintain a website to advertise and promote our brand. We will provide you with a listing within our website. You must give us the information and materials we request to develop, update, maintain and modify the listing. Subject to the terms of use on our website, we may gather, develop and use in any lawful manner information about any visitor to the website, including your customers, franchisees or prospective franchisees regardless of whether they were referred to you via the website or were otherwise in contact with you. We retain the right to approve any linking or other use of our website.

2.5.4 Your Online Activities.

A. You will not have the right to create an independent website that includes our Marks or promotes your franchise.

B. Your use of social media and other online mediums using our brand or promoting your franchise must be in strict compliance with our standards as outlined in our Operations Manual. We reserve the right to require you to get our prior approval of proposed venues and content for social media and other online mediums. We reserve the right to restrict or completely prohibit your use of social media and other online mediums using our brand or promoting your franchise.

C. Any domain name, site, address, account, and other online platform or presence you create or use in connection with your Franchise will be at your expense, but we will be deemed to own the rights to them. Upon termination or expiration of this Agreement for any reason, at our discretion, you must take all action, and sign all documents, necessary to transfer all ownership rights and control of all such domain names, sites, addresses, accounts, and other online presence to us.

D. At your sole expense, you will maintain and update as needed all computer systems and services necessary to access the internet and any intranet or similar communication system we establish in the manner we require. You are required to have high-speed internet service to your business where you will be able to access downloads from us of advertising materials, operations manual revisions, training materials, and system news, and other communications.

2.5.5 Internal Communications Systems. You must use any intranet or other online communications systems we establish or designate. You must use such system(s) in the manner we require. You understand and agree that we may elect to provide certain assistance, deliver information and materials, or otherwise communicate with you via such system(s).

2.5.6 Trademark and Copyright Notices. You will use the Marks in strict conformity to the Operations Manual, and will include in any advertisement, or promotional materials which use the Marks, trademark notices as are required by the Operations Manual. All copyrighted materials we supply to you or otherwise used by you in connection with the Franchise will contain copyright notices as required by the Operations Manual.

2.5.7 Establishment of Advertising Programs. At any time, we will have the right to create or modify advertising regions for the purpose of establishing regional advertising, marketing and promotional programs. We will promptly notify you and our other franchisees, of the establishment, modification and

geographical boundaries of regional advertising regions. We may require all franchisees located within each geographic region to meet periodically for the purpose of creating and establishing regional advertising programs. Each franchise unit, and each unit we own and operate, will be entitled to one vote at these meetings. For the purpose of this subsection, each unit we own will be deemed to be a franchise.

If at any meeting of the franchisees in an advertising region, 75% of the franchisees vote to contribute to a regional advertising program, all franchisees within that region will be obligated to make a contribution to a regional advertising fund in the amount established by the vote (the "**Regional Advertising Fund**"). No advertising region may require any franchisee in that region to make a contribution to a Regional Advertising Fund in excess of 2% of that franchisee's Gross Sales.

Each Regional Advertising Fund will be administered pursuant to standards and procedures outlined in the Operations Manual by representatives elected by each region, at a meeting we call for this purpose.

2.5.8 Regional or National Accounts. We may provide you with referral members/customers through a national accounts system. You must service these customers according to the provisions in the FITNESS 1440 Manuals concerning national accounts. What constitutes a "regional account" or "national account" will be at our sole reasonable discretion. We may designate revenue sharing between us and the franchisee(s) that service(s) the account.

2.5.9 Limited-Time Offers. In national or regional advertising programs, we may include "suggested retail prices" or offer price-specific limited-time offers for the goods or services sold by you and our other franchisees. We will include within all such advertising the phrase "available at participating locations only" or other cautionary language to advise the consumer that the prices may not be adhered to by all our franchisees.

2.5.10 Discount Programs. We may develop and market special discount or free coupon programs. You will have the right, but not the obligation, to participate in these programs. We will notify you of the creation and provisions of a discount or coupon program. Within five days after receipt of the notice, you will advise us whether or not you wish to participate in that program. If you notify us that you wish to participate, you will adhere to all provisions of the program. If you elect to be excluded from a program, we will have the right to advise consumers, by advertising, sales solicitation or otherwise, that you are not a participant. You will not be entitled to the benefits of that program. We will establish the discount or coupon programs in our sole discretion, and will not have any obligation to consult or confer with you or any other of our franchisees with respect to the nature, content or amount of any discount or coupon established pursuant to any program. Except as otherwise required by law, any discount or coupon programs or other promotions you desire to offer will be subject to our prior written approval (which we may withhold at our discretion).

2.5.11 Grand Opening. FITNESS 1440 requires that you hold an official grand opening in connection with the opening of your Franchise Premises. You must spend at least \$10,000 on grand opening marketing and promotion prior to and within the first three months of your franchised operations. Subject to the aforementioned minimum, the amount spent on a grand opening will vary from one market to another.

2.6 "Gross Sales" Defined. "**Gross Sales**" means all receipts generated by the Franchise from any source, including sales, exchanges, services, any other type of remuneration, gift, barter of products or services, charity, payment in kind, or any other benefit or value that is received or deferred to be received, and excludes discounts, refunds, and sales taxes. Credit transactions will be included in Gross Sales as of

the date of the transaction without deduction for uncollected credit accounts. The proceeds from any business interruption insurance you receive will be included in Gross Sales.

2.7 You Will Pay Taxes and Indebtedness.

2.7.1 You will pay all taxes, assessments, liens, encumbrances, accounts, and other debts, regardless of their nature, assessed against you, the Franchise Premises, or inventory, materials, fixtures, and equipment used in the Franchise. Payment will be made when due and before delinquent except when being contested in good faith by appropriate proceedings. If we are charged with any tax by the authorized taxing authority of any state or political subdivision, including taxes on sales made to or licenses granted to you, or sales made by you in the Franchise Territory, you will pay these taxes. You will pay to us promptly and when due the amount of all sales taxes, personal property taxes and similar taxes imposed upon, required to be collected, or on account of collection by us of the Initial Franchise Fee, the Royalty Fee, or any other payments you make to us pursuant to this Agreement.

2.7.2 You acknowledge that one of the benefits accruing to you and all of our other franchisees is the economy of mass purchasing power made available through us. Your failure to pay or repeated delay in making prompt payment in accordance with the terms of the invoice or statements rendered to you for payments due, or misdirection of supplies or other abuses will result in a loss of credit standing and goodwill and a loss of benefits derived to us and other franchisees using the System. You expressly agree to promptly make all product purchase payments on invoices and statements rendered to you in accordance with the terms of the invoices and statements and to make timely remittances of rent as required on your lease.

2.8 Set-Offs and Late Charges.

2.8.1 You will not set off any claim for damages or money due to you from us against any payments to be paid by you to us under this Agreement or any related agreement between the parties. No endorsement or statement on any check or payment of any sum less than the full sum due from you to us will be construed as an acknowledgment of payment in full or as an accord and satisfaction. We will have the right to accept any check or payment without prejudice to our rights to recover the balance due or to pursue any other remedy available to us.

2.8.2 A late charge will be added to any sums to be paid under this Agreement that remain unpaid after the date due. The late charge will equal 1.5% per month. In addition, late payments will be subject to a late payment penalty of 5% of the amount due. These late charges and late payment penalties will not exceed any limits placed upon late charges and late payment penalties by applicable local laws.

Our acceptance of late charges will not constitute a waiver of the breach created by your non-payment of any amount when due. Notwithstanding the payment of any late charges, we may exercise any rights or remedies granted by this Agreement upon your breach or any rights or remedies otherwise granted by law.

Nothing contained in this Agreement obligates us to accept any payments after due or to commit to extend credit to or otherwise finance your operation of the Franchise. You acknowledge that failure to pay all amounts when due will constitute grounds for termination of this Agreement.

2.8.3 Upon your failure to pay us as and when due, we may, at our election, deduct the unpaid sums from any monies or credit we hold for your account. You agree that you will not withhold payment of any amounts due to us on the grounds of any alleged non-performance by us, or in the event of any dispute or a claim by you, or for any other reason whatsoever.

2.8.4 If you fail to pay as and when due any obligation to us, our affiliates, or any supplier or service provider, equipment lessor, real property landlord, utility provider, government entity, or any other person or entity in connection with your operation of the franchise, then we may direct the Billing Company to deduct from your account and pay amounts owed plus interest and penalties as directed by such person or entity. Notwithstanding the foregoing, we will not direct the Billing Company to pay your employees as it is solely your responsibility to pay your employees properly. You hereby release us and the Billing Company from any liability associated with us directing the Billing Company to make such deductions from your account.

2.9 **Records and Reports.**

2.9.1 You will keep a complete and accurate set of books and records of the operation of the Franchise, produce monthly financial statements in accordance with generally accepted accounting principles and practices for each calendar month and furnish copies of these statements to us within 30 days after the end of each quarter (or more frequently upon our request).

2.9.2 You will furnish to us as outlined in the Operations Manual, an itemized report of the Gross Sales for the prior month. This report must be certified by you to be true and correct. The report will be in the form and will include such supporting documentation as we may reasonably demand. All Royalty Fees, Advertising Fees and any other fees due based upon the Gross Sales for the preceding month will accompany the report (unless otherwise provided in the Operations Manual).

2.9.3 You will keep records of all business done and Gross Sales received through the Franchise. These records will include, but are not limited to, order sheets, sales and rental agreement forms, daily sales summaries, tax returns, financial statements, and invoices. You will date, file in consecutive order, retain for a period of five years, and make available to us for inspection and audit all of your records. Without limiting the foregoing, you must send us copies of your tax returns and any other records upon our written request.

2.9.4 Our right to inspect will include the right to examine your books, tax returns and records of other businesses owned, in whole or in part, or operated by you to determine whether all revenue to be reported by you has been properly reported and that appropriate fees and contributions have been paid. We may establish a uniform list of accounts and a uniform bookkeeping system for all of our franchisees. You agree to maintain your books and records in the manner we require.

2.9.5 You will submit to us a list of all shareholders, members, partners or other owners of the franchise business and the respective interests held by each as of the end of each fiscal year. Provided, however, if your shares are publicly traded, the list of shareholders required will include only those owning 5% or more of the shares outstanding. The required report will be submitted to us within 90 days after the end of your fiscal year.

2.9.6 If Franchisee fails, for any reason, to timely deliver to Franchisor any required report with all required information, Franchisor is authorized, without further notice, to assess Royalty Fees and Advertising Fees for each relevant month and effect an electronic funds or other transfer of such funds calculated as the greater of (a) Franchisee's average monthly Royalty Fees and Advertising Fees over the prior twelve months (or shorter period if Franchisee has been in operation for less than 12 months) or (b) the average monthly Royalty Fees and Advertising Fees of all similar franchisees within Franchisee's region as defined by Franchisor. Franchisee hereby authorizes Franchisee's bank to make such transfers upon Franchisor's request. No action taken under this sub-paragraph shall constitute a cure of any breach by Franchisee, an election of remedies by Franchisor or act, in any way, to limit Franchisee's liability to

pay fees under this Agreement.

2.10 **Audits.** We may audit your reports, books, statements, business records, cash control devices, and tax returns at any time during normal business hours. Audits will be conducted at our expense unless you understate the Gross Sales for any reported period or periods by more than 2% or unless you fail to deliver any required report of Gross Sales or any required financial statement in a timely manner. In the event of an understatement or failure to deliver, you will reimburse us for all audit costs. These will include, among other things, the charges of any independent accountant and the travel expenses, room, board, and compensation of our employees incurred in connection with the audit. You will immediately pay all Royalty Fees, Advertising Fees, all other fees and late payment charges that the audit determines are owed (which we may deduct from payments we or our designated Billing Company collect from your clients). These payments will not prejudice any other remedies we may have under this Agreement or by law. Our right to audit will include the right to examine the books, tax returns and records of other businesses that you own or operate, in whole or in part, to determine whether all revenue to be reported by you has been properly reported and that appropriate fees and contributions have been paid.

2.11 **You are to Pay all Franchise Costs.** All the costs of the Franchise, including opening and operating costs, will be your sole obligation. We will have no other costs, liability or expense whatsoever with respect to your opening and operation of the Franchise. You will not use or employ the Marks in performing any activity or incurring any obligation or indebtedness in a manner that could result in making us liable for them.

2.12 **Application of Payments.** We have the right, in our sole discretion, to apply any payment from you to any past due indebtedness you owe to us or our affiliates, whether from monthly fee payments, purchases, late payment charges, or for any other reason. This section will apply regardless of how you may designate a particular payment is to be applied.

2.13 **Gift Cards and Loyalty Cards.** Franchisee shall sell or otherwise issue gift cards or certificates (together “**Gift Cards**”) and loyalty cards (“**Loyalty Cards**”) that have been prepared utilizing the standard form of Gift Card and Loyalty Card provided or designated by Franchisor, and only in the manner specified by Franchisor in the Operations Manual. Franchisee shall fully honor all Gift Cards and Loyalty Cards that are in the form provided or approved by Franchisor regardless of whether a Gift Card or Loyalty Card was issued by Franchisee or another franchisee. Franchisee shall sell, issue, and redeem Gift Cards and Loyalty Cards in accordance with procedures and policies specified by Franchisor in the Operations Manual, including those relating to procedures by which Franchisee shall request reimbursement for Gift Cards and Loyalty Cards issued by other franchisees and for making timely payment to other operators of FITNESS 1440 outlets for Gift Cards and Loyalty Cards issued by the Franchisee.

2.14 **Technology Fee.** You shall pay to us a monthly Technology Fee of two hundred and ninety-nine dollars (\$299.00) per month for technology such as maintenance and updates to our central website, proprietary software applications (if developed), and other technology. This fee is subject to reasonable increases at our discretion. The precise timing and method of payment for this fee will be as described in our Operations Manual.

3 **TRAINING**

3.1 **Mandatory Training.**

3.1.1 We will provide a mandatory training course for you and the Franchise manager you choose (if applicable). Training shall consist of a training and familiarization course with classroom training

at or near our headquarters (currently in Gilbert, Arizona) and approximately two days of on-the-job training at a FITNESS 1440 club at a location we will designate (typically at or near our headquarters currently in Gilbert, Arizona). We reserve the right to provide some or all of the training via webcast, pre-recorded videos, or other technology. This training course will cover various aspects of the operation of the Franchise, which may include topics such as financial controls, marketing techniques, service methods, and maintenance of quality standards.

3.1.2 The training sessions will take place typically within the 60-day period immediately preceding the opening of your Franchise for business. You and your manager (if applicable) must complete the course before opening the Franchise for business. Training is scheduled and held on an “as needed” basis depending on the number of franchisees requesting training in a particular time frame and our training personnel’s availability.

3.1.3 You must complete this mandatory training program to our exclusive satisfaction or we may terminate this Agreement. You are encouraged to participate in the training before incurring any costs or expenses related to the planned opening of the Franchise. We will not be liable for any costs or expenses you incur if we terminate this Agreement because you fail to satisfactorily complete the mandatory training course. The precise timing and method of payment for the Royalty Fee will be as described in our Operations Manual.

3.1.4 You will pay the transportation, board and lodging expenses you and your manager incur related to this training. Training and training materials may be delivered in the formats or media we choose (which may include digital and online media). You will participate in and pay for the costs of training, including costs of computer equipment and internet services needed to participate.

3.1.5 If the Franchise is managed by any persons other than you, you will notify us of these managers. Each manager you hire must complete the mandatory training program before assuming management duties (this training program will be conducted by us or by you in accordance with our specifications, at our discretion). You will bear all costs of the training, including a reasonable training fee at our then-current rates. Each of your employees will complete a training program under the direction of you or your designated manager who has successfully completed our mandatory training course. At all times, your franchise must be operated and supervised by an individual who has completed our mandatory initial training program.

3.2 **Additional Training**

3.2.1 **Requested By You**. At your option and upon not less than 30 days’ prior written notice to us, you may receive additional training at our training center or at other agreed upon locations (subject to our availability). The timing and duration for this training is negotiable and depends upon your needs and our availability. All expenses of this training will be borne by you, including your transportation, lodging, meals, compensation, and our reasonable costs and expenses including a reasonable training fee at our then-current rates. You will not receive any compensation for services rendered by the trainee during this or any other training.

3.2.2 **Required or Offered by Us**. We may provide refresher training programs or seminars and may require that you or your managers attend and complete them to our satisfaction. These programs and seminars will be held at locations we designate. We may charge a reasonable training fee at our then-current rates. You will be responsible for your transportation, meals and lodging, and wages for your employees.

3.2.3 **Additional Training Required by Franchisor Based on Franchisee’s Deficiency**. We may

require you to participate in additional training if you breach this Agreement or fail to meet our standards and specifications in the opening or operation of your Franchise as we determine at our discretion. This training will typically be held at our headquarters or your location at our discretion. We will charge a reasonable training fee at our then-current rates. You will be responsible for your and our transportation, meals and lodging, and wages for your employees.

3.2.4 Who Will Provide Training. We may provide training through our staff and/or one or more designees or third-party service providers, which may include, for example, qualified franchisees, master franchisees, and/or representatives of our approved suppliers.

4 COMMENCEMENT OF OPERATIONS

4.1 Opening Deadline.

4.1.1 You must commence full and continuous operation of the Franchise within twelve (12) months of the Effective Date (the “**Opening Deadline**”).

4.1.2 Before commencing operations, you must (1) complete to our exclusive satisfaction the mandatory training program described above; (2) have your initial manager (if applicable) complete the training program; (3) find a site for the Franchise Premises acceptable to you and approved by us; (4) procure all necessary licenses, permits and improvements and purchase initial equipment, supplies and inventory (as applicable); and (5) get our written consent to open.

4.1.3 If you do not open by the Opening Deadline, then we may terminate this Agreement.

4.2 Real Property Security Assignments. If you own the Franchise Premises, you will not mortgage, pledge, or otherwise assign as security the premises during the term of this Agreement without our prior written approval. Upon termination or expiration of this Agreement, you will give us a reasonable and good faith opportunity to lease the Franchise Premises and to continue business operations there. The fair value of and fair terms for the lease and for all related equipment, fixtures, signs, equipment leases and personal property will be determined by appraisal as provided in Section 7.6 (entitled “Appraisals”).

5 FRANCHISE STANDARDS OF OPERATION

5.1 Operations Manual.

5.1.1 Operations Manual. The development of the System is an important and beneficial aspect of the relationship you want to have with us. We agree to lend to you a copy of the Operations Manual (the “**Operations Manual**”) once you have paid to us the Initial Franchise Fee, in full. In general, the Operations Manual is intended to establish standards and recommendations for outcomes to protect our systems and brand while giving you the flexibility, as an independent contractor franchisee, to determine the means to accomplish such outcomes. You are responsible for the day-to-day operation of your Franchise.

The Operations Manual describes the System, which may include specifications, standards, operating procedures, accounting and bookkeeping methods, marketing ideas, equipment requirements and control techniques, plans, specifications, and requirements, public relations guidelines and other rules that we may prescribe periodically and identify as part of the Operations Manual.

5.1.2 Formats of Operations Manual. The Operations Manual includes materials in whatever form (including electronic) we provide to you that describe the guidelines, advice, and requirements

regarding the operation of your franchise, including user manuals and related instruction materials. It includes amendments, supplements, and new documents made and identified by us as part of the Operations Manual. The Operations Manual may be delivered to you by hard paper copy; digital copy; videos; or by any other medium we choose at our discretion.

5.1.3 Confidentiality of Operations Manual. The Operations Manual is and will remain confidential and our exclusive property. You will not disclose, copy or duplicate any part of the Operations Manual for any reason. You agree to return to us the Operations Manual and any updated or amended pages immediately upon written demand. Nothing in this Agreement may be construed as an incorporation of the terms of the Operations Manual or as making the Operations Manual part of this Agreement. The Operations Manual, in part, may consist of confidential:

- A. manual or manuals;
- B. any Intranet or password protected portion of an internet site;
- C. any other embodiment of the System, including notices of new standards and procedures; and
- D. any amendments, supplements, derivative works, and replacements.

5.1.4 Amending Operations Manual. We may amend the Operations Manual, including changes which may affect minimum requirements for your franchise operations. At all times you will ensure that your copy of the Operations Manual and any other manuals given to you are kept current and up to date with the amendments and updates we provide to you. In the event of any dispute as to the contents of the Operations Manual, the terms of our master copies maintained at our principal place of business will be controlling.

You will strictly adhere to the requirements of the Operations Manual as we amend it periodically. You will implement immediately all changes at your cost unless we otherwise specify. We reasonably may restrict you from producing, stocking, and selling certain services and goods as may be specified in the Operations Manual.

5.1.5 Forms and Templates and Your Compliance with Laws. To the extent we provide you forms and templates for you to use in the operation of your Franchise (in the Operations Manual or otherwise), such forms and templates are provided as samples only (unless expressly stated otherwise in this Agreement or the Operations Manual). It is solely your responsibility to ensure that all forms, templates, handbooks, documents and agreements you use in the operation of your Franchise are appropriate for their intended purposes and comply with all applicable laws. It is your responsibility to consult with your own independent lawyer and other professional advisors for more information. This is especially important with respect to employment-related matters. We shall not be responsible or liable for your use of forms and templates we provide to you. The indemnities described in Section 8.1 shall include Claims related to or arising from your use of such forms or templates.

5.2 Standards to Be Maintained. You will follow the System and maintain standards of product and service that we prescribe.

5.2.1 You will operate the Franchise in a clean, orderly, and respectable manner in strict compliance with this Agreement and the Operations Manual. You will only use signs, equipment, materials, products, inventory, and services that conform to our specifications to conduct the franchise.

5.2.2 If you maintain any signs at the Franchise Premises, these signs must comply with local sign ordinances, regulations and laws and must be approved by us.

5.2.3 We may enter the Franchise Territory at reasonable times to verify your compliance with the terms of this Agreement. Without limitation, we may do the following:

- A. Inspect the Franchise;
- B. Observe your operation of the franchise business for any consecutive or intermittent periods we deem necessary;
- C. Select items, products and other materials, services, equipment, operations and supplies for test of content and evaluation purposes to make certain that they are satisfactory and meet our quality control provisions and performance standards;
- D. Interview your personnel, customers, and vendors;
- E. Inspect and copy any books, records and documents related to the operation of the franchise and any other franchise information we may require; and
- F. Use mystery shopper evaluators at your Franchise Premises and within your Franchise Territory.

If any inspection of your Franchised Premises by us or our designee indicates any deficiency or unsatisfactory condition at the Franchised Premises, then we may notify you in writing of the deficiencies and you must promptly correct, remedy or repair such deficiency or unsatisfactory condition. In addition, if any inspection indicates any deficiency or unsatisfactory condition that requires a re-inspection of the Franchised Premises, you shall pay us, upon demand, the sum of \$500 for each re-inspection of the Franchised Premises and shall, in addition, reimburse us for our out-of-pocket expenses for the re-inspection, including for transportation costs, food, lodging and similar expenses.

You and anyone acting as your agent will cooperate fully with us and our agents in connection with these inspections, observations, and interviews. You expressly waive any rights of privacy or confidentiality you have with your personnel, customers, and vendors in reference to these inspections, observations and interviews. Despite the foregoing, our reviews and inspections of your operations do not replace your duty to supervise your own business operations and workers.

5.2.4 You will comply with all applicable ordinances, regulations, bylaws, laws, and statutes. You will not permit unlawful activities in the Franchise and will not sell, exchange, offer, hold, show, rent, or permit to be sold, exchanged, offered, held, shown, or rented any material or service you know or reasonably suspect to have been obtained in violation of law or to be otherwise illegal.

5.2.5 You will secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchise and will operate the Franchise in full compliance with all applicable ordinances and regulations, including all government laws and regulations relating to occupational hazards and health, EEOC laws, Americans with Disabilities Act, copyright laws protecting owners of artistic works, consumer protection, trade regulations, workers compensation, unemployment insurance and withholding, and payment of federal and state income taxes, social security taxes and sales, use and property taxes. You will furnish to us within 120 days after the receipt of equipment, a copy of a receipt for the payment of all use taxes, personal property taxes, and like taxes or assessments.

5.2.6 You will comply with the following additional standards:

- A. You will not offer, sell or dispense any products or services or activities other than those we specifically recognize and approve in writing.
- B. You, at your expense, will maintain the Franchise and equipment and furnishings in good repair, attractive appearance, and sound operating condition in compliance with the

Operations Manual. At our reasonable request, you will refurbish, remodel, and replace the Franchise Premises, fixtures, equipment, and signage to conform to the then-current Operations Manual and System standards. You will commence all repairs and changes within a reasonable time after notice from us, and you will proceed with due diligence until completion. You will complete all such upgrades and changes at your sole expense. If you do not maintain the Franchise as required, after notice to you, we at our option, may make the necessary maintenance and repairs and charge the cost to you. If we make or direct the making of repairs, we will not incur any liability to you, including liability for interruption of your business during the course of making the maintenance and repairs.

- C. You will keep your Franchise open for business every day of the year, except as outlined in our Operations Manual, or as we designate or approve in writing, or as otherwise mandated by government order or applicable law.

5.3 **Our Intellectual Property.**

5.3.1 You agree that the Marks, Operations Manual, System, and other intellectual property are our sole and exclusive property. Except for the Franchise granted to you by this Agreement, nothing in this Agreement or any other agreement will give you or others any right, title, or interest whatsoever in or to the Marks, Operations Manual, or System. Your license to use the Marks is non-exclusive. We, in our sole discretion, may operate under the Marks and may grant licenses to others to use the Marks on any terms and conditions we deem appropriate. In those states and nations where applicable, you agree to execute on request all documents necessary to record you as a registered user of the Marks. Except for any legally required assumed business name (*aka* doing business as or fictitious business name) filings, you shall not apply to register the Marks with any governing body. You will not use the Marks as part of any electronic mail address or in any electronic mail message except in accordance with the Operations Manual and only for purposes of the franchise.

5.3.2 You will immediately notify us of any infringement of, or challenge to, your use of the Marks or any marks identical to or confusingly similar to the Marks (or any of our other intellectual property), including any claims of infringement or unfair competition. We are entitled (but not obligated) to prosecute, defend and/or settle any proceeding arising out of your use of any of the Marks pursuant to this Agreement, and if we undertake to prosecute, defend and/or settle any matter, we will have no obligation to indemnify or reimburse you with respect to any fees or disbursements of any legal counsel you retain. If we undertake the defense or prosecution of any litigation or administrative action involving you, the Marks, other intellectual property, or the System, you agree to execute any and all documents and to do all acts and things that in the opinion of our counsel are necessary or advisable to carry out the defense or prosecution. This may be done either in our name or in your name, as we will elect.

5.3.3 You will modify or discontinue use of any franchise names or Marks (or other intellectual property), or will use one or more substitute names or marks (or other intellectual property), if we so direct in writing at any time at your sole expense. Under no circumstances will we be liable to you for any damages, costs, losses, rights, or detriments related to any modification, discontinuance, or substitution. All obligations or requirements imposed upon you relating to the Marks (or other intellectual property) will apply with equal force to any modified or substituted names or marks (or other intellectual property).

5.3.4 You will not contest, directly or indirectly: our ownership, title, right, or interest in the Marks, the Operations Manual, other intellectual property, or the System; or our exclusive right to register, use, or license others to use the Marks, Operations Manual, other intellectual property, and System. You will not advertise or use the Marks without following our then-current guidelines and requirements. These may include, but will not be limited to, the placement of appropriate © or ® copyright and registration

marks, or the designations TM or SM, where applicable.

5.3.5 Any and all goodwill associated with the Marks (or our other intellectual property), including any goodwill that might be deemed to have arisen through your activities, will accrue directly and exclusively to our benefit, except as otherwise provided by applicable law. You appoint us as your agent and attorney-in-fact to amend or cancel any registered user or business name filings obtained by you or on your behalf that involve or pertain to the Marks.

5.3.6 You will not use the Marks on products or services that come from any source other than us or sources we approve in writing except for products you prepare or produce pursuant to the Operations Manual and the System.

5.3.7 We make no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Marks or our other intellectual property.

5.3.8 We and you will use reasonable best efforts to continuously improve the products, processes and services used in the System and to develop new products, processes and services for use as part of the System. All the improvements, inventions and developments you make, develop or create for use in the System will be our property (or that of our parent or an affiliate) and we alone (or our parent or an affiliate) will hold any patent, trademark registration or other form of protection for those improvements, inventions, developments, processes, methods and practices.

5.3.9 Your use of the Marks shall constitute active use by Franchisor or its relevant affiliates for purposes of common law use and use required for trademark registrations by Franchisor or its relevant affiliates.

5.4 **You Will Not Use Names or Marks in Combination.** Except as provided in this Agreement, you will not use or give others permission to use the Marks, or any colorable imitation of them, combined with any other words or phrases. You and your owners, officers, and agents will not form or participate in the formation of any company, firm, corporation, or other entity having a name containing the words of the Marks. You may not combine or associate any name or symbol of the Marks with any other name or word in any advertising or sign. The Marks must be used in exact conformity with specifications we set in the Operations Manual.

5.5 **Marks, Operations Manual, and System May Be Changed.**

5.5.1 You acknowledge that the Marks, Operations Manual, and System, including any future amendments or modifications to them, have substantial value, and that the conditions, restrictions, covenants not to compete, and other limitations imposed by this Agreement are necessary, equitable, and reasonable for the general benefit of you, us, and others enjoying any lawful economic interest in the Marks, Operations Manual, and System.

5.5.2 We may change or modify any part of the Marks, Operations Manual, or System periodically at our sole discretion. You will accept, use, and protect, for the purposes of this Agreement, all changes and modifications as if they were a part of the Marks, Operations Manual, and System at the time this Agreement is executed. You will bear all costs and expenses which may be reasonably necessary as a result of such changes or modifications. Under no circumstances will we be liable to you for any damages, costs, losses, or detriments related to of these changes or modifications.

5.5.3 Complete and detailed uniformity of the Marks, Operations Manual, and System under the

varying conditions to be experienced by our franchisees may not be possible or practicable. Therefore we reserve the right, at our discretion, to accommodate your special needs, or those of any other of our franchisees. These needs may result from the peculiarities of a particular site or location, density of population, business potential, populations of trade area, existing business practices, requirements of local law or local customers, landlord requirements, or any other condition which we deem to be important to the successful operation of the franchisee's business. We may allow certain franchisees to depart from normal system standards and routines to experiment with or test new products, equipment, designs, and procedures. In no event will any variance or testing be deemed a waiver of any of our rights, or an excuse for you to not perform any of your duties under this Agreement. We may require you at any time to commence full compliance with the Operations Manual and the System. We will not be required to grant any variance to you under any circumstances. You will not require us to disclose or grant to you a like or similar variation.

5.6 **Confidential Information.**

5.6.1 You specifically acknowledge that we will provide to you valuable information regarding our System for the operation of your Franchise, which may include information regarding our operational, sales, promotional and marketing methods and techniques, operating procedures, recipes, processes, practices, lists of suppliers, customer lists, manuals, communications methods, accounting and reporting methods, use of proprietary software, marketing and sales techniques and strategies (“**Confidential Information**”). Any and all information, knowledge and know how, not generally known about the System will be deemed Confidential Information.

5.6.2 You acknowledge that unauthorized disclosure or use of our Confidential Information would harm our goodwill associated with our Marks and System, and would harm our other franchisees. Unless the Franchisor otherwise agrees in writing, during the term of this Agreement and forever after its expiration, transfer or termination, you will not use or disclose any Confidential Information except as required for the establishment and operation of your Franchise as authorized by us.

5.6.3 Confidential Information loses that status if: (1) You can demonstrate that such information has become generally known or easily accessible other than by your breach of this Agreement; or (2) You are legally compelled to disclose such information in judicial or administrative proceedings, provided you have notified the Franchisor prior to disclosure and shall have used your best efforts to obtain and shall have afforded the Franchisor the opportunity to obtain an appropriate protective order or other assurance satisfactory to the Franchisor of confidential treatment for the information required to be so disclosed.

5.6.4 You acknowledge and agree that our System and Confidential Information are and shall continue to be our sole and exclusive property, whether or not disclosed or entrusted to you in connection with your relationship with us. Nothing in this Agreement or any other agreement will give you or others any right, title, or interest whatsoever in or to them. Our Confidential Information shall be considered our trade secrets and shall be entitled to all protections provided by applicable law to trade secrets.

5.6.5 You agree to hold our Confidential Information in the strictest confidence. You agree to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure. You agree to fully and strictly adhere to all security procedures we prescribe for maintaining the confidentiality of the information.

5.6.6 You will not reverse engineer, decompile or disassemble any items embodying the System, our Confidential Information, our proprietary software (if any), or any of our other intellectual property, or permit or induce the foregoing. Without limiting the generality of the foregoing, Franchisee will not attempt

to decode or decrypt, or derive the source code, techniques, processes, algorithms, know-how or other information from the proprietary software (if any).

5.6.7 The Operations Manual may contain guidelines to protect Confidential Information and trade secrets, including limited access to the information on a need to know basis, locking of offices and computer files, placement of appropriate legends on materials, limited access for copying and scanning, pass-word protection, and encryption. You will conduct periodic meetings with your managers and employees to instruct them on their responsibilities to maintain the confidentiality of our information.

5.6.8 If Franchisee is a business entity, all of Franchisee's owners shall either sign this Agreement directly or sign a Confidentiality and Non-Competition Agreement in the form we specify.

5.6.9 You shall require all of your officers, directors, beneficiaries, independent contractors, agents, representatives, and employees - who may obtain or who are likely to obtain knowledge concerning our Confidential Information and who do not directly sign this Agreement - to sign confidentiality and non-disclosure agreements with provisions similar to those provided in this Agreement (and a non-competition agreements with provisions similar to those provided in this Agreement to the extent permitted by applicable law). We may provide a sample form of agreement for your use, but it is solely your responsibility to ensure that such agreement complies with applicable law in your jurisdiction. We must be described as a third-party beneficiary on such agreements so that we may enforce such agreements (unless we specify otherwise).

5.6.10 If you become aware of any actual or threatened unauthorized use or disclosure of our Confidential Information, then you will promptly and fully advise us in writing of all related facts known to you. You will cooperate with us in all ways we reasonably request to prevent or stop any such unauthorized use or disclosure.

5.6.11 We may disclose financial performance information regarding your Franchise operations in our franchise disclosure documents and elsewhere at our discretion. You hereby consent to the disclosure of such information. You agree to provide such information to us promptly upon request.

5.7 **In-Term Non-Competition Covenant.**

5.7.1 In express consideration for and during the term of this Agreement, neither you nor your owners, directors, officers, successors, agents, or representatives will directly or indirectly (such as through another individual or entity or otherwise) participate as an owner, director, officer, employee, consultant, franchisor, licensor, franchisee, licensee, distributor, advisor or agent, or serve in any other capacity in any business engaged, in whole or in part, in offering health club, exercise, or spa services, or any other products or services that are substantially similar to those offered by the Franchisor or a majority of its franchisees. We may waive this covenant only in writing.

5.7.2 You will ensure that you and your owners, directors, officers, successors, agents, and representatives, during the term of this Agreement and for a period of two years after expiration or termination of this Agreement do not divert or directly or indirectly attempt to divert any of our business or any of our customers to any competing establishment.

5.7.3 The provisions relating to interests in any other business will not apply to your ownership of outstanding securities of any corporation whose securities are publicly held and traded; provided that you hold these securities for investment purposes only and that your total holdings do not constitute more than 5% of the outstanding securities of the corporation.

5.8 **Participation in the Actual Operation of the Business.**

5.8.1 You will diligently, faithfully, and honestly perform your obligations pursuant to this Agreement. You will use your best efforts to develop, promote, and enhance your Franchise. You will not engage in any activity or business enterprise that conflicts with these obligations.

5.8.2 You must participate directly and actively in the day-to-day operation of the Franchise unless we (at our sole discretion) permit you to designate a manager to assume such responsibility. Even if we permit your manager or designee as supervisor of day-to-day operations, you must spend substantial time in the actual, direct supervision of the business and must ensure that a qualified manager be on-site at the Franchise Premises during business hours. It is ultimately your responsibility to comply with this Agreement and our Operations Manual.

5.9 **Computer Systems.**

5.9.1 You must purchase and use computer hardware and software (including software as a service subscriptions and point of sale system) (collectively “**Computer Systems**”) we require from our designated or approved supplier(s) (unless we specify otherwise). If we do not designate approved or designated suppliers, then your Computer Systems must comply with our minimum standards and specifications. You must comply with any separate software or other license agreement that we or our designee uses in connection with providing services to you.

5.9.2 You are required to have high-speed internet service where you will be able to access downloads from us of advertising materials, operations manual revisions, training materials and corporate news (as applicable).

5.9.3 We will have full ability to access your data, Computer Systems and related information by means of direct access whether in person or by electronic means.

5.9.4 We may require reasonable changes, replacements, or additions to the Computer Systems. If we require any such changes, replacements, or additions, you must comply with such requirements within a reasonable period at your sole expense.

5.9.5 We may develop custom proprietary software to aid you in the operation of your Franchise. You will be given access to the software when it is available and at that point you must use it in your business at all times. You must pay our then-current upfront and ongoing fees for such software.

5.9.6 You acknowledge your understanding that Computer Systems are vulnerable in varying degrees to computer viruses, bugs, power disruptions, communication line disruptions, internet access failures, internet content failures, and attacks by hackers and other unauthorized intruders. We do not guarantee that information or communication systems that we or others supply will not be vulnerable to such issues, and it is your responsibility to protect your business from such issues. You should also take reasonable steps to verify that others with whom you communicate and do business have reasonable protection from such issues. This may include taking reasonable steps to secure your Computer Systems (including firewalls, password protection, and anti-virus systems) and to maintain backup systems.

5.10 **Working Capital Requirements.** At all times during the term of this Agreement, you must maintain and employ as much working capital as may be required to enable you to properly and fully perform all your duties, obligations, and responsibilities.

5.11 **Notice of Court Action.** You will notify us in writing within five (5) days of the commencement of any action, suit or proceeding, or of the issuance of any order, writ, injunction, award or decree of any court, agency or government instrumentality that may adversely affect your operation of or the financial condition of the Franchise.

5.12 **Products and Suppliers.**

5.12.1 You must purchase all goods and services needed for the operation of your Franchise either from us, our affiliates, one or more exclusively designated suppliers, our approved suppliers, or subject to our standards and specifications, as we will designate. You must purchase items that bear the Marks from us or designated suppliers. We may private label proprietary items and supplies. We retain the right to make a reasonable profit on any items, supplies and materials you buy from us or our affiliates. We may also make a reasonable profit on supplies we purchase in bulk quantities and sell to you.

5.12.2 You must sell, offer for sale, distribute or deliver only such services or products that meet the specifications and standards of quality and quantity in the Operations Manual. You must sell or offer to sell all approved items and services. You must refrain from deviating from our standards and specifications and must discontinue selling or offering for sale any such items as we may, at our discretion, disapprove in writing at any time. You will use commercially reasonable efforts and good faith to promote and sell the products and services.

5.12.3 We may require you to use approved suppliers, or we may designate a single source of supply, for any goods or services for your Franchise. All specifications that we require of you and lists of approved and exclusively designated suppliers will be included in the Operations Manual. We will use our best judgment to set and modify specifications in order to maintain the integrity and quality of the franchise system.

5.12.4 EXCEPT AS EXCLUSIVELY SET FORTH IN WRITING AND SIGNED BY US, WE MAKE NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS AND SERVICES WE OR OUR AFFILIATES PROVIDE. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT RESTRICTED TO, THE IMPLIED WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. UNDER NO CIRCUMSTANCES WILL OUR LIABILITY IN CONNECTION WITH ANY PRODUCTS OR SERVICES EXCEED THE DOLLAR AMOUNT OF THE PURCHASE PRICE, LICENSE FEE, OR SUBSCRIPTION FEE PAID BY YOU FOR THE PRODUCTS OR SERVICES. IN NO EVENT WILL WE BE LIABLE TO ANY PARTY, INCLUDING BUT NOT LIMITED TO, YOU AND YOUR CUSTOMERS, FOR ANY TORT DAMAGES OR INDIRECT, SPECIAL, GENERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR ANTICIPATED PROFITS AND LOSS OF GOODWILL, ARISING IN CONNECTION WITH THE USE (OR INABILITY TO USE) THE PRODUCTS OR SERVICES FOR ANY PURPOSE WHATSOEVER, EVEN IF WE ARE AWARE OR HAVE BEEN ADVISED OF THE POSSIBILITY OF POTENTIAL LOSS OR DAMAGES.

5.12.5 Except for items and services that we require you to purchase from us, our affiliates, or our exclusively designated suppliers:

With advance written notice, you may request our approval to obtain products, supplies or materials from sources that we have not previously approved. We may require you to give us sufficient information, photographs, drawings, samples, and other data to allow us to determine whether the items from these other

sources meet our specifications and standards. These specifications and standards will relate to quality and the suppliers' capacity and facility to supply your needs in the quantities, at the times, and with the reliability necessary for efficient operation. We may require that samples from any supplier be delivered to a designated independent testing laboratory for testing prior to approval and use. You will reimburse us for the actual cost of the tests. We will license any supplier that can meet or exceed our quality control and confidential requirements and standards, for a reasonable license fee, to produce and deliver products to you but to no other person. Our confidential manufacturing requirements, equipment, designs, and systems will be disclosed to potential suppliers only after we have received reasonable evidence that the proposed supplier is trustworthy and reputable; has the capacity to consistently adhere to our standards, requirements and testing procedures; will maintain the confidentiality of the designs and systems; and will adequately supply your reasonable needs. We may require a confidentiality and non-disclosure agreement signed by the proposed supplier prior to release of any Confidential Information. We will not unreasonably withhold approval of a supplier you propose. We will notify you in writing of the approval or disapproval of any supplier you propose within 90 days of our receipt from you of your written notice of request for approval.

5.12.6 You acknowledge that while you may propose alternate suppliers for products and services, the proposed suppliers may not qualify. You further acknowledge that our approved suppliers may be the only source of supply for products and services required in the Franchise.

5.12.7 We or our agents may inspect any proposed or approved manufacturer's, supplier's or distributor's facilities and products to ensure proper production, processing, storing, and transportation. Permission for inspection will be a condition of our continued approval of any manufacturer, supplier or distributor. Should we determine from any inspection that a manufacturer, supplier or distributor fails to meet our specifications and standards, we will give written notice describing this failure to you and to the manufacturer, supplier or distributor, together with a notice that unless the failure or deficiency is corrected within 30 days, the manufacturer, supplier or distributor will no longer be approved.

5.12.8 One of the potential benefits that may accrue to you and all our other franchisees is the economy of mass purchasing power potentially made available through us. Your failure to pay or repeated delay to make prompt payment in accordance with the terms of the invoices and statements for payments due on your purchases of any items, or your misdirection of supplies or other abuse of our approved suppliers, distributors and manufacturers, will result in a loss of credit standing and goodwill and benefits otherwise available to us and our other franchisees. You expressly agree to promptly pay all such invoices and statements in accordance with their terms.

5.12.9 We may obtain money, goods, services, or other benefits from persons and entities with whom you do business, on account of that business with you. These may include rebates, refunds, commissions, co-operative payments, or discounts.

5.12.10 If you purchase items or services from us or our affiliates, then you must make payment when you place your order. Any items or services goods sold, licensed, or leased by or through us or our affiliates to you will be sold, licensed, or leased in accordance with the terms expressly set forth in the Operations Manual or as otherwise provided for in writing by us or the manufacturer of the products and goods.

5.12.11 You must comply with all of the obligations and requirements imposed upon you by the manufacturers or distributors of the products.

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5.12.12 You must purchase at least \$400 of approved garments and gear every calendar month

during the term of the Franchise Agreement from our preferred vendor. We reserve the right to reasonably increase this minimum expenditure amount periodically. Such increases will be effective upon written notice to you.

5.13 **Non-Disparagement.** You will ensure that you and your owners, directors, officers, successors, agents, and representatives, during the term of this Agreement and thereafter, do not (1) do or perform, directly or indirectly, any act injurious or prejudicial to our goodwill associated with the Marks and/or System; or (2) disparage or defame us, our Marks, or our franchise system in any manner (orally, in writing, or otherwise).

5.14 **Reciprocity.** You shall permit members from other Fitness 1440 locations to access your Franchise Premises and services in the same manner as your own members based on the appropriate type of membership.

5.15 **Membership Formats.** You shall adhere to our standards and specifications regarding membership formats, including membership names, types of memberships, the manners in which memberships are presented to members, etc.

6 **RENEWAL, TERMINATION AND INTERIM MANAGEMENT**

6.1 **Renewal of Franchise.**

6.1.1 **Renewal Franchise Agreement.** If you are not in breach, you may renew the Franchise for periods of ten (10) years under the terms of our then-current Franchise Agreement forms. These forms may vary materially from this Agreement. Royalty Fees, Advertising Fees, and other fees will be set at the then prevailing rates and terms. Your failure or refusal to execute the renewal Franchise Agreement forms within 30 days after delivery to you may be regarded as an election by you not to renew. Upon renewal, the Franchise Territory may be modified and its geographic area may be reduced or expanded to meet our then-current franchise market penetration and demographic standards.

6.1.2 **Additional Conditions for Renewal.** To renew, you must comply with the following additional conditions:

- A. You will exercise your renewal option by giving written notice to us. The notice must be given at least three months, but no earlier than six months, before the end of the franchise term established by this Agreement.
- B. You will pay us a renewal fee equal to 25% of our then-current standard Initial Franchise Fee.
- C. You must execute a general release, in a form we prescribe, following applicable law, to release us from any claims you may have against us.
- D. Before renewal, you and your designated manager will attend and successfully complete any retraining program we prescribe in writing. This will be done at your expense, including transportation, meals, lodging, and our then-current training fee.
- E. You will refurbish, remodel, and replace the Franchise Premises, fixtures, equipment, and signage to conform to the then-current Operations Manual and System standards.
- F. We may refuse to renew this Agreement if you fail to satisfactorily comply with this Agreement. The determination of satisfactory compliance will be within our exclusive discretion in good faith. If we refuse to renew, you must continue to perform under this Agreement until its expiration.

6.1.3 **Continuation.** You have no automatic right to continue operation of the Franchise following expiration or termination of this Agreement. If you continue to operate the Franchise with our express or implied consent following the expiration or termination of this Agreement, the continuation will be a month-to-month extension of this Agreement. During such period of continuation, the Royalty Fee will increase to eight percent (8%) of Gross Sales or \$2,495 per month, whichever is greater. This Agreement will then be terminable by either party upon 30 days' written notice. Otherwise, all provisions of this Agreement will apply while operations continue. Upon termination of this Agreement under this section, all post-termination covenants and obligations in this Agreement will apply.

6.2 **Termination by You.** You may terminate this Agreement if you comply with the terms of this Agreement and if we substantially breach any material provision of this Agreement and fail within 30 days after receipt of written notice specifying the breach. However, if such breach cannot reasonably be cured within 30 days after delivery of notice of breach, then we must undertake within 10 days after delivery of such notice of breach and continue, until completion, efforts to cure such breach. Termination will be effective 10 days after you deliver to us written notice of termination for our failure to cure within the allowed period. Upon termination of this Agreement pursuant to this subsection, you must comply with your post-termination obligations in this Agreement.

6.3 **Termination by Us.**

6.3.1 **Default with Opportunity to Cure.** You agree that it will be a **default constituting a substantial breach of a material provision of this Agreement pursuant to relevant law, thus establishing good cause for termination of this Agreement** and any other franchise and related agreements between the parties if you (or your owners, officers, or key employees) breach any term or provision of this Agreement and do not cure the breach (or reasonably begin to cure and diligently pursue the cure until the breach is remedied) within 30 days after receipt of our written notice to cure. Termination will occur immediately upon delivery to you of our written notice of termination for failure to cure within the allowed time frame.

6.3.2 **Termination Without Opportunity to Cure.** You agree that it will be a **default constituting a substantial breach of a material provision of this Agreement pursuant to relevant law, thus establishing good cause for us to immediately terminate this Agreement** and any other franchise and related agreements between the parties without other cause, and without giving you an opportunity to cure, if you (or your owners, officers, or key employees):

- A. Attempt to transfer all or any portion of this Agreement, the Franchise Premises, substantial assets of the Franchise business, or ownership or control of you or to fractionalize any of the rights granted to you pursuant to this Agreement in violation of Section 7.1.
- B. Fail to pass the initial training program. (See Section 3.1 above).
- C. Fail to open the Franchise for business by the Opening Deadline. (See Section 4.1 above).
- D. Fail to operate the Franchise continuously and actively for five or more consecutive days or any period for which it would be reasonable under the facts and circumstances for us to conclude that you do not intend to continue the Franchise.
- E. Receive three or more notices to cure defaults during any consecutive 12-month period whether or not you cured such defaults.
- F. On three or more occasions fail to report monthly Gross Sales on time, understate monthly Gross Sales by more than 2%, or distort other material information.
- G. Falsify data in reports or intentionally understate Gross Sales or other information reported to the Franchisor.
- H. Make or have made any material misrepresentation or misstatement on the franchise application or with respect to ownership of the Franchise. If you misrepresented yourself

and are a competitor of ours or a competitor of an affiliate of ours, we may keep your entire initial franchise fee, cancel training and terminate this Agreement.

- I. Are convicted of or plead guilty or no contest to a felony, or any other crime that is reasonably likely to adversely affect the System, the Franchise, or the goodwill associated with the Marks or the franchise system (as we determine at our sole discretion).
- J. Deny us the right to audit your books and records, inspect the Franchise, or access your computer systems and information, as permitted under this Agreement.
- K. Within a period of 10 days after notification of noncompliance, fail to comply with any federal, state or local law or regulation applicable to the operation of the Franchise.
- L. Fail to pay any Initial Franchise Fee, Royalty Fee, Advertising Fee or any other fees or amounts owed pursuant to this Agreement within five days after receipt of written notice that the fees or amounts are overdue.
- M. Operate the Franchise in a manner that creates an imminent danger to public health or safety.
- N. Fail to comply with any of the confidentiality, non-disclosure, non-diversion of business, or non-competition covenants of this Agreement, including but not limited to obligations and restrictions described in Sections 5.6 and 5.7.
- O. Engage in any conduct that is reasonably likely, at our sole opinion, to adversely affect the System, the Franchise, or the goodwill associated with the Marks or the franchise system.
- P. Attempt to unilaterally repudiate this Agreement or the performance or observance of any of its terms, conditions, covenants, provisions or obligations by any conduct evidencing your intention to no longer comply with or be bound by this Agreement.

6.3.3 Automatic Termination Without Notice or Opportunity to Cure. This Agreement will automatically terminate without notice or an opportunity to cure if you:

- A. Become insolvent, make a general assignment for the benefit of creditors, have a receiver appointed to administer or take possession of any part of the franchise or your assets, or admit to not being able to meet your obligations as they become due or become bankrupt, or become subject to any chapter of the United States Bankruptcy Code, unless you:
 - (1) timely undertake to reaffirm the obligations under this Agreement;
 - (2) timely comply with all conditions as legally may be imposed by us upon such an undertaking to reaffirm this Agreement; and
 - (3) timely comply with such other conditions and provide such assurances as may be required in relevant provisions of the United States Bankruptcy Code;

provided, however, that we and you acknowledge that this Agreement constitutes a personal service contract and that we have relied to a degree and in a manner material to this Agreement upon the personal promises of you and/or your directors, officers, shareholders or partners, as the case may be, to participate personally on a full-time basis in the management and operation of the franchise, and, consequently, we and you agree that any attempt by any other party, including the trustee in bankruptcy or any third party, to assume or to accept an assignment of this Agreement will be void.

or

- B. Allow the Franchise, Franchise Premises or franchise assets to be seized, taken over, or foreclosed by a creditor, lien holder, or lessor; let a final judgment against you remain unsatisfied for 30 days (unless a supersedeas or other appeal bond is filed); or allow a levy

of execution upon the Franchise or upon any property used in the Franchise, that is not discharged by means other than levy within five days of the levy.

6.4 **Time Frames Subject to Applicable Laws.** The provisions of this Agreement may state periods of notice less than those required by applicable law. They may provide for termination, cancellation, non-renewal or the like other than according to applicable law. They will be extended or modified to comply with applicable law. Also, Franchisor may reinstate or extend the term of this Agreement for the purpose of complying with applicable law by submitting a written notice to Franchisee without waiving any of Franchisor's rights under this Agreement.

6.5 **Certain Post-Termination Obligations.** Substantial damages that are difficult to determine at the date of execution of this Agreement will accrue to us if you do not comply with any of the following requirements upon expiration or termination of this Agreement. Upon expiration or termination of this Agreement, you will:

6.5.1 Immediately cease using the Marks (or any names or marks deceptively similar to them), the Operations Manual and the System.

6.5.2 Completely de-identify the Franchise Premises (unless we exercise our option to purchase the franchise under Section 6.5.7 below). De-identification will consist of removal of all signs; modification or remodeling of all identifying architectural features; repainting as necessary to no longer use the color scheme used in our franchise system; and any other steps necessary (at our reasonable discretion) to effectively distinguish the Franchise Premises (and vehicles, if any) from our Marks and proprietary designs, trade dress, and other intellectual property.

6.5.3 Return to us all copies of the Operations Manual. Return to us all records, files, instructions, correspondence, and materials in your possession or control related to the System. You will give us a complete and accurate summary of your advertisers, customers and leads, including their names, addresses, telephone numbers and related file records. You will assist us in every way possible to bring about a complete and effective transfer of your franchise business to us or to our designated franchisee.

6.5.4 Authorize business telephone, internet, email, social media providers, electronic network, directory and listing entities to transfer all numbers, email addresses, domain names, locators, directories and listings to us or our designee. Notify them of the termination of your right to use the Franchise names and Marks. You authorize the transfer of your business telephone numbers and directory listings and internet addresses, email addresses, domain names and locators to us or our designated franchisees. You appoint us as your agent and attorney-in-fact to effect the transfer of these telephone numbers and directory listings and domain names and internet directory listings to us. You agree that we will be treated as the subscriber for the telephone numbers and directory listings. We will have full authority to instruct the applicable telephone, directory and listing companies on the use and disposition of the telephone listings and numbers. You release and indemnify these companies from any damage or loss because they follow our instructions.

6.5.5 Pay to us within seven days all Royalty Fees, Advertising Fees, and other sums you owe. These sums will include all damages, costs and expenses, including reasonable attorneys' fees and collection costs, we incur because of your breach. These sums will include all costs and expenses, including reasonable attorneys' fees, we incur in obtaining injunctive, appellate, or other relief to enforce the provisions of this Agreement.

6.5.6 Abide by all provisions of this Agreement that expressly or by reasonable implication are

intended to apply after expiration or termination of this Agreement, including provisions related to non-use and non-disclosure of Confidential Information and non-competition. You will immediately return to us all of our Confidential Information you have received, including any items that embody the Confidential Information. You acknowledge that you have no continuing ownership interest in the Confidential Information.

6.5.7 At our option, do some or all of the following:

- A. Remove all Franchise-related equipment, furnishings, and inventory from the Franchise Premises;
- B. Sell to us (or our designee) all (or such portion as we designate) of your Franchise-related equipment, supplies, and inventory. The purchase price will be fair market value for equipment, supplies and furnishings, and your invoice cost for inventory less a 10% restocking charge. We will not be liable for payment to you for intangibles, including goodwill;
- C. Assign to us ownership and control of any domain name, website, online presence or account you own or control related to the Franchise;
- D. Within 30 days of expiration or termination of this Agreement, return to us (at our headquarters or another location we designate) all exterior and interior signage of the Franchise in good condition at your sole cost and expense;
- E. Sell to us or our designee your interest in the Franchise, the Franchise Premises, if any, and all related equipment, fixtures, signs, real estate leases, equipment leases and personal property, free and clear of all liens, restrictions or encumbrances. You agree, at our election, to assign your leasehold interest in the Franchise Premises to us, or to enter into a sublease for the remainder of the lease term on the same terms (including renewal options) as the prime lease.
 - i. We will have the right to elect this option by written notice to you within 30 days of expiration or termination of this Agreement. If we elect this option, then the parties will make good faith efforts to agree on a purchase price and payment terms within 10 days after such notice. If the parties cannot agree within the 10-day period, then fair value will be determined by appraisal as provided in Section 7.6 (entitled "Appraisals").
 - ii. We will have the unrestricted right to assign this option to purchase.
 - iii. We will be entitled to all customary warranties and representations in connection with our asset purchase, including, without limitation, representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; and liabilities affecting the assets, contingent or otherwise.

If you fail to timely comply with Section 6.5.7.D above (timely return of signage), unless we exercise our right to acquire your Franchise pursuant to Section 6.5.7.E above, then you must pay us nine thousand and five-hundred dollars (\$9,500) as liquidated damages and not as a penalty. The parties acknowledge and agree that: (1) it would be difficult to calculate with certainty the amount of damage that Franchisor will incur upon the violation of the obligation to timely return signage; (2) the liquidated damages provided for in this paragraph are fair and reasonable under the circumstances; (3) the liquidated damages specified in this paragraph are only intended to compensate Franchisor for the damage that Franchisor will incur upon the violation of the obligation to timely return signage, but not for any other breach of this Agreement by Franchisee or any other damages incurred by Franchisor, and all remedies applicable thereto remain available to Franchisor; and (4) if a court determines that this liquidated damages clause is unenforceable, then Franchisor may pursue all remedies available at law or in equity, including

consequential damages.

6.5.8 Upon termination for any reason, you will return to us all proprietary and confidential materials, including customer lists and data, keys, codes, signage, advertising and marketing materials, service agreements and other forms, printed files, security codes, and the like as may be described in the Operations Manual. If you fail to return or cease use of any of these items, we may enter your business premises without being guilty of trespass or any other tort to remove and retain the items. You will pay to us, on demand, any expenses we incur in trying to remove or collect such items or in attempting to have you cease use of them.

6.5.9 Damages and Liquidated Damages. Upon termination pursuant to any default by Franchisee, Franchisee agrees to pay Franchisor, all actual and consequential damages and any costs and expenses (including reasonable attorneys' fees) incurred by Franchisor as a result of such default and termination. Franchisee acknowledges and agrees that it does not have the right to terminate this Agreement, except as provided in Section 6.2, or as otherwise agreed in writing by the parties, and that any termination of this Agreement by Franchisee that is not in accordance with the terms of Section 6.2, or any termination of this Agreement by Franchisor in accordance with its terms, may result in lost future revenue and profits to Franchisor, harm to the goodwill associated with the Marks, and increased costs to Franchisor to re-develop or re-franchise the market in which the Franchise is located.

Accordingly, in the event that Franchisee terminates this Agreement other than in accordance with the terms of Section 6.2, or if Franchisor terminates this Agreement pursuant to its terms, then Franchisee shall pay to Franchisor within fifteen (15) days of such termination as liquidated damages, (and not as a penalty), an amount equal to Royalty Fees, Advertising Fees, and other ongoing fees Franchisee should have paid, had this Agreement not be terminated, for the lesser of (1) 12 months, or (2) the number of months remaining on the term of this Agreement. Such payment will be calculated based on the average Royalty Fees, Advertising Fees, and other ongoing fees Franchisee paid (or if unpaid, payable) during the immediately preceding 12-month period (or shorter period if you will have operated for less than 12 months).

The parties hereby acknowledge and agree that the actual damages that would be incurred by Franchisor in the event of any breach or early termination of this Agreement by Franchisee would be difficult to calculate and that the liquidated damages provided for in this Agreement are fair and reasonable under the circumstances. The parties further acknowledge and agree that the liquidated damages specified in this Section are only intended to compensate Franchisor for the early termination of this Agreement and Franchisor's loss of revenue resulting therefrom, but not for any other breach of this Agreement by Franchisee or any other damages incurred by Franchisor, and all remedies applicable thereto remain available to Franchisor.

6.5.10 Franchisor's Right to Assume Business Upon Termination for Default. Notwithstanding any contrary provision contained in this Agreement, upon our termination of this Agreement based on your default, we shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination, to do the following (and you will have the following obligations):

- A. Because most or all equipment at the Franchise Premises is leased, and because significant assets of the franchised business are proprietary to Franchisor, such as signage and other items bearing the Marks and Customer Data (as defined in Section 6.9 below), at our discretion we will have the right (but not the duty) to assume your interest in the Franchise, the Franchise Premises, and all related

equipment, fixtures, signs, real estate leases, equipment leases and personal property without any obligation to make payment to you.

- B. If we exercise our option described in this subsection 6.5.10, we will not assume any liabilities related to the franchised business or its assets (other than assumption of lease obligations from the date of assumption of the leases) as all such liabilities will remain with you. For example, you will have no further right and title to or interest in the Franchise Premises lease or equipment leases, but you will remain liable to the Franchise Premises landlord and equipment lessors for any past due rental payments or other charges. If we determine (at our sole discretion) to cure your past due rental payments or other charges, then you will remain liable to us for the same.

6.6 **We May Assign Franchise Territory Upon Termination.** Upon expiration or termination of this Agreement, we may immediately license or franchise the Franchise Territory to another person or may operate FITNESS 1440 businesses within the Franchise Territory.

6.7 **Post-Term Non-Competition Covenant.** This covenant will apply for two (2) years after termination, expiration or transfer of this Agreement. In express consideration for this Agreement, you will ensure that you and your owners, LLC managers, directors, officers, successors, agents, and others occupying similar positions will not directly or indirectly (such as through another individual or entity or otherwise) participate as an owner, director, officer, employee, consultant, franchisor, licensor, franchisee, licensee, distributor, advisor or agent, or serve in any other capacity in any business engaged, in whole or in part, in offering health club, exercise, or spa services, or any other products or services that are substantially similar to those offered by the Franchisor or a majority of its franchisees. This covenant applies within the Franchise Territory, within a 25-mile radius of the Franchise Territory, and within a 25-mile radius of any location or franchise territory where we operate or have granted the franchise to operate a FITNESS 1440 business. We may waive this covenant only in writing.

6.8 **Interim Management.** To protect the System, the Marks, the Confidential Information, and the goodwill associated with the same, Franchisor may (but is not obligated to) assume interim management of the Franchise for any of the following reasons: (a) after Franchisor has given Franchisee written notice that Franchisee is in default under this Agreement and during the pendency of any cure period or in lieu of immediately terminating this Agreement; (b) your business activities are having, or are likely to have, a negative impact upon the value of our Marks, goodwill, or the franchise system (as we determine at our sole discretion); (c) we determine that significant operational problems require us to temporarily operate the Franchise; (d) while your Franchise is not being managed by a competent and trained manager after your Death or Disability (as defined in Section 7.3 below); or (e) after termination or expiration of your Franchise Agreement while we are deciding whether to exercise our right to purchase any or all of your assets pursuant to Section 6.5 above, or while such a purchase is pending. If Franchisor elects to assume interim management of the Franchise, then: (i) Franchisor's election will not relieve Franchisee of Franchisee's obligations under this Agreement; (ii) Franchisor will not be liable for any debts, losses, costs or expenses incurred in the operation of the Franchise during any interim management period; (iii) Franchisor will have the right to charge a reasonable fee for the management services; (iv) Franchisee hereby agrees to indemnify, defend and hold harmless Franchisor and its interim manager(s) from and against any and all claims, demands, judgments, fines, losses, liabilities, costs, amounts paid in settlement and reasonable expenses (including, but not limited to attorneys' fees) incurred in connection with the interim management of the Franchise, other than those arising solely from the gross negligence or willful misconduct of Franchisor; and (v) our operation or appointment of a manager to operate the Franchise will not be deemed an assignment to us of your commercial lease or sublease. We will have no responsibility

for payment of any rent or other charges owing on any lease.

6.9 **Customers Data.** All customer lists, data, and information (collectively “**Customer Data**”) are proprietary to Franchisor during and after the term of this Agreement. As long as you are in full compliance with this Agreement and our standards and specifications, you shall have the right to use the Customer Data during the term of this Agreement for the purpose of providing authorized services and products to customers. Despite any contrary provision in this Agreement, upon expiration or termination of this Agreement for any reason, all customers that you serviced during the term of this Agreement will revert to us (or our designee), and you will no longer have the right to service those customers in any manner, at any location, or at any time. To the extent necessary to accomplish the purposes and intent of the foregoing, you agree that all Customer Data and customer relationships and accounts will be deemed assigned to us automatically upon expiration or termination of this Agreement. You agree to cooperate with us in all reasonable ways (including by executing any and all documents and doing such acts as we may reasonably require at our discretion) to carry out the purposes and intent of this paragraph.

7 **TRANSFER**

7.1 **Transfer by You.**

7.1.1 We enter this Agreement, in part, in reliance upon the individual or collective character, skill, attitude, business ability and financial capacity of you (or your owners if you are a business entity). Your rights and obligations under this Agreement are exclusive to you. Except as expressly permitted by this Agreement, you, your owners and others claiming an interest in the Franchise shall not voluntarily or involuntarily sell, transfer, assign, encumber, give, lease, or sublease, or allow any other person to conduct business in or through (collectively called “**Transfer**”) the whole or any part of: (1) this Agreement; (2) the Franchise Premises; (3) substantial assets of the Franchise business; (4) ownership or control of Franchisee. Any attempted Transfer without our prior written consent will be a breach of this Agreement.

7.1.2 We need not consent to any proposed Transfer before the date the Franchise opens for business; or to a competitor of ours; or if we reasonably believe the purchase price is excessive or if we believe based upon a review of the transferee’s operational and business plans that the transferee’s business operations might not be beneficial on a cash flow or financial basis (because we will have a strong and vested interest in the financial viability and ongoing management abilities of the transferee).

7.1.3 You recognize that there are many subjective factors that comprise the process by which we select a suitable franchise owner. While we will exercise our discretion reasonably, our consent to a Transfer by you will remain a subjective determination and will include, but not be limited to, the following conditions. Before the effective date of a Transfer we approve:

- A. The transferee must assume your Franchise obligations. You will remain bound by all covenants in this Agreement that expressly or by reasonable implication are intended to apply after Transfer of your Franchise rights, including covenants related to non-use and non-disclosure of Confidential Information, post-term non-competition, non-use of the Marks, and similar covenants.
- B. You will pay all ascertained or liquidated debts concerning the Franchise.
- C. You may not be in breach of this Agreement or any other agreement between the parties.
- D. The transferee will pay for and complete to our exclusive satisfaction the training programs we then require of new franchisees or otherwise show to our satisfaction sufficient ability to successfully operate the Franchise.

- E. You or the transferee will pay a Transfer Fee in an amount equal to fifty percent (50%) of our then-current initial franchise fee (or \$2,500 if the owners of an entity franchisee are transferring less than 20% of the ownership interest in the entity). This fee will reimburse us for our reasonable legal, accounting, credit check, and investigation expenses that result from the Transfer, as well as the mandatory training program for the transferee (as applicable).
- F. You will pay us a 10% commission on the gross Transfer price (excluding the price of real property) if we obtain the transferee for you.
- G. The transferee will execute all documents we then require of new franchisees. This includes a new franchise agreement in the form we then are using. The new franchise agreement may contain economic and general terms that are materially different from those contained in this Agreement. The term of the new agreement will be for the unexpired term of this Agreement or for a new full term as we will elect. You must ask us to provide the prospective purchaser with our current form of disclosure document required by the applicable federal or provincial/state registration and disclosure laws. We will not be liable for any representations you make apart from those contained in our disclosure document.
- H. The transferee will meet our standards for quality of character, financial capacity, and experience required of a new or renewing franchisee. You will provide information we require to prove the transferee meets our standards.
- I. If permitted by applicable law, you and your owners, LLC managers, officers, directors, and individuals occupying similar positions will execute a general release in our favor. The release will be in a form we prescribe, following applicable law, to release any claims you may have against us and our parent, subsidiaries, affiliates, owners, officers, directors, agents, representatives, and employees. This will include claims arising under federal, state and local laws, rules and ordinances arising out of, or connected with, the offer, sell and performance of this Agreement or any other agreement between the parties.
- J. If the Initial Franchise Fee has not yet been paid in full, it must be paid in full prior to the date of Transfer.
- K. If the lease or sublease for the Franchise Premise requires, the lessor or sublessor must have consented to the assignment or sublease of the Franchise Premises to the transferee. All fixtures, furnishings and equipment at the Franchise Premises must be in good working order and free of operational defects. It will be your responsibility to bring all fixtures, furnishings and equipment to proper working order before the date of Transfer.
- L. You will enter into an agreement to subordinate, to the transferee's obligations to us (including the payment of all franchise fees), any obligations of the transferee to make installment payments of the purchase price to you. The form of this subordination is subject to our approval.
- M. You will deliver to the purchaser the Operations Manual and all other manuals and materials we provided to you for use in the Franchise, including all materials bearing the Marks and our advertising, promotional and training materials.
- N. You or the transferee will refurbish, remodel, and replace the Franchise Premises, fixtures, equipment, and signage to conform to the then-current Operations Manual and System standards.

7.1.4 Upon our granting of approval for the Transfer, you will ensure that the Transfer is effected in compliance with the requirements of all federal, state, and local laws, including applicable tax and bulk sales legislation, and with the applicable requirements of the lease of the Franchise Premises.

7.1.5 With our prior written consent, you may Transfer your rights and obligations under this Agreement to a business entity in which you continuously own 100% of the issued and outstanding shares

of each class of stock or other evidence of ownership. The entity must be newly organized with its activities confined exclusively to act as the Franchisee under this Agreement. The entity must agree in writing to be bound by the terms of this Agreement. You will remain a party to this Agreement and therefore personally, jointly and severally liable in all respects under this Agreement.

7.1.6 You may offer your securities or partnership interests to the public, by private offering, or otherwise, only with our prior written consent. Consent may not be unreasonably withheld. All materials required for the offering by federal or state law will be submitted to us for review before filing with any government agency. Any materials to be used in any exempt offering will be submitted to us for review prior to their use. No offering by you will imply (by use of the Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities. You and all other participants in the offering must fully indemnify us concerning the offering. For each proposed offering, you will pay to us the amount necessary to reimburse us for our reasonable costs and expenses associated with reviewing the proposed offering, including, legal and accounting fees. You will give us at least 60 days' written notice before the effective date of any offering or other transaction covered by this subsection.

7.1.7 You may not grant sub-franchises or similar franchise rights to others.

7.1.8 Our consent to a proposed Transfer will not be a waiver of any claims we may have against you or your owners, or a waiver of our right to demand exact compliance with this Agreement. Our consent to a Transfer will not constitute or be interpreted as consent for any future Transfer.

7.1.9 You will comply with and help us to comply with any laws that apply to the Transfer, including state and federal laws governing the offer and sale of franchises.

7.1.10 If you are a business entity, your ownership certificates and/or operating agreements will clearly state that assignment or transfer of ownership interests is subject to the restrictions imposed upon assignments by this Agreement.

7.2 **Transfer by Us.**

7.2.1 We shall have the right to sell all or any part of our assets, including the Marks or other intellectual property, and our interest in, and rights and obligations under this Agreement in our sole discretion. Without limiting the generality of the foregoing, we may sell the System to one or more third parties, may go public, may engage in a placement of some or all of our securities, may merge, acquire other entities or be acquired by other entities, or may undertake a refinancing, recapitalization, reorganization, leveraged buyout or other economic or financial restructuring. We will not be required to remain in any particular form of business.

7.2.2 As for any or all of these sales, assignments and dispositions, you waive any claims, demands or damages arising from or related to the loss of the Marks (or any variation of them) or the loss of association with or identification as part of our franchise system.

7.3 **Your Death or Disability.**

7.3.1 In the case of your death or permanent disability or incapacity (such that you are unable to perform your functions as franchisee as determined by Franchisor at its reasonable discretion) if you are an individual, or of any general partner of you if you are a partnership, or of any member or shareholder owning 50% or more of you if you are a limited liability company or corporation or other entity (your "**Death or Disability**"), the executor, administrator, conservator, or other personal representative of the

deceased or permanently disabled person, or the remaining owners, must appoint a competent manager within a reasonable time, not to exceed 30 days after the date of Death or Disability. The appointment of this manager is subject to satisfactory completion of our required training program(s).

7.3.2 In addition to the right to appoint a temporary manager as described in Section 6.8 (entitled “Interim Management”), the following will apply in case of Death or Disability. Within 180 days of the event, the heirs, beneficiaries, devisees or legal representatives of that individual may:

- A. Apply to us for the right to continue to operate the Franchise for the duration of the term of this Agreement. The right to continue will be granted upon the fulfillment of all of the conditions set forth in Section 7.1, except that no transfer fee will be required; or
- B. Transfer your interest according to the provisions of Section 7.1. If a proper and timely application for the right to continue to operate has been made and rejected, the 180 days within which to transfer will be computed from the date of rejection.

7.3.3 If a suitable transferee purchaser is not found within 180 days from the date of Death or Disability, we may at our sole option enter into a contract to purchase the Franchise. We will have the right to elect this option by written notice to you (or one or more of your heirs, beneficiaries, devisees or legal representatives) within 60 days of the expiration of the 180-day period. If we elect this option, then the parties will make good faith efforts to agree on a purchase price and payment terms within 10 days after such notice. If the parties cannot agree within the 10-day period, then fair value will be determined by appraisal as provided in Section 7.6 (entitled “Appraisals”).

7.3.4 If the provisions of this Section 7.3 have not been fulfilled within the time provided, at our option, all rights licensed to you under this Agreement will immediately terminate and revert to us.

7.4 **First Right of Purchase.**

7.4.1 Before soliciting offers from others, you will notify us in writing if you desire to effectuate a Transfer (defined in Section 7.1). You will give us sufficient information and documentation to allow us to analyze the status and value of your business. We will notify you of our election or waiver of our option to purchase within 30 days after our receipt of your written notification and due diligence information. Our failure to notify you within the 30-day period will be deemed a waiver of our option. If we offer you an amount that you do not agree to, you may try to sell to a third party but on no better terms for the purchaser than we offered to you. If you later receive an offer from a third-party purchaser on better terms than we offered to you, you are obligated to re-offer to us pursuant to Section 7.5 (Right of First Refusal). Before any Transfer, you must comply with Section 7.1 (Transfer by You) and Section 7.5 (Right of First Refusal). If you do not complete a transaction with a third party within six months, you agree we will again have the right of first purchase before any subsequent contemplated transaction (notwithstanding any prior waiver).

7.4.2 We may elect to purchase all of the franchise business regardless of your intent to sell, assign or transfer a lesser interest. We can choose to pay the purchase price in cash up front or by industry-standard monthly payments that amortize the principal amount with interest calculated at the prime rate as of the date of purchase.

7.5 **Right of First Refusal.**

7.5.1 If you receive a bona fide offer from a third party acting at arm's length to purchase the Franchise, a majority interest in ownership of you, or substantially all of the assets of the Franchise, which offer is acceptable to you or to your owners, we will have the right of first refusal to purchase at the bona

vide price on the same terms and conditions as offered to you. We may substitute cash for any other form of consideration contained in the offer. Our credit will be deemed to be equal to the credit of any proposed purchaser. At our option, we may pay the entire purchase price at closing. Within 10 days after receipt by you of an acceptable bona fide offer, you will notify us in writing of the terms and conditions of the offer. You will give us sufficient information and documentation to allow us to analyze the status and value of your business. We may exercise this right of first refusal within 30 days after receipt of notice from you and due diligence information.

7.5.2 If the interest which is the subject of the third party's offer involves less than all of the ownership interest, then in our sole option, our right of first refusal will apply to the entire ownership interest. In such case, the consideration to be received, as set forth in the offer shall be divided by the percentage interest subject to the offer and the resulting quotient shall be the price to be paid for the entire ownership interest. Terms and conditions for the purchase of the entire ownership interest shall be as similar to the terms and conditions set forth in the offer as practicable, except for the substitute provisions noted above in this subsection.

7.5.3 If we do not exercise our right of first refusal within the 30-day period, you may make the proposed transfer to a third party. The transfer will not be at a lower price nor on more favorable terms than disclosed to us. Any transfer will be subject to Section 7.1 (Transfer by You). If the Franchise is not transferred by you within six months from the date it is offered to us, or if any material change is made in the terms of the proposed sale, then you must re-offer to transfer to us before a transfer to a third party.

7.6 **Appraisals.**

7.6.1 This Section 7.6 will apply to any other provisions of this Agreement that require determination of value by appraisal. The fair value of the relevant asset(s) will be determined by a single appraiser selected by you from a list of two appraisers provided by us. Franchisor and Franchisee will equally share the cost of the appraisal. The parties may then present evidence of the value of the relevant asset(s). For purposes of Section 4.2 (entitled "Real Property Security Assignments") and Section 6.5.7(d) (our right to acquire your franchise upon termination or expiration), the appraiser must *exclude* from its decision any amount or factor for the "goodwill" or "going concern" value. For purposes of Section 7.3.3 (our right to acquire your franchise upon your Death or Disability), the appraiser may *include* in its decision a factor for the "goodwill" or "going concern" value of the franchise.

7.6.2 Any time within 30 days after receiving the appraiser's decision, at our option we may enter into the transaction at the price determined by the appraiser.

7.6.3 For purposes of Section 6.5.7(d) (our right to acquire your franchise upon termination or expiration) and Section 7.3.3 (our right to acquire your franchise upon death or permanent disability or incapacity), terms of payment will be 10% of the purchase price payable upon contract signing, the balance payable in 60 equal monthly payments of principal payments with interest calculated at the prime rate published by our principal bank at time of execution of the purchase contracts. For purposes of Section 4.2 (entitled "Real Property Security Assignments"), fair terms for the lease and purchase payment terms for all related equipment, fixtures, signs, equipment leases and personal property will be determined by the appraiser.

8 **INDEMNIFICATION, INSURANCE, CONDEMNATION AND CASUALTY**

8.1 **Indemnification.**

8.1.1 Franchisee shall defend, hold harmless and indemnify Franchisor, its officers, directors, owners, agents, representatives, employees, landlords, related companies, and assigns (each an “**Indemnified Party**” and collectively “**Indemnified Parties**”) from any and all losses, claims, damages, liabilities, or expenses of any kind or nature, including fines, penalties, interest, attorneys' fees, and all other types of costs or expenses (collectively “**Claims**”), arising directly or indirectly from the establishment or operation of the franchise business, the Franchise Premises, and the acts or omissions (whether or not negligent or wrongful) of Franchisee or of any of Franchisee's manager(s), employees, agents, or representatives, including but not limited to acts or omissions in connection with the performance or breach of any obligation under this Agreement. Without limiting the foregoing, this indemnity will apply to claims that we (or one or more other Franchisor Indemnified Parties) were negligent or failed to train, supervise or discipline you, and to claims that you, your owners, employees, brokers or your independent contractors are our (or another Indemnified Party's) employees, agents are part of a common enterprise with us (or another Indemnified Party), including claims regarding violations of labor or employment laws or regulations. The obligations under this Section shall survive the expiration or termination of this Agreement.

8.1.2 You will defend the Indemnified Parties at your own expense in any legal or administrative proceeding subject to this Section 8.1. The defense will be conducted by attorneys we approve. Our approval will not be unreasonably withheld. You will immediately pay and discharge any liability rendered against any Indemnified Party in any proceeding, including any settlement that we approve in writing. You will not settle any claim against any Indemnified Party without our prior written approval. In our sole discretion and upon prior written notice to you, we may settle or defend any claims against any Indemnified Party at your expense, including attorneys' fees that we pay or incur in settling or defending. Promptly upon demand, you will reimburse us for any and all legal and other expenses we reasonably incur in investigating, preparing, defending, settling, compromising or paying any settlement or claim, including monies that we pay or incur in settling or defending such proceeding.

8.2 **Insurance.**

8.2.1 During the term of this Agreement, Franchisee shall maintain in force policies of insurance with the following minimum limits of coverage for each Franchise, issued by licensed insurers approved by Franchisor:

- A. Broad form commercial general liability coverage, on an occurrence form (including premises and operations, products and completed operations, personal & advertising injury, broad form contractual, and employers liability), against claims for bodily injury, personal injury, including death, and property damage with minimum limits of not less than \$2,000,000 per occurrence and \$3,000,000 aggregate for each coverage;
- B. All risk property insurance including equipment breakdown for the full replacement cost sufficient to cover all business personal property including contents, leasehold improvements, furniture, fixtures, equipment, and signs;
- C. Loss of income including extra expense insurance with sufficient limits to cover all ongoing expenses, including, future profits, royalty fees, advertising contributions, ordinary payroll for competent personnel and other fixed expenses for a minimum of 24 months from the date of loss;
- D. Plate glass insurance (if applicable);
- E. Worker's compensation and employer's liability insurance in statutory amounts;
- F. Unemployment insurance and state disability as required by governing laws;
- G. Employment practices liability insurance with minimum limits of not less than \$1,000,000 per occurrence/aggregate.

- H. Business automobile liability, including bodily injury and property damage coverage for all owned, non-owned and hired vehicles, with limits of not less than \$1,000,000 for injuries to persons resulting from any one accident, and \$500,000 for property damage resulting from any one accident;
- I. Commercial umbrella liability insurance with limits not less than \$4,000,000 each occurrence. The umbrella liability will be on a following form basis of the underlying policies (commercial general liability, premises and operations, products and completed operations, personal and advertising injury, automobile and employers liability);
- J. Blanket employee dishonesty coverage with minimum limits of not less than \$50,000;
- K. Monies and securities (crime) coverage with limits of not less than \$10,000 inside limit and \$5,000 outside limit; and
- L. Cyber and privacy liability with minimum limits of \$25,000 including, crisis management and data extortion expense.

8.2.2 Franchisee shall also maintain such additional insurance as is necessary to comply with all legal requirements concerning insurance as well as any other insurance required by Franchisee's landlord. Franchisor may periodically increase the amounts of coverage required under such insurance policies and require different or additional kinds of insurance at any time (upon 60 days' advance notice), including higher liability limits, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances.

8.2.3 Each insurance policy shall: (1) name Franchisor and each of its affiliates, directors, agents and employees (as may be specified by Franchisor) as additional insureds (except for worker's compensation, employer's liability insurance, employment practices liability insurance, and other employer-related insurance coverage) on a primary, non-contributory basis and provide a waiver of subrogation rights against Franchisor; (2) provide for 30 days' prior written notice to us of any material modification, cancellation, or expiration of the policy; and (3) provide that coverage applies separately to each insured. In the case of property insurance, the Franchisor parties shall be named as their interests may appear. Insurance carriers must be authorized to do business in the state where your Franchise Premises is located, be rated at least A-X with A.M. Best and approved by us. At our discretion, we may require you to purchase your insurance from a specific insurance carrier. Upon request, you must provide us with proof of insurance in compliance with this Agreement.

8.2.4 Certificates shall provide 30 days' notice prior written notice to Franchisor of any material modification, cancellation, or expiration of the policy, and due in our office 30 days prior to expiration and coverages listed above.

8.2.5 Franchisee shall provide Franchisor with evidence of the insurance required at least fifteen (15) days before the Franchise opens. Franchisee shall provide Franchisor with a complete copy of each insurance policy no later than thirty (30) days after delivery of the original proof of insurance, if required by Franchisor. Prior to the expiration of each insurance policy term, Franchisee shall furnish Franchisor with evidence of each renewal or replacement insurance policy to be maintained by Franchisee for the immediately following term and evidence of the payment of the premium thereof. If Franchisee fails or refuses to maintain required insurance coverage or to furnish satisfactory evidence thereof and the payment of the premiums thereof, Franchisor may, at Franchisor's option, and in addition to Franchisor's other rights and remedies hereunder, obtain such insurance coverage on Franchisee's behalf and Franchisee shall fully cooperate with Franchisor in its effort to obtain such insurance policies, promptly execute all forms or instruments required to obtain or maintain any such insurance, allow any inspections of the Franchise Premises which are required to obtain or maintain such insurance and pay to Franchisor on demand any costs and premiums incurred by Franchisor. If Franchisee fails to purchase or maintain any insurance

required by this Agreement or fails to reimburse Franchisor for its purchase of insurance on Franchisee's behalf within fifteen (15) days of delivery to Franchisee of Franchisor's written demand for reimbursement, then Franchisor may terminate this Agreement upon notice of termination without opportunity to cure.

8.2.6 The maintenance of sufficient insurance coverage shall be Franchisee's responsibility. Nothing contained in this Agreement will be construed as a representation or warranty by us that the minimum insurance coverage we specify will insure you against all insurable risks or amounts of loss that may or can arise out of or in connection with the operation of your franchise business.

8.2.7 Franchisee's obligations to maintain insurance coverage as herein described shall not be affected in any manner by reason of any separate insurance maintained by Franchisor nor shall the maintenance of such insurance relieve Franchisee of any indemnification obligations under this Agreement.

8.3 **Condemnation.** You will give us notice of any proposed taking through the exercise of the power of eminent domain within 10 days of your first knowledge of the proposed taking. If the Franchise Premises or a substantial part of it is to be taken, the Franchise Premises may be relocated within the Franchise Territory or elsewhere with our prior written approval. The relocated premises may not infringe on the protected rights of any other franchisee pursuant to our specifications and contractual obligations. Relocation must be completed and franchise business operations recommenced within a reasonable time after the closing of the initial Franchise Premises (but in any event, within one year after closing of the Franchise Premises). The new franchise location will become the Franchise Premises licensed under this Agreement. If a condemnation takes place and a new franchise location does not open within the timeframe prescribed above, then Franchisor may terminate this Agreement effective 30 days after written notice to you.

8.4 **Casualty.**

8.4.1 If the Franchise Premises is damaged by fire or other casualty, you will repair the damage as soon as commercially practicable. If the damage or repair requires the closing of the Franchise, you will:

- A. immediately notify us;
- B. repair or rebuild the Franchise Premises following our specifications; and
- C. re-open the Franchise for continuous business operations as soon as commercially practicable (but in any event, within one year after closing of the Franchise Premises). You will give us not less than 30 days advance notice of the date of reopening.

8.4.2 If the Franchise Premises does not re-open within one year, then Franchisor may terminate this Agreement effective 30 days after written notice to you.

8.5 **Proceeds From Insurance.** The proceeds from any business interruption insurance you receive will be included in Gross Sales.

9 **MISCELLANEOUS**

9.1 **Notices.**

9.1.1 All notices required by this Agreement will be in writing. They may be sent by certified or registered mail, postage prepaid and return receipt requested. They may be delivered by Federal Express, or other reputable air courier service, requesting delivery with receipt on the next business day. They may be sent by e-mail (provided that the sender confirms the e-mail by sending an original confirmation copy

by expedited delivery service or certified or registered mail within three business days after transmission). Notices will be delivered to you at the Franchise Premises, to us at our headquarters or to other locations specified in writing. Notices may be delivered and receipted to you personally at any location.

9.1.2 Notices sent by certified or registered mail will be deemed to have been delivered and received three business days following the date of mailing. Notices sent by Federal Express, or other reputable air courier service will be deemed to have been received one business day after placement requesting delivery on the next business day. Notices sent by e-mail will be deemed to have been delivered upon transmission (provided confirmation is sent by expedited delivery service or registered or certified mail as provided above).

9.2 **Business Name.** You will execute any documents we may direct, to be retained by us until this Agreement ends, to evidence that you abandon, relinquish, and terminate your right or interest you may claim in or to the Marks.

9.3 **Relationship of the Parties.**

9.3.1 **Independent Contractor Relationship.** You are and will remain an independent contractor. You and we are not and will never be considered joint venturers, partners, employees, or agents one for the other. Neither will have the power to bind nor obligate the other except as otherwise outlined in this Agreement. No representation will be made by either party to anyone that would create any apparent agency, employment, or partnership. Each will hold the other safe and harmless from each other's debts, acts, omissions, liabilities, and representations. You acknowledge that you are not in a fiduciary relationship with us.

9.3.2 **Display.** In all public and private records, documents, relationships, and dealings, you will show that you are an independent owner of the Franchise. You will prominently indicate on your letterheads, business forms, business cards, email signatures and similar mediums that you are our licensed franchisee by using language saying that you operate an independently owned Franchise. You will prominently display, by posting of a sign within public view, on or in the Franchise Premises, a statement that clearly indicates that your franchise business is independently owned and operated by you as a franchisee and not as our agent.

9.3.3 **Your Employees.**

- A. We will not directly control (hire, fire, schedule, direct, supervise, discipline, or set wages for) your employees.
- B. Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local labor laws and functions of the franchise business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, scheduling, supervision, and discipline of employees, paid or unpaid, full or part-time, and its independent consultants.
- C. You will maintain employee records to show clearly that you and your employees are not our employees.
- D. You are responsible for any employee wages and compensation, payroll taxes and other required withholding, worker's compensation and benefits. You must display your entire business entity's name, not just the licensed brand, on your payroll checks.
- E. You will indemnify, defend, and hold us legally harmless from any of your violations of federal, state or local labor laws or similar laws. You acknowledge that you have had ample opportunity to investigate these and other laws applicable to your business with your own

- independent legal counsel before signing this Agreement.
- F. You must place a prominent, boldface statement at the top of your employee applications that the applicant is applying to work for you, not for us. We do not provide sample employment applications for your use with your employees. You should acquire such forms from independent sources of your choice.
 - G. We do not post job openings at your franchise on our website or otherwise. We do not coordinate the sharing of employees among franchisees.
 - H. We do not provide sample employee handbooks for your use with your employees. You should develop these with independent sources of your choice.

9.3.4 **Email Accounts.** You acknowledge that you will have no expectation of privacy in your business email accounts. If we do access such email accounts and their contents, it is solely for our benefit and not for your benefit. Such access is not for the purpose of assisting you with, or supervising, your business operations or workers. We will not have any obligation to monitor any of your email activity. You must include in your email signature in each email communication the following language or similar language as we may direct: “[*your corporate entity or individual name*] independently owns and operates this FITNESS 1440 franchise.”

9.4 **Waiver.** A waiver of any breach of any provision, term, covenant, or condition of this Agreement will not be a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition. Any waiver of any provision of this Agreement must be set forth in writing and signed by the party granting the waiver. Customs or practices of the parties in variance with the terms of this Agreement will not constitute a waiver of our right to demand exact compliance with the terms of this Agreement. Our delay, waiver, forbearance, or omission to exercise any power or rights arising out of any breach or default by you of any of the terms, provisions, or covenants of this Agreement, will not affect or impair our rights and will not constitute a waiver by us of any right or of the right to declare any subsequent breach or default. Our subsequent acceptance of any payment due to us will not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement.

9.5 **Time Is of the Essence.** Time is of the essence of this Agreement.

9.6 **Documents.** You and your owners, officers, and directors agree to execute and deliver any documents that may be necessary or appropriate during the term and upon expiration or termination of this Agreement to carry out the purposes and intent of this Agreement. Upon the expiration, termination or transfer of this Agreement, if you do not execute any document necessary in our judgment to comply with the requirements of this Agreement, then by this Agreement, you irrevocably nominate, constitute and appoint the person then serving as our President, Managing Member, LLC Manager or similar position as your attorney-in-fact to so execute that document in your name and on your behalf.

9.7 **Construction.**

9.7.1 **Entire Agreement.** This document, including any exhibits attached to this Agreement and the documents referred to in this Agreement, will be construed together and constitute the entire agreement between the parties. Except as expressly and otherwise provided in this Agreement, this Agreement may be modified only by a written instrument signed by the parties. No previous communications, negotiations, course of dealing or usage in the trade not specifically set forth in this Agreement will be admissible to explain, modify, or contradict this Agreement. Nothing in the Agreement is intended to disclaim the representations we made in the franchise disclosure document that we delivered to you.

9.7.2 **Format.** All words in this Agreement include any number or gender as the context or sense

of this Agreement requires. The words "will" and "must" used in this Agreement indicate a mandatory obligation. In this Agreement, including means "including but not limited to" unless expressly stated otherwise. All captions and headings are for reference purposes only and are not part of this Agreement. The recitals set forth in this Agreement are specifically incorporated into and constitute a part of the terms of this Agreement.

9.7.3 Interpretation.

9.7.3.1 The rule of construction that a written agreement is construed against the party preparing or drafting such agreement will specifically not be applicable to the interpretation of this Agreement.

9.7.3.2 If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties agree that covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement.

9.7.3.3 If there is any typographical, word processing, printing or copying error in this Agreement, the error will be interpreted and corrected consistent with the following order of interpretation:

- A. The content and expressed intent and exhibits of our franchise disclosure document previously delivered to you.
- B. The content and expressed intent of franchise agreements we have executed with our other franchises within the same reasonable timeframe to this Agreement.

9.7.4 Severability. If any part of this Agreement is declared invalid, that declaration will not affect the validity of the remaining portion, which will remain in full force and effect as if this Agreement had been executed with the invalid portion omitted. Provided, however, that if Franchisor determines that the finding of invalidity materially and adversely affects the basic consideration of this Agreement, Franchisor may, at its option, terminate this Agreement.

9.8 Additional Provisions Regarding Covenants.

9.8.1 Your Acknowledgments. You acknowledge the following regarding the covenants in Section 5.6 (Confidential Information), Section 5.7 (In-Term Non-Competition Covenant), and 6.7 (Post-Termination Non-Competition Covenant): (1) the time, content and geographical restrictions are fair and reasonable; (2) your observance of the covenants will not cause you any undue hardship or impair your ability to obtain employment commensurate with your abilities; and (3) your knowledge of the System would cause our franchise system serious injury and loss if you use the knowledge to the benefit of a competitor or to compete with us or our franchisees.

9.8.2 Lawful Scope. If, for any reason, any provision set forth in Section 5.6 (Confidential Information), Section 5.7 (In-Term Non-Competition Covenant), 6.7 (Post-Termination Non-Competition Covenant), or any similar covenant in this Agreement exceeds any lawful scope or limit as to duration, geographic coverage, or otherwise, it is agreed that the provision will nevertheless be binding to the full scope or limit allowed by law or by a court of law. The duration, geographic coverage and scope allowable by law or court of law shall apply to such Sections as if the resulting covenant were separately stated in this Agreement. You further acknowledge and agree that we will have the right, at our sole discretion, to reduce the scope of any of the aforementioned covenants. We may do so without your consent, effective immediately upon our written notice to you. You must comply with any covenant that pertains to you as we so modify it.

9.8.3 Liquidated Damages. The parties agree that Franchisor would not have an adequate remedy at law for any breach or nonperformance of the terms of the covenants (each a “**Covenant**”) in Section 5.6 (Confidential Information), Section 5.7 (In-Term Non-Competition Covenant), or 6.7 (Post-Termination Non-Competition Covenant). Therefore, upon violation of a Covenant, Franchisee agrees to pay Franchisor \$50,000 for each violation as fair and reasonable liquidated damages, but not as a penalty. The parties acknowledge and agree that: (1) it would be difficult to calculate with certainty the amount of damage that Franchisor will incur upon the violation of a Covenant; (2) the liquidated damages provided for in this subsection are fair and reasonable under the circumstances; (3) the liquidated damages specified in this subsection are only intended to compensate Franchisor for the damage that Franchisor will incur upon the violation of a Covenant, but not for any other breach of this Agreement by Franchisee or any other damages incurred by Franchisor, and all remedies applicable thereto remain available to Franchisor; and (4) if a court determines that this liquidated damages clause is unenforceable, then Franchisor may pursue all remedies available at law or in equity, including consequential damages.

9.9 Dispute Resolution and Enforcement.

9.9.1 Disputes. The mediation provisions of this Agreement do not apply to controversies, disputes, or claims related to or based on (1) improper use of the Marks [including those based on the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051, et seq.)] or any of the Franchisor’s other intellectual property; (2) the violation by Franchisee (or any related individual or entity) of any of the restrictive covenants in this Agreement, which include but are not limited to restrictive covenants under the following sections of this Agreement: Section 5.6 (Confidential Information); Section 5.7 (In-Term Non-Competition Covenant); and Section 6.7 (Post-Term Non-Competition Covenant); or (3) collection of delinquent payments from you. The mediation provisions of this Agreement shall apply to all other controversies, disputes, or claims between the parties (and/or their respective affiliates, owners, officers, directors, LLC managers, agents, guarantors, and/or employees) arising out of or related to: (a) this Agreement or any other agreement between Franchisee and Franchisor; (b) the franchise relationship between Franchisor and Franchisee; (c) the offer and sale of the Franchise; (d) the validity of this Agreement or any other agreement between Franchisee and Franchisor; or (e) any System standard (referred to herein as “**Disputes**”).

9.9.2 Mediation. Before taking any other legal action, the parties agree to participate in good faith mediation in accordance with the mediation procedures of the American Arbitration Association or of any similar organization that specializes in the mediation of commercial business disputes. The party demanding mediation must provide written notice to the other party of the demand for mediation. If the other party does not respond to the mediation demand within 30 days of written notice, or indicates a refusal to participate in mediation, then the party providing notice may proceed with other forms of dispute resolution. The parties agree to equally share the costs of mediation. Injunctive relief and or claims of specific performance sought pursuant to or authorized by this Agreement, are not subject to, nor can be avoided by, the mediation terms of this Agreement, and may be brought in any court of competent jurisdiction.

9.9.3 Injunctive Relief and Specific Performance. No provision in this Agreement will limit either party’s right to seek and obtain in any court of competent jurisdiction specific performance and injunctive relief to restrain a violation by the other party of any term or covenant of this Agreement. Without limiting the generality of the foregoing, you acknowledge that any violation by you of the covenants in Section 5.6 (Confidential Information), Section 5.7 (In-Term Non-Competition Covenant), Section 6.7 (Post-Termination Non-Competition Covenant), or similar covenants in this Agreement would result in irreparable injury to us for which no adequate remedy at law may be available. Accordingly, you consent

to the issuance of an injunction prohibiting any conduct by you in violation of the terms of such covenants. We will not be required to post a bond as a condition for the granting of injunctive relief.

9.9.4 Governing Law. This Agreement is accepted by us in the State of Arizona and will be governed by the substantive laws of Arizona without regard to Arizona choice of law provisions. Following are exceptions to this choice of laws provision:

- A. Arizona laws will not prevail to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051, et seq.).
- B. Any law of the State of Arizona that regulates the sale of franchises or business opportunities or governs the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section.
- C. No antitrust, implied covenant, unfair competition, fiduciary, or any similar doctrine of law statute, law or regulation of Arizona (or any other state) is intended to be made applicable to this Agreement unless it would otherwise apply absent this paragraph.

The foregoing will not be construed as a waiver of any of your rights under any applicable franchise registration, disclosure or relationship law of another territory, state or commonwealth.

Any portion of this Agreement that requires enforcement in any other state, and is enforceable under the laws of that state but not of Arizona, will be construed and enforced according to the laws of that state.

9.9.5 Venue. All controversies, disputes, or claims related or arising from this Agreement or the relationship between the parties will be mediated, arbitrated, tried, heard, and decided (as applicable) in the county in which our headquarters are then located (currently Maricopa County, Arizona) or the nearest Federal District Court, which the parties agree is the most convenient venue for these purposes. The parties acknowledge and agree that this location for venue is reasonable and the most beneficial to the needs of, and best meets the interest of, all of the members of Franchisor's franchise system.

9.9.6 Attorneys' Fees. The prevailing party in any insolvency proceeding, bankruptcy proceeding, suit, or action to enforce this Agreement will recover its proceeding, and court costs and reasonable attorneys' fees. These will be set by the proceeding or court, including costs and attorneys' fees on appeal or review from the proceeding, suit, or action. Prevailing party means the party who recovers the greater relief in the proceeding.

9.9.7 Remedies. No right or remedy conferred upon us is exclusive of any other right or remedy in this Agreement or provided by law or equity. Each will be cumulative of every other right or remedy. The following provisions are in addition to all other remedies available to us at law or in equity:

- A. We may employ legal counsel or incur other expense to collect or enforce your obligations or to defend against any claim, demand, action or proceeding because of your failure to perform your obligations. Legal action may be filed by or against us and that action or the settlement of it may establish your breach of this Agreement. If either event occurs, we may recover from you the amount of our reasonable attorneys' fees and all other expenses we incur in collecting or enforcing that obligation or in defending against that claim, demand, action or proceeding.
- B. You agree that the existence of any claims you may have will not constitute a defense to the enforcement by us of any of the covenants of this Agreement related to confidentiality and non-competition.

- C. If you materially breach any of the terms of this Agreement, we have the right to appoint a receiver to take possession, manage and control assets, collect profits, and pay the net income for the operation of the Franchise as ordered by a court of jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists, and without the necessity of notice to you.
- D. If you materially breach any of the terms of this Agreement, you irrevocably nominate, constitute and appoint the person serving as our President, Managing Member, LLC Manager or similar position to be your attorney-in-fact so to act in your name and on your behalf.
- E. If you materially breach any of the terms of this Agreement, or upon expiration or termination of this Agreement, at our election and without waiving any claims for default or breach and without prior notice to you or resort to legal process, we may enter upon any premises using the reasonable force as is necessary in the circumstances, without being guilty of trespass or liable to you or the property owner for the entry, for the purposes of securing the return of our property, the performance of your obligations of discontinuance and the protection of our rights.
- F. We will have the option to cure your breaches at your expense. We may direct the Billing Company to pay us or third parties directly in this regard. This includes, but is not limited to, your failure to comply with our standards and specifications. For example, if you fail to clean or otherwise maintain your Franchise Premises in compliance with our standards and specifications, we may hire service providers to clean and maintain your Franchise Premises at your expense.
- G. If Franchisee breaches any of the terms of this Agreement, and Franchisor delivers to Franchisee a notice of default, Franchisor has the right to suspend its performance of any of its obligations under this Agreement including, without limitation, the sale or supply of any products or services for which Franchisor is an approved supplier to Franchisee, until such time as Franchisee corrects the breach.
- H. If any payments to us, our affiliates or approved vendors are late by more than 15 business days, we may order all product deliveries withheld from you until the payments are received.
- I. Upon your breach or anticipatory breach of this Agreement (as we determine in good faith at our sole discretion), including but not limited to anticipated closure of your Franchise Premises, we will have the right (but not the obligation) to direct the Billing Company to place a monetary hold on your account and/or to deduct from your account and pay amounts owed to us and any third party (plus interest and penalties). You hereby release us and the Billing Company from any liability associated with us directing the Billing Company to make such transfer, hold, and/or deductions from your account. J. Upon your abandonment of the Franchise, or upon your failure to cure any default within the prescribed cure period after receipt of written notice, or upon termination or expiration of this Agreement, or upon our assumption of your Franchised Business consistent with this Agreement, or upon our interim management of your Franchise pursuant to Section 6.8 (entitled "Interim Management"), we will have the right (but not the obligation) to direct the Billing Company to (1) transfer your account to us or our designee, (2) pay past due payments to us and third parties or pay us directly so that we can pay third parties to which you owe money, (3) pay us and our affiliates for our costs, expenses, and reasonable fees for our administrative time and resources related to your breach or termination (or management fees with respect to interim management), (4) pay us liquidated damages as provided herein, including in Sections 6.5.7, 6.5.9 (entitled "Damages and Liquidated Damages"), and 9.8.3 (entitled "Liquidated Damages"), and/or (5) place a monetary hold on your account. You hereby release us and the Billing Company from any liability

associated with us directing the Billing Company to make such transfer, hold, and/or deductions from your account.

- K. Upon the voluntary or involuntary transfer of your Franchise (or substantial assets of your Franchise) we will have the right (but not the obligation) to direct the Billing Company to (1) transfer your account to us or our designee (e.g. the transferee), (2) pay past due payments to us and third parties or pay us directly so that we can pay third parties to which you owe money, (3) pay us and our affiliates for our costs, expenses, and reasonable fees for our administrative time and resources related to the transfer, and/or (4) place a monetary hold on your account. You hereby release us and the Billing Company from any liability associated with us directing the Billing Company to make such transfer, hold, and/or deductions from your account.

9.10 **Cross-Defaults.** If you or any of your owners, officers or key employees violate any material provision of any other franchise or similar agreement with us, that breach will be considered a breach of this Agreement and of the other agreements. We then may terminate or otherwise enforce this Agreement and the other agreements.

9.11 **Successors and Assigns.** This Agreement benefits and binds the respective heirs, executors, administrators, successors, and permitted assigns of the parties. Except as provided in the immediately preceding sentence, the parties intend to confer no benefit or right on any person or entity not a party to this Agreement and no third party will have the right to claim the benefit of any provision of this Agreement as a third-party beneficiary of that provision.

9.12 **Counterparts and Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, will constitute an original. Execution of this Agreement via DocuSign or other reputable e-signature services shall constitute valid and legally binding execution.

9.13 **Withholding Consent.** Our consent, whenever required by this Agreement, will be at our sole and absolute discretion unless expressly stated otherwise herein and may be withheld if you are in breach of this Agreement. In this Agreement, the phrase “at our discretion” or similar wording shall mean “at our sole and absolute discretion.”

9.14 **Joint and Several Liability.** If, at any time during the term of this Agreement, the Franchisee consist of two or more persons or entities (whether acting in partnership or otherwise and whether or not all have signed this Agreement), the rights, privileges and benefits granted to Franchisee in this Agreement may only be exercised and enjoyed jointly, and Franchisee’s obligations, liabilities and responsibilities under this Agreement will be joint and several obligations of each such person and entity.

9.15 **Personal Guaranty.** If you are a business entity, all of your owners (and principal officers, if we so require) must either sign this Agreement as direct parties or sign a personal guaranty in a form we specify at the time this Agreement is signed. This constitutes a material obligation under this Agreement.

9.16 **Force Majeure.** In the event that either party shall be delayed, hindered in, or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of utilities, restrictive governmental laws or regulations, riots, insurrection, war, epidemic or pandemic, Acts of God, or any reason of a like nature, not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of such delay; provided that the provisions of this section shall not operate to excuse you from timely payment of any monetary obligations under this

Agreement.

9.17 **We May Investigate.** We may conduct investigations and make inquiries of any person or persons we, in our reasonable judgment, believe appropriate concerning the credit standing, character, and professional and personal qualifications of you and your owners, officers, directors, LLC managers, and persons occupying similar positions or performing similar functions. You authorize us to conduct these investigations and to make these inquiries. We agree to comply with the requirements of laws that apply to these investigations and inquiries.

9.18 **Your Additional Representations and Acknowledgments.** You make the following representations and acknowledgments to us:

9.18.1 **Receipt of Disclosure Documents.** You have received our franchise disclosure document at the earlier of (1) the first personal meeting with us (if required in your state); or (2) 14 calendar days before signing any franchise or related agreement or making any payment with the franchisor or an affiliate in connection with the franchise sale (or 10 business days if required in your state). In addition, you acknowledge either:

- A. Receipt of this Agreement containing all substantive terms at the time of delivery of the franchise disclosure document; or
- B. If we unilaterally and materially altered the terms and conditions of our standard franchise agreement or any related agreements attached to the franchise disclosure document (in connection with properly amending our franchise registration in the relevant state(s)), you acknowledge that you received a complete and final copy of this Agreement and its exhibits not less than seven calendar days before you signed this Agreement.

9.18.2 **You Have Read and Understand this Agreement.** You have read and understand this Agreement. You understand and accept the terms, conditions and covenants contained in this Agreement. They are necessary to maintain our high standards of quality, service and uniformity at all franchises. They protect and preserve the goodwill of the Marks and the confidentiality and value of the System. You have received advice from advisors of your own choosing regarding all pertinent aspects of this Franchise and the franchise relationship created by this Agreement. You believe you have made a good decision for yourself (or your partners or your business entity) based upon what you believe is your ability to run and control a business of your own.

9.18.3 **Varying Forms of Agreement.** You are aware that some present and future FITNESS 1440 franchisees may operate under different forms of agreement and, consequently, that our obligations and rights in respect to our various present and future franchisees may differ materially in certain circumstances.

9.18.4 **Speculative Success.** The success of your franchise is speculative and depends, to a large extent, upon your ability as an independent businessperson. You recognize that the business venture contemplated by this Agreement involves business risks. We do not make any representation or warranty, express or implied, as to the potential success of the Franchise.

9.18.5 **Independent Investigation, No Projections or Representations.** You have entered this Agreement after conducting an independent investigation of us and of the franchise we offer. You have not relied upon any representation as to gross revenues, volume, cost savings, potential earnings or profits which you in particular might realize. Except as outlined in Item 19 of our franchise disclosure document, we expressly disclaim the making of, and you acknowledge that you have not received, any representation, warranty, or guarantee, express or implied, concerning the potential revenues, cost savings, volume, profits,

or success of the business venture contemplated by this Agreement. You acknowledge that neither we, nor any of our officers, directors, shareholders, employees, agents or servants, made any other representation about the business contemplated by this Agreement or that are not expressly set forth in this Agreement or our franchise disclosure document to induce you to accept this Franchise and execute this Agreement. Any oral representations made by our representatives to you, whether or not set forth in earlier versions of our standard form franchise agreement, have either been ratified by us by including the representations in this document or have been disavowed by excluding them from this Agreement.

9.18.6 No Review of Business Plans or Loan Applications. Prior to your execution of this Agreement, we have not given you any advice or review of any of your business plans or third-party loan applications related to your purchase of and proposed operation of the Franchise. We do not receive or review business plans and loan applications before a franchisee signs the relevant franchise agreement. We have strongly recommended that you retain and work with your own independent accountant and financial advisors to fully review all financial aspects of your potential franchise investment for you. You acknowledge that we will not provide financial assistance to you and that we have made no representation that we will buy back from you any products, supplies, or equipment you purchase in connection with your franchise.

9.18.7 Your Location and Market Area. You acknowledge that we will not provide or designate locations for you. You have investigated the potential of the market area in which you are to establish and operate your franchise business and the laws and applicable regulations. You agree and represent that that market area is reasonable and the Initial Franchise Fee represents fair consideration for the opportunity to establish and operate a FITNESS 1440 franchise.

9.18.8 Health and Full-Time Participation. You acknowledge that a FITNESS 1440 business involves hard work and sometimes long hours, similar to most small businesses that are owner-operated. We have not represented that this business is going to be easy for you, your partners, officers or directors. You represent that you or your principals are in good health and able to devote your best efforts in the operations of your Franchise and/or that you have the business management skills necessary to successfully hire a general manager to run the day-to-day operations of your Franchise (to the extent permitted by this Agreement).

9.18.9 Terrorism, Convictions, Immigration Status. You represent to us, unconditionally without reservation, that:

- A. Neither you, nor any of your owners, officers or employees, nor any of their respective spouses, children, or parents, nor anyone who has an interest in or who will manage the franchise, nor any of your affiliated entities (“**Interested Party(ies)**”): supports terrorism; provides money or financial services to terrorists; receives money or financial services from terrorists; or is engaged in terrorism, or any activity, organization, or plan with a terrorist. For purposes of this Agreement, “terrorist(s)” includes any person or organization on any current U.S. government list of persons and organizations that support terrorism as provided by law. You represent that neither you nor any Interested Party is on any such list(s).
- B. Neither you nor any Interested Party has engaged in or been convicted of fraud, corruption, bribery, money laundering, narcotics trafficking or other crimes, and each is eligible under applicable U.S. immigration laws to communicate with, lawfully reside in, and travel to the United States to fulfill your obligations under your agreements with us.
- C. You and all Interested Parties are in the United States lawfully, have legal residence in the United States, and are lawfully permitted to work in the United States.

9.18.10 Investigate Applicable Laws. You have had ample opportunity to investigate laws applicable to your business with your own independent legal counsel before signing this Agreement.

9.18.11 No Representations, Projections, or Warranties by Franchisor. WE HAVE NOT MADE ANY REPRESENTATIONS, PROMISES, GUARANTEES, PROJECTIONS, OR WARRANTIES OF ANY KIND TO YOU, YOUR OWNERS, OR THE GUARANTORS TO INDUCE THE EXECUTION OF THIS AGREEMENT OR CONCERNING THIS AGREEMENT EXCEPT AS SPECIFICALLY SET FORTH IN WRITING IN THIS AGREEMENT AND IN OUR FRANCHISE DISCLOSURE DOCUMENT THAT WE DELIVERED TO YOU. YOU ACKNOWLEDGE THAT NEITHER WE NOR ANY OTHER PARTY HAS GUARANTEED YOUR SUCCESS IN THE BUSINESS CONTEMPLATED BY THIS AGREEMENT.

Without limiting the generality of the foregoing, you acknowledge that we have not guaranteed that you will derive income from the Franchise that exceeds the price you paid for the Franchise; or that we will refund all or part of the price you paid for the Franchise, or repurchase any of the products, equipment, supplies or chattels supplied by us (as applicable) if you are unsatisfied with the Franchise.

9.19 Security Interest. Subject to applicable state law, you grant to us a security interest in all tangible and intangible assets of the Franchise (and products and proceeds of them) as security for your obligations under this Agreement. This includes, without limitation, furniture, fixtures, equipment, supplies, inventory, leasehold interests, leasehold improvements, appliances, contract rights, accounts receivable, deposit accounts, customer lists/information/accounts, websites, domain names, social media accounts, books and records, general intangibles, money, instruments, chattel paper, documents, business name and other intellectual property, together with all after-acquired property, accessories, substitutions, additions, replacements, parts and accessions affixed to or used in connection therewith and the proceeds, products, rents, and profits of all the foregoing, and under any other business name you may use and wherever you may locate the assets of the business. (To clarify, the foregoing sentence does not: (1) permit you to do business in connection with your Franchise using any marks other than the Marks licensed to you hereunder; (2) relocate the Franchise Premises or assets without our prior approval as required hereunder; or (3) permit you to operate a competing business during or after the term of this Agreement in violation of any covenants hereunder.) You agree that we may prepare and file all instruments or documents necessary to consummate or perfect any such security interest, including a UCC Financing Statement. Upon request, you will execute and file such instruments or documents as needed. You acknowledge that we may file a copy of this Agreement as a financing statement for that purpose.

[SIGNATURES APPEAR ON THE NEXT PAGE.]

The parties have executed this Agreement on the day and year first above written.

Franchisor: FITNESS 1440, INC.

By: _____

Print Name: _____

Title: _____

Franchisee:

IF YOU ARE A CORPORATION, LIMITED LIABILITY COMPANY OR OTHER ENTITY: THIS AGREEMENT MUST BE SIGNED BY A COMPANY OFFICER OR OWNER AUTHORIZED TO SIGN ON BEHALF OF THE COMPANY. ADDITIONALLY, THE AGREEMENT OR A SEPARATE PERSONAL GUARANTY MUST BE SIGNED BY ALL OWNERS (AND PRINCIPAL OFFICERS, IF WE SO REQUIRE) OF THE COMPANY AS INDIVIDUALS.

Name of Corporation/LLC/Partnership: _____

By: _____ Title: _____

Individual Signature: _____

Print Name: _____

Individual Signature: _____

Print Name: _____

Individual Signature: _____

Print Name: _____

Franchise Agreement - Attachment 1

Description of Territory

This Attachment 1 to the Franchise Agreement executed by FITNESS 1440, INC. ("**Franchisor**") and _____ ("**Franchisee**"), on _____, hereby grants to Franchisee the following Franchise Territory:

[#]-mile radius from the center of the site location of the Franchise Premises.] The Franchise Premises is currently located at the following address: _____ . If the site location of the Franchise Premises is unknown at the time of execution of the Franchise Agreement, it will be selected by Franchisee and approved by Franchisor as described in the Franchise Agreement. The [#]-mile radius will be based on the actual address of the Franchise Premises once selected by the Franchisee and approved by the Franchisor, even if the Franchisor does not add the address to this Attachment.

[Search Area: You are responsible for selecting the site location for your Franchise Premises within the following area ("**Search Area**"): The following zip codes (as constituted as of the effective date of the Franchise Agreement) in the State of _____: _____ . Franchisor does not grant territorial protections or exclusivity in the Search Area. Franchisor does grant certain territorial protections in the Franchise Territory as described in the Franchise Agreement.]

General. The Franchise Territory and Franchise Premises must be in the United States of America, legally available pursuant to state and federal franchise and business opportunity disclosure and registration laws and pursuant to Franchisor's contractual commitments (including those with Franchisor's other franchisees) and in compliance with Franchisor's franchise placement, market development and demographic criteria.

Except as specifically outlined or forbidden in the Franchise Agreement, there are no understandings oral or written concerning the future placement of outlets by any party and concerning any territory protections granted to Franchisee.

Franchisor: FITNESS 1440, INC.

By: _____

Name: _____

Title: _____

Date: _____

Franchisee:

By: _____

Name: _____

Title: _____

Date: _____

Signed: _____

Name: _____

Date: _____

Signed: _____

Name: _____

Date: _____

Franchise Agreement – Attachment 2

Lease Rider

This Lease Rider has been entered this ____ day of _____, 20____. It is by _____ and _____ between _____ ("**Landlord**") and _____ (jointly and severally "**Tenant**" or "**you**").

On or about _____, 20____, Landlord and Tenant executed a lease agreement (the "**Lease**") by which Tenant leased from Landlord real property for Tenant's operations of a Fitness 1440 franchise at the following location: _____ (the "**Franchise Premises**").

On or about _____, 20____, Tenant and Fitness 1440, Inc., a Pennsylvania corporation (the "**Franchisor**" or "**we/us**") executed a franchise agreement (the "**Franchise Agreement**") for Tenant to operate a Fitness 1440 franchise at the Franchise Premises.

Landlord and Tenant desire to execute this addendum to the Lease to give Franchisor certain rights to the Franchise Premises as required by the Franchise Agreement.

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. **Use of Franchise Premises.** During the initial term and any option terms of the Lease, the Franchise Premises may be used only for the operation of a Fitness 1440 facility.
2. **Use of Franchisor's Marks.** During the initial term and any option terms of the Lease, Landlord shall permit Tenant to use and display all service marks, trademarks, and commercial logos that Franchisor has developed or develops in the future for a Fitness 1440 facility in accordance with the Franchisor's specifications, subject only to applicable law.
3. **Landlord Reports and Disclosures to Franchisor.** Tenant acknowledges and agrees that Landlord may, upon Franchisor's written request, disclose to Franchisor all reports, information, or data in Landlord's possession respecting sales made in, upon, or from the Franchise Premises and Tenant's business operations.
4. **Assignment to Franchisor.** Without the need for additional consent from Landlord, Tenant may assign its right and interest in the Lease to Franchisor (or Franchisor's designee) without cost or penalty. Upon termination or expiration of Tenant's Lease or Franchise Agreement, Franchisor (or Franchisor's designee) will have the right, at Franchisor's election, to take possession of the Franchise Premises and expel Tenant from the Franchise Premises without the need for additional consent from Landlord or Tenant. This option may be exercised by Franchisor any time within 30 days of such termination or expiration. In that event, Tenant will have no further right and title to or interest in the Lease but will remain liable to Landlord for any past due rental payments or other charges under the Lease.

5. **Tenant's Default; Notice to Franchisor.** Landlord will give written notice to Franchisor (concurrently with the giving of notice to Tenant) of any breach by Tenant under the Lease. Franchisor will have the right (but not obligation), in Franchisor's sole discretion, to cure any breach at Tenant's expense within 15 days after the expiration of the period in which Tenant had to cure the default. Notice will be sent to the following address, or to the address Franchisor may, from time to time, specify in writing to Landlord:

FITNESS 1440, INC.
870 East Williams Field Road
Gilbert, AZ 85295

6. **Franchise Premises De-identification.** Upon termination, expiration, or non-renewal of the Lease or Franchise Agreement, Tenant may de-identify the Franchise Premises. If Tenant fails to do so, Landlord gives Franchisor the express right to de-identify. De-identification consists of removal of all signs; modification or remodeling of all identifying architectural features; repainting as necessary to no longer use the color scheme used by Franchisor; and any other steps Franchisor deems necessary to effectively distinguish the Franchise Premises from Franchisor's proprietary designs, trade dress, trademarks, and service marks.

7. **Franchisor's Interim Management Rights.** To protect the Franchisor's system, trademarks, confidential information, and the goodwill associated with the same, Franchisor may (but is not obligated to) assume interim management of the Franchise at the Franchise Premises for any of the following reasons: (a) after Franchisor has given Tenant written notice that Tenant is in default under the Franchise Agreement and during the pendency of any cure period or in lieu of immediately terminating the Franchise Agreement; (b) Tenant's business activities are having, or are likely to have, a negative impact upon the value of Franchisor's Marks, goodwill, or the franchise system (as Franchisor determines at its sole discretion); (c) Franchisor determines that significant operational problems require it to temporarily operate the Franchise; (d) upon the death or permanent disability of the Tenant (or any general partner of Tenant or of any member or shareholder owning 50% or more of Tenant) as provided in the Franchise Agreement; or (e) after termination or expiration of the Franchise Agreement while the Franchisor is deciding whether to exercise its right to purchase any or all assets, or while such a purchase is pending. If Franchisor elects to assume interim management of the Franchise, then: (i) Franchisor's election will not relieve Tenant of Tenant's obligations under the Franchise Agreement; (ii) Franchisor will not be liable for any debts, losses, costs or expenses incurred in the operation of the Franchise during any interim management period; (iii) Franchisor will have the right to charge a reasonable fee for the management services; (iv) Tenant hereby agrees to indemnify, defend and hold harmless Franchisor and its interim manager(s) from and against any and all claims, demands, judgments, fines, losses, liabilities, costs, amounts paid in settlement and reasonable expenses (including, but not limited to attorneys' fees) incurred in connection with the interim management of the Franchise, other than those arising solely from the gross negligence or willful misconduct of Franchisor; and (v) Franchisor's interim management of the Franchise will not operate as an assignment to Franchisor of the lease or any sublease of franchise property. Franchisor will have no responsibility for payment of any rent or other charges owing on any lease.

8. **Third-Party Beneficiary.** Tenant and Landlord acknowledge and agree that Franchisor is

a third-party beneficiary of this Lease Rider, and Franchisor is entitled to all rights and remedies conferred upon Franchisor under this Lease Rider (which Franchisor may enforce directly against Tenant or Landlord, with or without the consent or joinder of Tenant). Notwithstanding anything contained in this Lease Rider, Franchisor will have no liability under the Lease or this Lease Rider unless Franchisor expressly enters into a written agreement with Landlord.

9. **Lease Rider Supersedes.** This Lease Rider supersedes any conflicting provisions in the Lease.

10. **Signatures.**

IN WITNESS, the parties have executed this Lease Rider on the day and year first above written.

(Landlord): _____

By: _____

Name: _____

Title: _____

(Tenant): _____

By: _____

Name: _____

Title: _____

Franchise Agreement – Attachment 3

Multiple Franchise Purchase Addendum

This Multiple Franchise Purchase Addendum (“*Addendum*”) is entered into as of _____ between FITNESS 1440, INC., a Pennsylvania corporation (“*we/us*”), and _____ and _____ (“*you*”).

1. **Simultaneous Multiple Franchise Purchase.** The parties have contemporaneously executed [#] Franchise Agreements, including this Agreement, as part of a multiple franchise purchase.

2. **Development Area.** If the Franchise Premises has not been determined when this Agreement is executed, you are responsible for selecting the site for your Franchise Premises within the following “**Development Area**”:

Subject to our reservations of rights in the Franchise Agreement, we will not establish or allow others to establish a Fitness 1440 facility located within your Development Area using our Marks and System so long as the Franchise Agreements and corresponding Multiple Franchise Purchase Addenda are in force and you are not in default in any material provision of such agreements. Upon termination or expiration of this Addendum (under Section 8 below), your rights with respect to the Development Area will automatically terminate.

3. **Franchise Premises and Franchise Territory.** The Franchise Territory for each franchise will be designated by us before you open each relevant Franchise Premises. The Franchise Territory and your Franchise Premises must be in the United States of America, legally available pursuant to state and federal franchise and business opportunity disclosure and registration laws and pursuant to our contractual commitments (including those with our other franchisees) and in compliance with our franchise placement, market development and demographic criteria.

4. **No Other Understandings.** Except as specifically outlined or forbidden in the relevant Franchise Agreement, there are no understandings oral or written concerning the future placement of restaurants by any party and concerning any territory protections granted to you.

5. **Franchise Opening Schedule.** You will commence in good faith to perform your obligations under the relevant franchise agreements and commence full and continuous operation of the relevant Franchise within the following time periods after execution of this Agreement (the “*Development Schedule*”):

END OF DEVELOPMENT PERIOD	NEW FRANCHISES TO BE OPENED DURING DEVELOPMENT PERIOD	CUMULATIVE NUMBER OF FRANCHISES TO BE OPENED AND CONTINUOUSLY OPERATED
First Franchise: Within 12 Months of Franchise Agreement Effective Date	1	1
Second Franchise: Earlier of 12 Months After Opening First Franchise or 12 Months After Deadline for Opening First Franchise	1	2
Third Franchise: Earlier of 12 Months After Opening Second Franchise or 12 Months After Deadline for Opening Second Franchise	1	3

Time is of the essence of this Development Schedule.

If you do not comply with the above Franchise opening and continuous operation requirements, we will have the right to terminate any of your franchise agreements representing franchises that have not yet opened for business. Any failure to commence operation caused by a war or civil disturbance, a natural disaster, a labor dispute, shortages or other events beyond your reasonable control (not including financial circumstances) will be excused for a period that we deem reasonable under the circumstances.

6. **Payment of Initial Franchise Fees.** You shall pay the Initial Franchise Fees for each Franchise in full at the time you contemporaneously sign the multiple Franchise Agreements. The Initial Franchise Fees are not refundable under any circumstances.

7. **Training for First Franchise.** We will have no obligation to provide franchise training to you at our expense except for the first Franchise you open.

8. **Termination and Expiration.** This Addendum will expire at the earlier of the following: (1) the opening of your last Franchise under your Development Schedule; or (2) the termination of this Addendum under to the terms and conditions of this Addendum or the Franchise Agreement. If you do not comply with the Development Schedule, we will have the right to terminate this Addendum and any of your Franchise Agreements representing Franchises that have not yet opened for business. Such termination will be effective upon written notice to you. Thereafter, we and our affiliates will have the right to operate or grant to others the right to operate outlets within the Development Area. However, your Franchise Agreement(s) and Territory(ies) for each of your operating Franchises will remain in force.

9. **Defined Terms.** All capitalized terms contained in this Addendum that are not

defined in this Addendum will have the meaning ascribed to them in the Franchise Agreement.

DATED _____.

("we/us"): **FITNESS 1440, INC.**

By: _____

Print Name: _____

Title: _____

(jointly and severally "you"):

Name of Corporation/LLC/Partnership: _____

By: _____ Title: _____

Individual Signature: _____

Print Name: _____

Individual Signature: _____

Print Name: _____

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EXHIBIT E
FINANCIAL STATEMENTS

THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAD AUDITED THESE FIGURES. SINCE THEY HAVE NOT BEEN AUDITED THEY DO NOT REFLECT THE CORRECTIONS OR ADJUSTMENTS AN AUDIT MIGHT REQUIRE.

12:50 PM

06/01/21

Accrual Basis

FITNESS 1440 INC
Balance Sheet
As of March 31, 2021

	Mar 31, 21	Mar 31, 20	\$ Change
ASSETS			
Current Assets			
Checking/Savings			
Chase Savings	9,921.54	5,160.69	4,760.85
Chase checking	138,776.33	10,476.55	128,299.78
S & T Checking	13,672.47	12,719.39	953.08
Wells Fargo	83,351.76	12,412.60	70,939.16
CA Checking Account	3,434.09	6,966.16	-3,532.07
Total Checking/Savings	249,156.19	47,735.39	201,420.80
Accounts Receivable			
Accounts Receivable	75,477.41	47,035.89	28,441.52
Total Accounts Receivable	75,477.41	47,035.89	28,441.52
Total Current Assets	324,633.60	94,771.28	229,862.32
Fixed Assets			
Vehicles & Trucks	51,354.76	51,354.76	0.00
Signage	23,914.78	23,914.78	0.00
Club Conceptual Design	0.00	2,357.50	-2,357.50
Equipment	7,073.95	8,998.32	-1,924.37
Website	3,245.00	3,245.00	0.00
Accumulated Depreciation	-82,343.49	-75,269.54	-7,073.95
Total Fixed Assets	3,245.00	14,600.82	-11,355.82
Other Assets			
Employee Advance	0.00	682.19	-682.19
Loan to Eugene	25,020.97	35,030.64	-10,009.67
Loan to Fitness 1440one Inc	457,127.23	641,392.47	-184,265.24
Loan to SJK Inc.	30,130.85	391.00	29,739.85
Loan to Phoenix	555,195.42	498,101.39	57,094.03
Loan to Tangerine Tan	64,851.17	0.00	64,851.17
Loan to Voodoo Pizza	290.08	0.00	290.08
Investment Fitness 1440one Inc	1,000.00	1,000.00	0.00
Loan to Georgia Club	285.00	285.00	0.00
Organizational Costs	5,415.00	5,415.00	0.00
Accumulated Amortization	-7,149.00	-9,021.00	1,872.00
Total Other Assets	1,132,166.72	1,173,276.69	-41,109.97
TOTAL ASSETS	1,460,045.32	1,282,648.79	177,396.53
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable			
Accounts Payable	20,036.46	27,308.84	-7,272.38
Total Accounts Payable	20,036.46	27,308.84	-7,272.38
Credit Cards			
Arizona B&T CC	5,000.00	18,426.60	-13,426.60
Capital One CC	4,620.47	20,728.89	-16,108.42
Total Credit Cards	9,620.47	39,155.49	-29,535.02
Other Current Liabilities			
Direct Capital-Computer Lease	3,609.61	8,477.69	-4,868.08
EIDL Loan	150,000.00	0.00	150,000.00
PPP Loan	36,995.00	0.00	36,995.00
Wells Fargo LOC	88,904.56	99,916.28	-11,011.72
NP Toyota - 2018 Tundra 4x	42,031.27	48,715.09	-6,683.82
NP R Lebonitte Stock Purchase	250,000.14	323,333.44	-73,333.30
Franchise Deposits	492,522.37	797,303.09	-304,780.72

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Accrual Basis

FITNESS 1440 INC
Balance Sheet
As of March 31, 2021

	<u>Mar 31, 21</u>	<u>Mar 31, 20</u>	<u>\$ Change</u>
Loans from Shareholders	-7,197.51	-7,197.51	0.00
Total Other Current Liabilities	1,056,865.44	1,270,548.08	-213,682.64
Total Current Liabilities	1,086,522.37	1,337,012.41	-250,490.04
Total Liabilities	1,086,522.37	1,337,012.41	-250,490.04
Equity			
Capital Stock	422,024.00	422,024.00	0.00
Treasury Stock	-450,000.00	-450,000.00	0.00
Retained Earnings	426,242.36	-81,596.01	507,838.37
Shareholder Distributions	-330.00	0.00	-330.00
Net Income	-24,413.41	55,208.39	-79,621.80
Total Equity	373,522.95	-54,363.62	427,886.57
TOTAL LIABILITIES & EQUITY	1,460,045.32	1,282,648.79	177,396.53

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Accrual Basis

FITNESS 1440 INC
Profit & Loss
January through March 2021

	Jan - Mar 21	Jan - Mar 20	\$ Change
Ordinary Income/Expense			
Income			
Royalty Income-USA	15,566.78	21,820.00	-6,253.22
Royalty Overrides-CAD	1,990.00	6,387.16	-4,397.16
Royalty Overrides-USA	142,974.86	160,052.75	-17,077.89
Income - Miscellaneous	3,146.38	1,154.60	1,991.78
Vendor Contributions	46,884.33	52,839.20	-5,954.87
Web Fees-CAD	198.00	594.00	-396.00
Web Fees-USA	10,401.00	17,744.07	-7,343.07
Refunds & Credits	0.00	-2,846.36	2,846.36
Total Income	<u>221,161.35</u>	<u>257,745.42</u>	<u>-36,584.07</u>
Gross Profit	221,161.35	257,745.42	-36,584.07
Expense			
Administrative Costs	1,995.00	0.00	1,995.00
Advertising and Promotion	29,853.19	30,774.02	-920.83
Automobile Expense	1,869.56	1,217.80	651.76
Bank Service Charges	552.80	560.35	-7.55
Commissions	823.03	0.00	823.03
Computer and Internet Expenses	337.86	77.49	260.37
Employee Benefits	6,847.29	4,219.20	2,628.09
Equipment Repair	50.89	0.00	50.89
Finance Charge	0.00	-26.50	26.50
Franchise support costs	5,495.71	0.00	5,495.71
Insurance Expense	1,514.22	1,567.44	-53.22
Janitorial	0.00	2,618.50	-2,618.50
Licenses & Fees	1,895.00	765.00	1,130.00
Meals and Entertainment	5,202.28	7,549.58	-2,347.30
Merchant Services	15.00	30.00	-15.00
Merchant Services-CAD	5.00	15.00	-10.00
Miscellaneous	482.55	490.00	-7.45
Office Supplies	6,381.55	3,364.15	3,017.40
Payroll Expenses	45,000.00	22,000.00	23,000.00
Payroll Tax Expense	5,091.00	2,047.00	3,044.00
Postage & Shipping	55.00	25.50	29.50
Products & Clothing	2,383.79	1,224.38	1,159.41
Product Research	3,375.13	0.00	3,375.13
Professional Fees	19,341.01	21,903.87	-2,562.86
Rent Expense	0.00	55.57	-55.57
Repairs and Maintenance	39.82	7,869.97	-7,830.15
Research & Reference Costs	717.52	635.08	82.44
Security Expense	188.19	125.85	62.34
Shop Expense	278.01	0.00	278.01
Small equipment	5,937.00	0.00	5,937.00
Subcontracting Expense	61,850.67	65,328.29	-3,477.62
Supplies	4,364.51	8,101.63	-3,737.12
Telephone Expense	3,750.17	2,007.26	1,742.91
Training Materials	4,555.23	0.00	4,555.23
Travel Expense	636.11	12,188.19	-11,552.08
Uniforms and Clothing	833.63	98.24	735.39
Total Expense	<u>221,717.72</u>	<u>196,832.86</u>	<u>24,884.86</u>
Net Ordinary Income	-556.37	60,912.56	-61,468.93

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Accrual Basis

FITNESS 1440 INC
Profit & Loss
January through March 2021

	<u>Jan - Mar 21</u>	<u>Jan - Mar 20</u>	<u>\$ Change</u>
Other Income/Expense			
Other Income			
Other Income	382.97	0.00	382.97
Interest Income	0.25	0.12	0.13
Total Other Income	<u>383.22</u>	<u>0.12</u>	<u>383.10</u>
Other Expense			
Taxes, Business	8,615.00	2,248.89	6,366.11
Nondeductible Costs	9.18	0.00	9.18
Interest Expense	1,473.14	1,909.72	-436.58
Total Other Expense	<u>10,097.32</u>	<u>4,158.61</u>	<u>5,938.71</u>
Net Other Income	<u>-9,714.10</u>	<u>-4,158.49</u>	<u>-5,555.61</u>
Net Income	<u>-10,270.47</u>	<u>56,754.07</u>	<u>-67,024.54</u>

FITNESS 1440, INC. AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2020 AND 2019



BIELAU, TIERNEY, COON & COMPANY, P.C.

Certified Public Accountants
2740 Smallman Street, Suite 202
Pittsburgh, PA 15222

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Harry Coon, Jr., C.P.A. (1947-2004)

INDEPENDENT AUDITOR'S REPORT

Board of Directors
Fitness 1440, Inc.

Report on Financial Statements

We have audited the accompanying consolidated financial statements of Fitness 1440, Inc. and its subsidiaries, which comprise the consolidated balance sheets as of December 31, 2020 and 2019, and the related consolidated statements of income, retained earnings, and cash flows for the years then ended, and the related notes to financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements 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 entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fitness 1440, Inc. and its subsidiaries as of December 31, 2020 and 2019, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Bielau, Tierney, Coon & Company, P.C.

May 7, 2021

FITNESS 1440, INC. AND SUBSIDIARIESCONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2020 AND 2019

	2020	2019
ASSETS		
Current Assets		
Cash	\$ 386,155	\$ 67,234
Accounts receivable	84,759	109,400
Notes receivable	111,535	128,946
Other receivables	285	1,422
Prepaid expenses	18,896	-
Total Current Assets	<u>601,630</u>	<u>307,002</u>
Property and equipment		
Leasehold improvements	23,915	23,915
Vehicles	51,355	51,355
Capital lease asset	7,074	-
	82,344	75,270
Accumulated depreciation	<u>(46,456)</u>	<u>(29,521)</u>
Net Property and Equipment	<u>35,888</u>	<u>45,749</u>
Other Assets		
Notes receivable - non-current	130,455	317,455
Related party loans	591,616	457,309
Deferred costs	46,827	94,961
Total Other Assets	<u>768,898</u>	<u>869,725</u>
Total Assets	<u>\$ 1,406,416</u>	<u>\$ 1,222,476</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIESCONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2020 AND 2019

	2020	2019
LIABILITIES AND SHAREHOLDERS' EQUITY		
Liabilities		
Current Liabilities		
Accounts payable	\$ 50,282	\$ 53,022
Accrued expenses	4,351	4,167
Deferred franchise fees	163,803	-
Line of credit	91,644	98,010
Notes payable - current	140,609	114,928
Capital lease obligation - current	3,650	-
Total Current Liabilities	<u>454,339</u>	<u>270,127</u>
Other Liabilities		
Notes payable, less current portion	392,792	323,030
Capital lease obligation, less current portion	1,050	-
Deferred franchise fees	394,443	931,285
Total Liabilities	<u>1,242,624</u>	<u>1,524,442</u>
Shareholders' Equity		
Common stock, no par value, 1,000,000 shares authorized, 11,608 shares issued, 8,889 shares outstanding	422,024	422,024
Retained earnings (accumulated deficit)	191,768	(273,990)
	613,792	148,034
Cost of treasury stock, 2,719 shares	(450,000)	(450,000)
Total Shareholders' Equity	<u>163,792</u>	<u>(301,966)</u>
Total Liabilities and Shareholders' Equity	<u>\$ 1,406,416</u>	<u>\$ 1,222,476</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIESCONSOLIDATED STATEMENTS OF INCOME
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019

	2020	2019
Revenues		
Franchise fees	\$ 345,055	\$ 252,082
Royalties	553,373	543,419
Other	<u>241,217</u>	<u>407,684</u>
Total Revenues	<u>1,139,645</u>	<u>1,203,185</u>
Expenses		
Subcontracted services	230,990	347,977
Professional fees	113,935	141,698
Advertising and promotion	104,189	231,676
Salaries and wages	67,000	163,947
Travel and entertainment	53,605	55,639
Supplies	32,851	(35)
Franchisee support costs	23,206	-
Employee benefits	20,291	12,174
Depreciation and amortization	16,935	19,559
Repairs and maintenance	13,908	-
Computer and internet	12,000	20,624
Automobile	11,380	6,460
Telephone	8,157	3,287
Miscellaneous	8,056	8,993
Insurance	7,543	21,185
Office supplies and expense	6,947	9,585
Payroll taxes	5,881	1,848
Taxes and licenses	5,672	13,331
Bank fees	5,203	6,425
Occupancy costs	4,429	4,401
Bad debts	1,618	4,852
Club concept design costs	<u>-</u>	<u>2,366</u>
Total Operating Expenses	<u>753,796</u>	<u>1,075,992</u>
Income from Operations	<u>385,849</u>	<u>127,193</u>
Other Income (Expenses)		
Interest income	20,139	32,279
Gain on sale of assets	-	11,439
Interest expense	<u>(18,255)</u>	<u>(15,513)</u>
Net other income (expense)	<u>1,884</u>	<u>28,205</u>
Net Income	<u>\$ 387,733</u>	<u>\$ 155,398</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019

	2020	2019
Balance, January 1,	\$ (273,990)	\$ (425,534)
Cumulative effect adjustment (See Note 2)	79,264	-
Net Income	387,733	155,398
Distributions	<u>(1,239)</u>	<u>(3,854)</u>
Balance, December 31, 2020	<u>\$ 191,768</u>	<u>\$ (273,990)</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019**

	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 387,733	\$ 155,398
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	16,935	19,559
Bad debts (recoveries)	12,000	20,624
Gain on sale of assets	-	(11,439)
Changes in assets and liabilities:		
Accounts receivables	12,641	17,398
Investment in sales-type lease	-	16,372
Prepaid expenses and other assets	(17,759)	54,761
Deferred costs	48,134	26,659
Other assets	-	10,000
Accounts payable	(2,740)	(7,053)
Accrued expenses	184	(45,833)
Deferred revenue	(293,775)	(122,082)
Net cash provided by operating activities	<u>163,353</u>	<u>134,364</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Loans advanced	(167,935)	(447,708)
Collection of loans	<u>238,039</u>	<u>143,226</u>
Net cash provided (used) by investing activities	<u>70,104</u>	<u>(304,482)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from long-term borrowings	186,995	-
Line of credit borrowings	13,589	164,506
Line of credit repayments	(19,955)	(66,496)
Repayment of long-term borrowings	(91,552)	(91,543)
Repayment of capital lease obligations	(2,374)	-
Shareholder distributions	<u>(1,239)</u>	<u>(3,854)</u>
Net cash provided by financing activities	<u>85,464</u>	<u>2,613</u>
Net increase (decrease) in cash	318,921	(167,505)
Cash, beginning of year	<u>67,234</u>	<u>234,739</u>
Cash, end of year	<u>\$ 386,155</u>	<u>\$ 67,234</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization - Fitness 1440, Inc. ("the Company") was incorporated on April 28, 2009 and is organized under the laws of the Commonwealth of Pennsylvania. The Company maintains its offices in Gilbert, Arizona.

The Company franchises businesses in the operation of specialty health and fitness clubs in the United States. The Company grants an exclusive right to operate a fitness club facility within a specific geographic area which enables the franchisee to operate a Fitness 1440 franchised business in accordance with its unique and comprehensive system. All franchisees must utilize the Fitness 1440, Inc. trade name, service mark(s), trademarks and related logos in the operation of their franchise.

Basis of Presentation and Principles of Consolidation – The Company's consolidated financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("GAAP"), and all significant intercompany transactions and balances have been eliminated in the consolidation. The consolidated financial statements of the Company include the accounts Fitness 1440, Inc. and Fitness1440One, Inc. and Fitness 1440 Eugene, Inc., wholly-owned subsidiaries of Fitness 1440, Inc.

Cash and Cash Equivalents – The Company considers all investments with a maturity of three months or less when purchased to be cash equivalents.

Accounts Receivable – Accounts receivable are comprised primarily of amounts owed to the Company for franchise fees, franchise royalties, and vendor rebates. They are presented net of an allowance for doubtful accounts. The allowance is estimated from historical performance and projection of trends. Accounts are written off at the time management determines them not to be collectible.

Reclassifications - Certain items in the 2019 financial statements have been reclassified to conform to 2020 presentation. The reclassifications had no effect on previously reported 2019 net income or equity.

Income Taxes – Fitness 1440, Inc. and its subsidiary, Fitness 1440One, Inc. have elected to be taxed as S Corporations for federal and state income tax purposes. In lieu of corporate income taxes, the shareholders of an S Corporation are taxed on their proportionate share of the Company's taxable income. The companies file a consolidated tax return.

Fitness 1440 Eugene, Inc. has not elected to be taxed as an S corporation and is subject to tax at the corporation level. However, income taxes, including deferred taxes, for the corporation are not considered material. Accordingly, no provision or liability for federal or state income taxes has been included in the consolidated financial statements.

Management is responsible for evaluating the Company's uncertain tax positions. Management has evaluated its tax positions taken for all open tax years and has not identified any uncertain tax positions that would require adjustment to or disclosure in the financial statements. The Company recognizes accrued interest related to uncertain tax positions in interest expense and penalties in operating expense.

As of December 31, 2020, the Company's tax returns for the years 2017, 2018 and 2019 are subject to examination by federal and state taxing jurisdictions. The Company is currently not under any examinations.

Advertising Costs - The Company expenses production advertising costs as incurred and communication costs the first time the advertising takes place

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

Property, Equipment and Depreciation – The Company capitalizes all property and equipment in excess of \$2,500 at cost. Expenditures for maintenance, repairs and minor renewals are charged to expense as incurred. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets.

Revenue Recognition - Revenue from franchised clubs includes royalties, initial and renewal franchise fees, transfer fees, and upfront fees from master franchise agreements. Under its franchise agreements, the Company provides franchisees with a franchise license, which includes 1) a license to use the Company's intellectual property, 2) preopening services, such as training and site selection, and 3) ongoing services. The services provided under franchise agreements are highly interrelated and dependent upon the franchise license and, as such, do not represent individually distinct performance obligations.

Royalties from franchised clubs are based upon a flat monthly fee and/or a percentage of net sales of the franchised clubs. Royalties are recognized in the period earned. Initial franchise fees, renewal fees, and transfer fees are recorded as deferred income when received and are recognized as revenue ratably over the contractual term of the franchise agreement agreements, which is generally five years.

Under its master franchise agreements, the Company has a distinct performance obligation to grant exclusive territorial subfranchising rights over a stated term, ranging between five and seven years. Upfront fees from master franchises are recognized ratably over the term of the agreement.

Franchise fee deposits are forfeited and recognized as revenue upon the termination of the related commitments to open new franchised clubs.

Other revenue consists primarily of vendor rebates and vendor commissions. These revenues are recognized as earned.

Franchise support and other costs – Commissions directly related to the initial sale of a franchise are capitalized and expensed at the time the related deferred franchise fee is recognized as revenue as described above. Costs related to direct support services provided to the franchisees, as well as other direct and incremental costs, are charged to operating expenses as incurred.

Leases – All long-term leases are evaluated to determine if they are capital or operating leases. If the lease meets the criteria of a capital lease, an asset and liability will be recorded at amounts equal to the lesser of the present value of the minimum lease payments or the fair market value of the leased property at the inception of the respective lease. Such assets are amortized evenly over the lesser of the related lease terms or their economic lives. Interest expense relating to the lease liabilities is recorded to effect constant rates of interest over the terms of the leases. Leases that do not meet such criteria are classified as operating leases, and related rentals are charged to expense as incurred.

Use of Estimates – Management uses estimates and assumptions in preparing consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates.

Concentrations of Credit Risk – The Company has franchises located in twelve states and two franchises located in Canada. Because of the number of states and, to a lesser extent Canada, management believes the risk of geographic concentration is not significant.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

The Company is subject to credit risk through its accounts receivable, consisting primarily of amounts due from franchisees for royalties and franchise fees. The financial condition of these franchisees is largely dependent upon the underlying operations of these clubs and market conditions. The concentration of credit risk is somewhat mitigated by the number of franchisees and the short-term nature of the franchise receivable.

In addition, the Company has notes receivable related to the sale of a health club the Company formerly owned and operated and a note receivable acquired as part of the acquisition of Fitness 1440 Eugene, Inc. The financial condition of these franchisees is largely dependent upon the underlying operations of these clubs and market conditions.

Adoption of New Accounting Standard – In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers (Topic 606)*. The new standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry specific guidance. The basic principle of the guidance is that an entity should recognize revenue for the transfer of goods and services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. The Company adopted the new guidance on January 1, 2020. As a result, the Company has changed its accounting for revenue recognition as discussed below.

The Company applied the new guidance using the modified retrospective method, whereby the cumulative effect of initially adopting the guidance was recognized as an adjustment to the opening balance of equity at January 1, 2020. Therefore, the comparative periods have not been adjusted and continue to be reported under the previous revenue guidance.

Under the previous guidance, initial franchise fees were recognized at the time a franchisee opened, as all material services and conditions related to the franchise fee had been substantially performed upon the club’s opening. Renewal and transfer fees were recognized as revenue at the time the agreement was signed. Under the new guidance, these franchise fees are considered highly dependent upon and interrelated with the franchise rights granted in the franchise agreement. As such, these franchise fees are recognized ratably over the contractual term of the franchise agreement.

Under previous guidance, upfront fees from master franchise agreements were recognized on a unit basis as each franchise was opened. Under the new guidance, upfront fees are recognized ratably over the term of the agreement.

New Accounting Standards - In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. This update supersedes existing lease accounting by requiring recognition of lease assets and lease liabilities by lessees for leases previously classified as operating leases under prior GAAP. This update is effective for fiscal years beginning after December 15, 2021. The guidance requires retrospective presentation. Management is currently evaluating the impact of this ASU on the Company’s consolidated financial position and results of operations.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 2 – REVENUE RECOGNITION

Revenue from Contract with Customers - As noted above, the Company transitioned to FASB ASC 606, *Revenue from Contracts with Customers* ("ASC 606") on January 1, 2020, using the modified retrospective method. The consolidated financial statements for 2020 reflect the application of ASC 606, while the 2019 consolidated financial statements were prepared under the guidance of the previous standards. The cumulative effect of the transition of ASC 606 is reflected as an adjustment of \$79,264 to retained earnings at January 1, 2020.

The adoption of ASC 606 represents a change in an accounting principal. ASC 606 eliminated industry-specific guidance and provides a single revenue model for recognizing revenue from contracts with customers. The core principle of ASC 606 is that a reporting entity should recognize revenue to depict the transfer of promised goods and services to customers in an amount that reflects the consideration to which the reporting entity expects to be entitled for the exchange of those goods and services.

Contract Receivables, Assets, and Liabilities – Contract receivables consist of amounts due for franchise fees and royalties. Contract assets consist of deferred costs related to commissions paid for franchise acquisitions. Contract liabilities consist of deferred revenue resulting from initial and renewal franchise fees and transfer fees. Contract receivables, assets, and liabilities at the beginning and end of 2020 were as follows:

	December 31, 2020	January 1, 2020
Contract receivables	\$ <u>96,759</u>	\$ <u>128,900</u>
Deferred costs	\$ <u>65,726</u>	\$ <u>93,742</u>
Deferred franchise fees	\$ <u>558,246</u>	\$ <u>850,801</u>

Financial Statement Impact of Transition to ASC 606 – As noted above, the Company transitioned to ASC 606 using the modified retrospective method. The cumulative effect of this transition to applicable contracts with customers that were not completed as of January 1, 2020 was recorded as an adjustment to retained earnings as of that date. As a result of applying the modified retrospective method to transaction to ASC 606, the following adjustments were made to the consolidated balance sheet as of January 1, 2020:

	As Reported December 31, 2019	Adjustments	Adjusted January 1, 2020
Deferred costs	\$ <u>94,961</u>	\$ <u>(1,220)</u>	\$ <u>93,741</u>
Total Assets	\$ <u>1,222,476</u>	\$ <u>(1,220)</u>	\$ <u>1,221,256</u>
Deferred franchise fees	\$ <u>931,285</u>	\$ <u>(80,484)</u>	\$ <u>850,801</u>
Total Liabilities	\$ <u>1,524,442</u>	\$ <u>(80,484)</u>	\$ <u>1,443,958</u>
Retained Earnings	\$ <u>(273,990)</u>	\$ <u>79,264</u>	\$ <u>(194,726)</u>
Shareholders' Deficit	\$ <u>(301,966)</u>	\$ <u>79,264</u>	\$ <u>(222,702)</u>

FITNESS 1440, INC. AND SUBSIDIARIESNOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019**NOTE 2 – REVENUE RECOGNITION - CONTINUED**

Comparison to Amounts if Previous Standards Had Been in Effect - The following reflects the impact of the adoption of ASC 606 on the Company's consolidated balance sheet and statement of income for 2020 and the amounts as if the previous standard were in effect. The adoption of ASC 606 had no impact on the Company's consolidated statement of cash flows for 2020.

Consolidated Balance Sheet

	As Reported December 31, 2020	Total Adjustments	Amounts Under Previous Standard
ASSETS			
Cash	\$ 386,155	\$ --	\$ 386,155
Accounts receivable	84,759	--	84,759
Note receivable	111,535	--	111,535
Other receivables	285	--	285
Prepaid expenses	18,896	(18,896)	--
Net property and equipment	35,888	--	35,888
Note receivable – non-current	130,455	--	130,455
Related party loans	591,616	--	591,616
Deferred Costs	<u>46,827</u>	<u>4,384</u>	<u>51,211</u>
Total Assets	<u>\$ 1,406,416</u>	<u>\$ (14,512)</u>	<u>\$ 1,391,904</u>
LIABILITIES AND SHAREHOLDERS' EQUITY			
LIABILITIES			
Accounts payable	\$ 50,282	\$ --	\$ 50,282
Accrued expenses	4,351	--	4,351
Deferred franchise fees	163,803	(163,803)	--
Line of credit	91,644	--	91,644
Notes payable - current	140,609	--	140,609
Capital lease obligation - current	3,650	--	3,650
Notes payable, less current portion	392,792	--	392,792
Capital lease obligation – less current portion	1,050	--	1,050
Deferred franchise fees	<u>394,443</u>	<u>363,342</u>	<u>757,785</u>
Total Liabilities	<u>1,242,624</u>	<u>199,539</u>	<u>1,442,163</u>
SHAREHOLDERS' EQUITY			
Common stock	422,024	--	422,024
Retained earnings	191,768	(214,051)	(22,283)
Treasury stock	<u>(450,000)</u>	<u>--</u>	<u>(450,000)</u>
Total Shareholders' Equity	<u>163,792</u>	<u>(214,051)</u>	<u>(50,259)</u>
Total Liabilities and Shareholders' Equity	<u>\$ 1,406,416</u>	<u>\$ (14,512)</u>	<u>\$ 1,319,904</u>

FITNESS 1440, INC. AND SUBSIDIARIESNOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019**NOTE 2 – REVENUE RECOGNITION - CONTINUED***Consolidated Statement of Income*

	As Reported December 31, 2020	Total Adjustments	Amounts Under Previous Standard
Revenues			
Franchise fees	\$ 345,055	\$ (119,055)	\$ 226,000
Royalties	553,373	--	553,373
Other	<u>241,217</u>	<u>--</u>	<u>241,217</u>
Total Revenue	1,139,645	(119,055)	1,020,590
Operating Expenses	<u>753,796</u>	<u>15,731</u>	<u>769,527</u>
Income from Operations	385,849	(134,786)	251,063
Other Income (Expenses)	<u>1,884</u>	<u>--</u>	<u>1,884</u>
Net Income	<u>\$ 387,733</u>	<u>\$ (134,786)</u>	<u>\$ 252,947</u>

The adjustments to the consolidated statement of income for 2020 to reflect consolidated statement of income as if the Company had continued to recognize income under the previous standard reflects on increase in deferred franchise fees and a decrease in deferred costs what was reported under ASC 606.

NOTE 3 – ACCOUNTS RECEIVABLE

Accounts receivable consisted of the following at December 31:

	<u>2020</u>	<u>2019</u>
Franchise fees	\$ 9,500	\$ 54,021
Franchise royalties	73,322	60,246
Vendor rebates	13,937	13,509
Other	--	1,124
Allowance for uncollectable accounts	<u>(12,000)</u>	<u>(19,500)</u>
Total receivables	<u>\$ 84,759</u>	<u>\$ 109,400</u>

NOTE 4 – NOTES RECEIVABLE

Notes receivable consisted of the following at December 31:

	<u>2020</u>	<u>2019</u>
Note receivable from sale of company owned clubs, Interest at 7%	\$ 241,990	\$ 446,401
Amount receivable within one year	<u>111,535</u>	<u>128,946</u>
Amount receivable in one to five years	<u>\$ 130,455</u>	<u>\$ 317,455</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 5 – DEBT FINANCING

Line of credit – The Company has a \$100,000 line of credit, of which \$91,644 and \$98,010, respectively was outstanding as of December 31, 2020 and 2019. The line carries an interest rate of 6.50%. The line is unsecured and is personally guaranteed by the Company's majority shareholder. Interest expense under the credit line for 2020 and 2019 was \$5,564 and \$5,506, respectively.

Paycheck Protection Program Loan - On May 13, 2020, the Company was granted a \$36,995 loan under the Paycheck Protection Program ("PPP") administered by a Small Business Administration (SBA) approved partner. The loan is uncollateralized and is fully guaranteed by the Federal government and carries an interest rate of 1%. The Company is eligible for loan forgiveness of up to 100% of the loan, upon meeting certain requirements. Proceeds from the loan are eligible for forgiveness if the Company maintains employment levels during its 24-week covered period and uses the funds for certain payroll, rent, and utility expenses. The Company intent was to use the PPP loan proceeds for purposes consistent with the PPP and apply for forgiveness within the time specified under the PPP provisions.

The Company has recorded a note payable and will record forgiveness upon being legally released from the loan obligation. No forgiveness income has been recorded for the year ended December 31, 2020. To the extent the Company is not granted forgiveness, it is required to repay the unforgiven portion of the loan, plus accrued interest, in monthly installments beginning either (1) the date that SBA remits the borrower's loan forgiveness amount to the lender (or notifies the lender that no loan forgiveness is allowed) or (2) if the borrower does not apply for loan forgiveness, ten months after the end of covered period.

Economic Injury Disaster Loan – On June 15, 2020, the Company was granted a \$150,000 Economic Injury Disaster Loan ("EIDL") from the SBA. The loan carries an interest rate of 3.75% and is payable in monthly installments, including accrued interest, over a 30-year period, beginning one year from the date of the loan. The loan is collateralized by all of the assets of the Company.

Term Debt – Term debt consisted of the following as of December 31:

	<u>2020</u>	<u>2019</u>
Note payable – individual, payable in monthly installments of \$4,167 through July 2019; commencing August 2019, monthly installments of \$5,833 through July 2020; and commencing August 2020, monthly installments of \$8,333 through July 2023. The note is non-interest bearing and is secured by the shares of treasury stock repurchased.	\$ 275,000	\$ 340,833
Paycheck Protection Program Loan – payable in monthly installments of \$1,558, including interest at 1% through July 2023. The note is unsecured.	36,995	--
Economic Injury Disaster Loan – payable in monthly installments \$695, including interest at 3.75% through May 2051. The loan is secured by the assets of the company.	150,000	--

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 5 – DEBT FINANCING - CONTINUED

Note payable – individual, payable in monthly installments of \$1,083 through August 2021. The note is non-interest bearing and unsecured.	9,750	21,667
Note payable – vehicles, payable in monthly installments of \$900 through including interest at 5.97% through July 2025. The notes are secured by the underlying vehicles financed.	44,731	51,415
Note payable – finance company, payable in monthly installments of \$1,267, including interest at 20.0% through November 2021. The note is secured by the underlying equipment financed.	<u>16,925</u>	<u>24,043</u>
	533,401	437,958
Less: Current portion	<u>140,609</u>	<u>114,928</u>
Non-current	<u>\$ 392,792</u>	<u>\$ 323,030</u>

Aggregate future principal payments are as follows:

Year Ended <u>December 31,</u>	
2021	\$ 140,609
2022	133,954
2023	98,250
2024	13,060
2025	11,061
Thereafter	<u>136,467</u>
	<u>\$ 533,401</u>

Interest expense on term debt for the years ended December 31, 2020 and 2019 was \$9,872 and \$12,562, respectively.

NOTE 6 – LEASES

During 2020 the company entered into an agreement to lease computer equipment which meets the criteria of a capital lease. Capital lease asset, net of amortization, at December 31, 2020 was \$5,895. Future minimum lease payments under the capital lease at December 31, 2020 are as follows:

<u>Year</u>	
2021	\$ 4,362
2022	<u>1,090</u>
Future minimum lease payments	\$ 5,452
Amount representing interest	<u>752</u>
Net present value of capital lease obligations	<u>\$ 4,700</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 7 – RELATED PARTY TRANSACTIONS

Related party loans - Loans to related parties consisted of the following at December 31:

Shareholder	\$ 8,679	\$ 8,679
Related entities	<u>582,937</u>	<u>448,630</u>
Total	<u>\$ 591,616</u>	<u>\$ 457,309</u>

Related entity loans represent working capital advances to two fitness clubs owned by the majority shareholder. The advances carry no interest rate and there are no scheduled terms of repayment.

Other - For the years ended December 31, 2020 and 2019, the Company paid \$ 112,000 and \$89,000, respectively, in consulting fees to a company owned by the Company's majority shareholder.

The Company has entered into franchises agreement with an several entities owned by the Company's majority shareholder. The initial franchise fees were waived. Royalty payments received during the year were \$33,981 and \$7,670 for the years ended December 31, 2020 and 2019, respectively.

NOTE 8 – COMMITMENTS AND CONTINGENCIES

The Company is contingently liable for lease payments on a club location sold in 2018. The lease is scheduled to expire July 31, 2021. Estimated total lease payments remaining at December 31, 2020 are \$115,899. Under the terms of the lease assignment agreement, should the purchaser fail to make the lease payments, the Company has the right to take possession of the property and operate the club. Because of the ability to take over the operation of the club, significant losses are not anticipated. Accordingly, there is no recorded liability for potential losses under this guarantee. The Company has not experienced any losses under this guarantee.

The Company is a co-borrower, along with Phoenix 1440, Inc., a corporation owned by the Company's majority shareholder, of a bank promissory note in the amount of \$120,000. The note is payable in monthly installments of \$2,406, including interest at 7.41% through July 2024. The loan is collateralized by substantially all of the Company's assets. Phoenix 1440, Inc. received the loan proceeds and is currently making the loan payments. Should Phoenix 1440, Inc. be unable to continue to make the loan payments, the Company would be required to repay the loan. As of December 31, 2020, \$92,731 was outstanding against the note. The loan is personally guaranteed by the Company's majority shareholder.

NOTE 9 – SUPPLEMENTAL CASH FLOW INFORMATION

	<u>2020</u>	<u>2019</u>
Cash paid during the year for interest	<u>\$ 14,424</u>	<u>\$ 12,584</u>

Noncash investing and financing activities:

In 2020, the Company obtained computer equipment in the amount of \$7,074 under a capital lease.

In 2019, the Company transferred a vehicle to an unrelated third party, who also assumed the related note payable liability. The cost and net book value of the vehicle at time of transfer was \$45,635 and \$23,578, respectively. The liability assumed by the third party was \$34,035.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2020 AND 2019

NOTE 10 – COVID-19

In December 2019, an outbreak of a novel strain of coronavirus (COVID-19) originated in Wuhan, China and has since spread to other countries, including the United States. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic.

The COVID-19 outbreak in the United States has caused business disruption through mandated and voluntary closings of multiple health and fitness clubs. While the disruption is expected to be temporary and a number of health and fitness clubs have begun to reopen, there is considerable uncertainty around the duration of the closings. Future potential impacts may include a reinstatement of mandatory closings. At this point, the extent to which COVID-19 may impact the Company's financial condition or operations cannot be reasonably estimated at this time.

NOTE 11 - SUBSEQUENT EVENTS

Management has evaluated subsequent events through May 7, 2021, the date the financial statements were available to be issued.

FITNESS 1440, INC. AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2019 AND 2018



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Harry Coon, Jr., C.P.A. (1947-2004)

INDEPENDENT AUDITOR'S REPORT

Board of Directors
Fitness 1440, Inc.

Report on Financial Statements

We have audited the accompanying consolidated financial statements of Fitness 1440, Inc. and its subsidiaries, which comprise the consolidated balance sheets as of December 31, 2019 and 2018, and the related consolidated statements of income, changes in shareholders' deficit, and cash flows for the years then ended, and the related notes to financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements 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 entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fitness 1440, Inc. and its subsidiaries as of December 31, 2019 and 2018, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Bielau, Tierney, Coon & Company, P.C.

June 24, 2020

FITNESS 1440, INC AND SUBSIDIARIESCONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2019 AND 2018

	2019	2018
ASSETS		
Current Assets		
Cash	\$ 67,234	\$ 234,739
Accounts receivable	109,400	124,413
Note receivable	128,946	150,523
Net investment in sales-type lease	-	16,372
Other receivables	1,422	285
Prepaid expenses	-	55,898
Total Current Assets	<u>307,002</u>	<u>582,230</u>
Property and equipment		
Leasehold improvements	23,915	23,915
Vehicles	51,355	96,990
	75,270	120,905
Accumulated depreciation	<u>(29,521)</u>	<u>(32,019)</u>
Net Property and Equipment	<u>45,749</u>	<u>88,886</u>
Other Assets		
Accounts receivable - non-current	-	23,009
Note receivable - non-current	317,455	439,104
Related party loans	457,309	9,601
Deferred costs	94,961	121,620
Other assets	-	10,000
Total Other Assets	<u>869,725</u>	<u>603,334</u>
Total Assets	<u>\$ 1,222,476</u>	<u>\$ 1,274,450</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC AND SUBSIDIARIESCONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2019 AND 2018

	2019	2018
LIABILITIES AND SHAREHOLDERS' DEFICIT		
Liabilities		
Current Liabilities		
Accounts payable	\$ 53,022	\$ 60,075
Accrued expenses	4,167	50,000
Deferred franchise revenue	931,285	1,053,367
Line of credit	98,010	-
Notes payable - current	<u>114,928</u>	<u>97,180</u>
Total Current Liabilities	1,201,412	1,260,622
Other Liabilities		
Notes payable, less current portion	<u>323,030</u>	<u>467,338</u>
Total Liabilities	<u>1,524,442</u>	<u>1,727,960</u>
Shareholders' Deficit		
Common stock, no par value, 1,000,000 shares authorized, 11,608 shares issued, 8,889 shares outstanding	422,024	422,024
Accumulated deficit	<u>(273,990)</u>	<u>(425,534)</u>
	148,034	(3,510)
Cost of treasury stock, 2,719 shares	<u>(450,000)</u>	<u>(450,000)</u>
Total Shareholders' Deficit	<u>(301,966)</u>	<u>(453,510)</u>
Total Liabilities and Shareholders' Deficit	<u>\$ 1,222,476</u>	<u>\$ 1,274,450</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC AND SUBSIDIARIESCONSOLIDATED STATEMENTS OF INCOME FOR THE
YEARS ENDED DECEMBER 31, 2019 AND 2018

	2019	2018
Revenues		
Sales and fees - company owned club	\$ -	\$ 326,178
Revenue from franchised clubs	845,505	534,584
Other	<u>357,680</u>	<u>225,122</u>
Total Revenues	<u>1,203,185</u>	<u>1,085,884</u>
Expenses		
Subcontracted services	347,977	454,570
Advertising and promotion	231,676	180,081
Salaries and wages	163,947	204,957
Professional fees	141,698	120,023
Travel and entertainment	55,639	76,361
Miscellaneous	21,185	19,009
Bad debts (recoveries)	20,624	(2,400)
Depreciation and amortization	19,559	38,137
Payroll taxes	13,331	19,315
Employee benefits	12,174	16,910
Insurance	9,585	12,190
Telephone	8,993	10,329
Computer and internet	6,460	23,099
Bank fees	6,425	6,831
Occupancy costs	4,852	208,179
Taxes and licenses	4,401	4,048
Automobile	3,287	22,980
Club concept design costs	2,366	15,149
Office supplies and expense	1,848	18,657
Repairs and maintenance	-	48,909
Supplies	<u>(35)</u>	<u>6,340</u>
Total Operating Expenses	<u>1,075,992</u>	<u>1,503,674</u>
Income (Loss) from Operations	<u>127,193</u>	<u>(417,790)</u>
Other Income (Expenses)		
Interest income	32,279	17,972
Loss on litigation settlement	-	(50,000)
Gain on sale of assets	11,439	567,049
Interest expense	<u>(15,513)</u>	<u>(12,584)</u>
Net other income (expense)	<u>28,205</u>	<u>522,437</u>
Net Income	<u>\$ 155,398</u>	<u>\$ 104,647</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDER'S DEFICIT
FOR THE YEARS ENDED DECEMBER 31, 2019 AND 2018**

	Common Stock Shares	Common Stock Amount	Accumulated Deficit	Treasury Stock	Total Shareholders' Deficit
Balance, January 1, 2018	11,608	\$ 422,024	\$ (525,559)	\$ -	\$ (103,535)
Purchase of treasury stock	-	-	-	(450,000)	(450,000)
Net Income	-	-	104,647	-	104,647
Distributions	-	-	(4,622)	-	(4,622)
Balance, December 31, 2018	11,608	422,024	(425,534)	(450,000)	(453,510)
Net Income	-	-	155,398	-	155,398
Distributions	-	-	(3,854)	-	(3,854)
Balance, December 31, 2019	11,608	\$ 422,024	\$ (273,990)	\$ (450,000)	\$ (301,966)

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2019 AND 2018

	2019	2018
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 155,398	\$ 104,647
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	19,559	38,137
Bad debts (recoveries)	20,624	2,400
Gain on sale of assets	(11,439)	(566,745)
Changes in assets and liabilities:		
Accounts receivables	17,398	(50,766)
Investment in sales-type lease	16,372	20,359
Prepaid expenses and other assets	54,761	(52,385)
Deferred costs	26,659	(40,667)
Other assets	10,000	-
Accounts payable	(7,053)	26,067
Accrued expenses	(45,833)	50,000
Deferred revenue	(122,082)	543,500
Net cash provided by operating activities	<u>134,364</u>	<u>74,547</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Loans advanced	(447,708)	(3,044)
Collection of loans	143,226	31,692
Proceeds from sale of property and equipment	-	100,000
Purchase of property and equipment	<u>-</u>	<u>(26,888)</u>
Net cash provided (used) by investing activities	<u>(304,482)</u>	<u>101,760</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Line of credit borrowings	164,506	-
Line of credit repayments	(66,496)	-
Repayment of long-term borrowings	(91,543)	(121,612)
Shareholder distributions	<u>(3,854)</u>	<u>(4,622)</u>
Net cash provided (used) by financing activities	<u>2,613</u>	<u>(126,234)</u>
Net increase (decrease) in cash	(167,505)	50,073
Cash, beginning of year	<u>234,739</u>	<u>184,666</u>
Cash, end of year	<u>\$ 67,234</u>	<u>\$ 234,739</u>

The accompanying notes are an integral part of these financial statements.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization - Fitness 1440, Inc. ("the Company") was incorporated on April 28, 2009 and is organized under the laws of the Commonwealth of Pennsylvania. The Company maintains its offices in Gilbert, Arizona.

The Company franchises businesses in the operation of specialty health and fitness clubs in the United States. The Company grants an exclusive right to operate a fitness club facility within a specific geographic area which enables the franchisee to operate a Fitness 1440 franchised business in accordance with its unique and comprehensive system. All franchisees must utilize the Fitness 1440, Inc. trade name, service mark(s), trademarks and related logos in the operation of their franchise.

The Company also owned and operated a health club in Bend, OR. The club was sold in July 2018.

Basis of Presentation and Principles of Consolidation – The Company's consolidated financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("GAAP"), and all significant intercompany transactions and balances have been eliminated in the consolidation. The consolidated financial statements of the Company include the accounts Fitness 1440, Inc. and Fitness1440One, Inc. and Fitness 1440 Eugene, Inc., wholly-owned subsidiaries of Fitness 1440, Inc.

Cash and Cash Equivalents – The Company considers all investments with a maturity of three months or less when purchased to be cash equivalents.

Accounts Receivable – Accounts receivable are comprised primarily of amounts owed to the Company for franchise fees, franchise royalties, and vendor rebates. They are presented net of an allowance for doubtful accounts. The allowance is estimated from historical performance and projection of trends. Accounts are written off at the time management determines them not to be collectible.

Reclassifications - Certain items in the 2018 financial statements have been reclassified to conform to 2019 presentation. The reclassifications had no effect on previously reported 2018 net income or equity.

Income Taxes – Fitness 1440, Inc. and its subsidiary, Fitness 1440One, Inc. have elected to be taxed as S Corporations for federal and state income tax purposes. In lieu of corporate income taxes, the shareholders of an S Corporation are taxed on their proportionate share of the Company's taxable income. The companies file a consolidated tax return.

Fitness 1440 Eugene, Inc. has not elected to be taxed as an S corporation and is subject to tax at the corporation level. However, income taxes, including deferred taxes, for the corporation are not considered material. Accordingly, no provision or liability for federal or state income taxes has been included in the consolidated financial statements.

Management is responsible for evaluating the Company's uncertain tax positions. Management has evaluated its tax positions taken for all open tax years and has not identified any uncertain tax positions that would require adjustment to or disclosure in the financial statements. The Company recognizes accrued interest related to uncertain tax positions in interest expense and penalties in operating expense.

As of December 31, 2019, the Company's tax return for the years 2016, 2017 and 2018 are subject to examination by federal and state taxing jurisdictions. The Company is currently not under any examinations.

Advertising Costs - The Company expenses production advertising costs as incurred and communication costs the first time the advertising takes place

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

Property, Equipment and Depreciation – The Company capitalizes all property and equipment in excess of \$2,500 at cost. Expenditures for maintenance, repairs and minor renewals are charged to expense as incurred. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets.

Revenue Recognition - Revenue from franchised clubs includes royalties and franchise fees. Royalties from franchise clubs are based upon a flat monthly fee and/or a percentage of net sales of the franchised clubs. Royalties are recognized in the period earned. Initial franchise fees are recorded as deferred income when received and are recognized as revenue when a franchised club is opened, as all significant services and conditions related to the franchise fee have been substantially performed upon the club opening.

Franchise fee deposits are forfeited and recognized as revenue upon the termination of the related commitments to open new franchised clubs. Renewal franchise fees are recognized as revenue when the renewal agreements are signed. Revenue from Company owned clubs is recognized when earned.

Other revenue consists primarily of vendor rebates and vendor commissions. These revenues are recognized as received.

Franchise support and other costs – Commissions directly related to the initial sale of a franchise are capitalized and expensed at the time the related deferred income is recognized as revenue as described above. Costs related to direct support services provided to the franchisees, as well as other direct and incremental costs, are charged to operating expenses as incurred.

Leases – All long-term leases are evaluated to determine if they are capital or operating leases. If the lease meets the criteria of a capital lease, an asset and liability will be recorded at amounts equal to the lesser of the present value of the minimum lease payments or the fair market value of the leased property at the inception of the respective lease. Such assets are amortized evenly over the lesser of the related lease terms or their economic lives. Interest expense relating to the lease liabilities is recorded to effect constant rates of interest over the terms of the leases. Leases that do not meet such criteria are classified as operating leases, and related rentals are charged to expense as incurred.

Use of Estimates – Management uses estimates and assumptions in preparing consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates.

Concentrations of Credit Risk – The Company has franchises located in fifteen states and two franchises located in Canada. Because of the number of states and, to a lesser extent Canada, management believes the risk of geographic concentration is not significant.

The Company is subject to credit risk through its accounts receivable, consisting primarily of amounts due from franchisees for royalties and franchise fees. The financial condition of these franchisees is largely dependent upon the underlying operations of these clubs and market conditions. The concentration of credit risk is somewhat mitigated by the number of franchisees and the short-term nature of the franchise receivable.

In addition, the Company has notes receivable related to the sale of a health club the Company formerly owned and operated and a note receivable acquired as part of the acquisition of Fitness 1440 Eugene, Inc. The financial condition of these franchisees is largely dependent upon the underlying operations of these clubs and market conditions.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

New Accounting Pronouncements – In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers (Topic 606). The new standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry specific guidance. The standard allows for either a full retrospective or modified retrospective transition method. This update is effective for annual reporting periods beginning after December 15, 2019. This standard will not impact the Company’s recognition of continuing royalty fees from franchisees. Under the Company’s current recognition method, initial franchise fees are recognized when all material obligations and services have been performed, which is generally when the franchised club opens. Under the new standard, the Company anticipates recognizing initial franchise fees over the life of the related franchise agreement, which is typically five years.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842). This update supersedes existing lease accounting by requiring recognition of lease assets and lease liabilities by lessees for leases previously classified as operating leases under prior GAAP. This update is effective for fiscal years beginning after December 15, 2021. The guidance requires retrospective presentation. Management is currently evaluating the impact of this ASU on the Company’s consolidated financial position and results of operations.

NOTE 2 – ACQUISITION

On August 29, 2018, Fitness 1440One, Inc. acquired 100% of the outstanding stock of Fitness 1440 Eugene, Inc. (“Eugene”) The purchase price was \$39,000 which is payable in 36 equal monthly installments of \$1,083. Eugene was a former franchisee. Prior to the acquisition, Eugene had transferred the franchise to a third-party. The Company acquired Eugene to facilitate the former owners’ exit from the business.

GAAP requires the acquirer in a business combination to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date.

The fair value of the assets acquired and liabilities assumed at the acquisition date is as follows:

Cash	\$	255
Note receivable		65,000
Other assets		<u>10,000</u>
Total assets acquired	\$	<u>75,255</u>
Loans payable	\$	35,951
Stockholder equity		<u>39,304</u>
Total liabilities and equity	\$	<u>75,255</u>

The difference between the equity acquired and price paid of \$304 was recognized as a gain in the 2018 consolidated statement of income.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 3 – SALE OF FITNESS CLUB

On July 30, 2018, the Company sold substantially all of the assets of the Bend, OR fitness club it operated under Fitness 1440One, Inc. The selling price was \$650,000. The Company received \$100,000 cash and a note for \$550,000. Total gain realized on the sale was \$566,878 which is reflected in the 2018 consolidated statement of income

NOTE 4 – ACCOUNTS RECEIVABLE

Accounts receivable consisted of the following at December 31:

	<u>2019</u>	<u>2018</u>
Franchise fees	\$ 54,021	\$ 105,324
Franchise royalties	60,246	42,095
Vendor rebates	13,509	--
Other	1,124	--
Allowance for uncollectable accounts	<u>(19,500)</u>	<u>--</u>
Total receivables	109,400	147,419
Receivable in less than one year	<u>--</u>	<u>124,410</u>
Receivable in one to five years	<u>\$ --</u>	<u>\$ 23,009</u>

NOTE 5 – NOTES RECEIVABLE

Notes receivable consisted of the following at December 31:

	<u>2019</u>	<u>2018</u>
Note receivable from sale of company owned clubs, Interest at 7%	\$ 446,401	\$ 589,627
Amount receivable within one year	<u>128,946</u>	<u>150,523</u>
Amount receivable in one to five years	<u>\$ 317,455</u>	<u>\$ 439,104</u>

NOTE 6 – NET INVESTMENT IN SALES-TYPE LEASE

The Company leased equipment to a franchisee under an agreement that meets the criteria of a sales-type lease. The following lists the components of the net investment in this lease as of December 31:

	<u>2019</u>	<u>2018</u>
Total minimum lease payments to be received	\$ --	\$ 16,922
Less: unearned income	<u>--</u>	<u>(550)</u>
Net investment in sale-type lease	--	16,372
Current portion	<u>--</u>	<u>16,372</u>
Non-current portion	<u>\$ --</u>	<u>\$ --</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 7 – FRANCHISING ARRANGEMENTS

The Company executes franchise agreements that set the terms of its arrangement with each franchisee. The franchise agreement requires the franchisee to pay an initial, non-refundable fee. The franchise is also required to pay a monthly royalty fee, as specified in the franchise agreement.

The Company has entered into master franchise agreements ("MFA") with area franchisees to develop clubs in geographical regions. These agreements generally stipulate that a certain number of clubs are to be developed over a seven-year period, one of which must be owned by the master franchisee. A non-refundable fee is due at the time the MFA are executed. The Company also receives franchise fees and royalties on each individual club that is developed under the MFA.

Non-refundable MFA fees are recognized as each of the clubs under the MFA is opened. Franchise fees and royalties are recognized in the same manner as individual franchise revenue is recognized, as described in Note 1.

The Company, as franchisor, grants certain use of its trade names, trademarks, logos and service marks. It also provides expertise in the promotion and sale of unique health and fitness programs and systems for the sale of fitness club memberships and personal training programs. Under the agreement, the Company must also provide training to employees of the business at an additional fee.

A summary of revenue and expense of Company owned and franchised clubs is as follows:

	<u>2019</u>	<u>2018</u>
Company owned club		
Revenue	\$ --	\$ 326,178
Costs and expenses	<u> --</u>	<u>724,864</u>
Net	<u>\$ --</u>	<u>\$ (398,686)</u>
Franchised clubs		
Initial fees	\$ 252,082	\$ 51,000
Royalties	<u>593,423</u>	<u>483,584</u>
	845,505	534,584
Vendors fee rebates	<u>335,138</u>	<u>209,602</u>
	1,180,643	744,186
Costs and expenses	<u>(1,056,793)</u>	<u>(774,874)</u>
Net	<u>\$ 123,850</u>	<u>\$ (30,688)</u>

Information about Company owned and franchised clubs:

	<u>Franchised</u>	<u>Company Owned</u>
Balance, January 1, 2018	30	1
Opened	7	--
Closed	<u>(6)</u>	<u>(1)</u>
Balance, December 31, 2018	31	--
Opened	12	--
Closed	<u>(6)</u>	<u>--</u>
Balance, December 31, 2019	<u>37</u>	<u>--</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 8 – OTHER ASSETS

Other assets consist of the following at December 31:

	<u>2019</u>	<u>2018</u>
Website development	\$ 3,245	\$ 3,245
Accumulated amortization	<u>(3,245)</u>	<u>(3,245)</u>
	--	--
Security deposits	<u>—</u>	<u>10,000</u>
	<u>—</u>	<u>—</u>

20.0% through November 2021. The note is secured by the underlying equipment financed.

	<u>24,043</u>	<u>33,395</u>
	437,958	564,518
Less: Current portion	<u>114,928</u>	<u>97,180</u>
Non-current	<u>\$ 323,030</u>	<u>\$ 467,338</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 9 – DEBT FINANCING - CONTINUED

Aggregate future principal payments are as follows:

Year Ended <u>December 31,</u>	
2020	\$ 114,928
2021	129,809
2022	109,011
2023	67,882
2024	10,119
Thereafter	<u>6,209</u>
	<u>\$ 437,958</u>

Interest expense on term debt for the years ended December 31, 2019 and 2018 was \$13,982 and \$12,562, respectively.

NOTE 10 – LEASES

The Company leased office space under a month-to-month operating lease.

Rental expense under operating leases for 2019 and 2018 amounted to \$3,600 and \$160,722, respectively.

NOTE 11 – RELATED PARTY TRANSACTIONS

Related party loans - Loans to related parties consisted of the following at December 31:

Shareholder	\$ 8,679	\$ 9,601
Related entities	<u>448,630</u>	<u>--</u>
Total	<u>\$ 457,309</u>	<u>\$ 9,601</u>

Related entity loans represent working capital advances to two fitness clubs owned by the majority shareholder. The advances carry no interest rate and there are no scheduled terms of repayment.

Other - For the years ended December 31, 2019 and 2018, the Company paid \$89,000 and \$98,411, respectively, in consulting fees to a company owned by the Company's majority shareholder.

In 2019, the Company entered into a franchise agreement with an entity owned by the Company's majority shareholder. The initial franchise fee was waived. Royalty payments received during the year were \$7,670.

NOTE 12 – COMMITMENTS AND CONTINGENCIES

Litigation - The Company is involved in litigation arising in the ordinary course of business.

In November 2018, the Company received a demand letter from a franchisee seeking rescission of its franchise agreement and damages of \$500,000. Subsequent to year-end, in March 2020, the lawsuit was settled in the Company's favor.

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 12 – COMMITMENTS AND CONTINGENCIES - CONTINUED

Other Contingencies - The Company is contingently liable for lease payments on a club location sold in 2018. The lease payments total \$195,856 for 2020, and \$82,785 for 2021. The lease is scheduled to expire July 31, 2021. Under the terms of the lease assignment agreement, should the purchaser fail to make the lease payments, the Company has the right to take possession of the property and operate the club. Because of the ability to take over operation of the club, significant losses are not anticipated. Accordingly, there is no recorded liability for potential losses under this guarantee. The Company has not experienced any losses under this guarantee.

The Company is a co-borrower, along with Phoenix 1440, Inc., a corporation owned by the Company's majority shareholder, of a bank promissory note in the amount of \$120,000. The note is payable in monthly installments of \$2,406, including interest at 7.41% through July 2024. The loan is collateralized by substantially all of the Company's assets. Phoenix 1440, Inc. received the loan proceeds and is currently making the loan payments. Should Phoenix 1440, Inc. be unable to continue to make the loan payments, the Company would be required to repay the loan. As of December 31, 2019, \$108,627 was outstanding against the note. The loan is personally guaranteed by the Company's majority shareholder.

NOTE 13 – SUPPLEMENTAL CASH FLOW INFORMATION

	<u>2019</u>	<u>2018</u>
Cash paid during the year for interest	\$ <u>12,584</u>	\$ <u>16,341</u>

Noncash investing and financing activities:

In 2019, the Company transferred a vehicle to an unrelated third party, who also assumed the related note payable liability. The cost and net book value of the vehicle at time of transfer was \$45,635 and \$23,578, respectively. The liability assumed by the third party was \$34,035.

In 2018, the Company purchased property and equipment, part of which was financed as follows:

Cost of property and equipment purchased	\$ 72,018
Amount financed	<u>45,130</u>
Cash paid for property and equipment	\$ <u>26,888</u>

In July 2018, the Company repurchased 2,719 shares of stock from one of the Company's shareholders for \$450,000. In exchange for the stock the Company issued a note payable to the former shareholder. No cash was paid at the time of the repurchase.

In July, 2018, the Company sold substantially all of the assets of its self-owned fitness club for cash and a note receivable, as follows:

Selling price	\$ 650,000
Cash received	<u>(100,000)</u>
Note receivable	\$ <u>550,000</u>

FITNESS 1440, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS DECEMBER 31, 2019 AND 2018

NOTE 13 – SUPPLEMENTAL CASH FLOW INFORMATION – CONTINUED

In August 2018, the Company purchases all of the outstanding stock of Fitness 1440 Eugene, Inc., which was financed, as follows:

Fair value of assets acquired	\$ 75,255
Fair value of liabilities assumed	<u>(35,951)</u>
Equity acquired	39,304
Gain recognized on acquisition	<u>(304)</u>
Net	39,000
Amount financed	<u>39,000</u>
Cash paid	<u>\$ --</u>

NOTE 14 – SUBSEQUENT EVENTS

In December 2019, an outbreak of a novel strain of coronavirus (COVID-19) originated in Wuhan, China and has since spread to other countries, including the United States. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic.

The COVID-19 outbreak in the United States has caused business disruption through mandated and voluntary closings of multiple health and fitness clubs. While the disruption is expected to be temporary and a number of health and fitness clubs have begun to reopen, there is considerable uncertainty around the duration of the closings. Future potential impacts may include a reinstatement of mandatory closings. At this point, the extent to which COVID-19 may impact the Company's financial condition or operations cannot be reasonably estimated at this time.

Subsequent to year end, the Company applied for and was approved for a \$36,995 loan under the Paycheck Protection Program created as part of the relief efforts related to COVID-19 and administered by the Small Business Administration. The loan accrues interest at 1% but payments are not required to begin for six months after the funding of the loan. The Company is eligible for loan forgiveness of up to 100% of the loan, upon meeting certain requirements. The loan is uncollateralized and is fully guaranteed by the Federal government.

Management has evaluated subsequent events through June 24, 2020, the date the financial statements were available to be issued.

EXHIBIT F

FORM OF GENERAL RELEASE

The Franchise Agreement provides that the Franchisee must sign a general release in a form satisfactory to the Franchisor in certain circumstances, such as upon transfer or renewal of the franchise or adding a new business entity to the Franchise Agreement. Following is a form of general release that is subject to change.

FORM OF GENERAL RELEASE

This General Release Agreement ("Agreement") is made this __ day of _____, 20__ . It is among FITNESS 1440, INC. ("Franchisor"), _____ and _____ (jointly and severally "Franchisee") and _____ and _____ (jointly and severally "Transferee") [and _____ ("New Entity")].

RECITALS

On or about ____ day of _____, 20__, Franchisor and Franchisee entered into a Fitness Franchise Agreement (the "Franchise Agreement[s]") for the operation of a Fitness franchise at the following location:
_____.

[NOTE: Describe the circumstances relating to the release, such as circumstances related to transfer or renewal of the franchise and relevant agreement dates.]

Now, therefore, in consideration of the mutual covenants set forth below, the parties agree as follows:

[1. Renewal of Franchise Agreement. The parties covenant and agree:

A. The Franchise Agreement, including all appurtenant addenda, certificates, exhibits, options, and obligations of the parties is terminated. The provisions of the Franchise Agreement concerning your obligations upon termination and renewal will continue in full force and effect. The parties agree that this Agreement fully and completely expresses the present understanding between the parties.

B. Contemporaneously with execution of this Agreement, you agree to execute our current franchise agreement forms. These forms may vary materially from the Franchise Agreement. Fees will be set at the currently prevailing rates and terms. The Franchise Premises must remain at the location designated in the Franchise Agreement unless we otherwise approve in writing.

C. You will reimburse us for the following reasonable out-of-pocket costs we incur concerning the renewal: _____.

D. You will refurbish, remodel, and replace the Franchise Premises, fixtures, and equipment to conform to the current Operations Manual and Method of Operation. This includes:
_____.

E. You or your designated manager will attend and successfully complete the following retraining programs at your expense, including travel, meals, lodging, and our current training fee of \$ _____: _____.]

[1. Adding New Entity to Franchise Agreement. The Franchise Agreement and all other or prior agreements between Franchisor and Original Franchisee, including all appurtenant addenda, certificates, exhibits, options, and obligations of the parties will continue in full force and effect. New Entity will be a party to the Franchise Agreement as though New Entity had executed the Franchise Agreement along with Original Franchisee on the date it was created.

Franchisor's consent to this Agreement will not constitute a waiver of any claims it may have against Original Franchisee.

2. Commitments and Obligations of Original Franchisee and New Entity. Original Franchisee and

New Entity represent, covenant and agree as follows:

- A. Original Franchisee will remain a party to and fully bound by the Franchise Agreement.
- B. Franchisor is not in default in any way under the Franchise Agreement or any other agreement between Original Franchisee and Franchisor.
- C. New Entity agrees to fully assume and to be bound by the terms, covenants and conditions of the Franchise Agreement as if New Entity had been named an original franchisee party in the Franchise Agreement. New Entity will execute all documents Franchisor or Original Franchisee may reasonably require to accomplish the purposes of this Agreement.
- D. Original Franchisee and New Entity will provide to Franchisor, upon demand, a current list of all owners, shareholders, directors, officers, partners, and employees of New Entity, together with a summary of their respective interests in New Entity.
- E. Neither Original Franchisee nor New Entity will make any public or private offering of any securities without first receiving the written consent of Franchisor. Consent may not be unreasonably withheld.
- F. Original Franchisee and New Entity will be jointly and severally liable under the Franchise Agreement.]

[1. Franchise Transfer. The Parties covenant and agree:

A. The Franchise Agreement between Franchisor and Franchisee, including all appurtenant addenda, certificates, exhibits, options, and obligations of the parties are terminated, as between them. The provisions of the Franchise Agreement concerning the obligations of Franchisee upon termination and transfer will continue in full force and effect. The parties agree that this Agreement fully and completely expresses the present understanding between the parties.

C. Franchisor enters into this Agreement, in part, in reliance upon the individual or collective character, skill, attitude, business ability and financial capacity of Transferee.

L. Franchisee will properly operate the franchises and maintain the Franchise Premises in clean and proper working order and will continue the employment of all current employees until Transferee assumes control of the businesses and [relocates] the Franchise Premises.

M. Franchisee will maintain a sufficient inventory and sufficient supplies on hand to provide for normal business operations through the second day after Transferee assumes control of the businesses and the Franchise Premises, except as follows:

N. Transferee agrees to place orders with product suppliers to maintain the inventory and supply levels following the closing of this transaction.

O. Franchisee and Transferee have entered into this Agreement for the transfer of Franchisee's rights under the Franchise Agreements after their own independent investigation. The transfer of the franchise rights and the amount of consideration for them have been determined by them independently. Franchisee and Transferee acknowledge that they have not relied upon any representation, warranty, promise or other consideration from or by Franchisor in entering into this Agreement or in evaluating the advisability of the transfer or the value of the franchises, any of the franchise rights or the franchise

locations.

P. Transferee will refurbish and remodel the Franchise Premises, and will refurbish, remodel and/or replace the fixtures, equipment and signage to conform to the current Operations Manual and Method of Operation within 90 days of transfer. This includes: _____.]

Q. Franchisee acknowledges that Franchisor has been and is authorized to release to Transferee any and all information maintained by Franchisor relating to the franchised business and the Franchise Agreement.

[NOTE: The following Section 2 is only for franchise transfers:]

[2. Franchisee to Cease Using Trade Names, Service Marks, and Logos. Upon completion of the transfer, Franchisee will immediately cease using Franchisor's trade names, service marks, logos, and other marks, symbols or materials indicating that Franchisee is or was related to Franchisor in any way, except as otherwise provided in writing. Franchisee acknowledges that all such names, service marks, logos, and symbols are the exclusive property of Franchisor and that Franchisee has been allowed to use them, only in conjunction with the franchise relationship as outlined in this Agreement. Franchisee will remain jointly and severally bound to comply with the covenants in the Franchise Agreement which expressly or by reasonable implication are intended to apply to Franchisee after termination of the Franchise Agreement, including any applicable non-disclosure requirements. Franchisee will [immediately]:

A. deliver to Transferee or Franchisor all copies of the Operations Manuals, training materials, and any other franchise-related materials in Franchisee's custody, control or possession (or destroy such materials if requested by Franchisor);

B. take action as required to transfer to Transferee all registrations relating to the use of all assumed names;

C. notify the telephone company and all listing agencies of the transfer of Franchisee's rights to use the franchise names and logos and classified and directory listings of the franchise;

D. cease use of the franchise trademarks, service marks, trade names, copyrights, and other intellectual or intangible property; and

E. refrain from doing business in any way that might tend to give the public the impression that Franchisee still is or was a franchisee in the franchise system.]

3. Communication of Confidential Information. Neither Franchisee nor its owners, officers, directors, or other persons enumerated in the Franchise Agreements will communicate or divulge to any person or entity the contents of this Agreement, the contents of the Franchise Agreement, the substance of the FITNESS franchise operations manuals, or any other nonpublic information related to the operation of the FITNESS franchise system. Franchisee represents and warrants that neither it nor any listed individual has communicated or divulged any such information to anyone prior to the date of this Agreement. Franchisee will continue to comply with all the confidentiality requirements of the Franchise Agreements. This provision shall not reduce the scope of the confidentiality and non-disclosure covenants in the Franchise Agreement, which shall continue in full force and effect.

[Nothing contained in this Agreement will preclude Franchisor or Franchisee from disclosing the fact of this Agreement or the amount paid by Transferee to Franchisor or to Franchisee.]

4. Release.

A. General. In consideration of the covenants and understandings set forth in this Agreement,

Franchisee does release and discharge Franchisor and its current and former owners, partners, directors, officers, members, employees and agents (“Released Parties”) from any and all claims, demands, actions or causes of action of every name, nature, kind and description whatsoever, whether in tort, in contract or under statute (each a “Claim” and collectively “Claims”), arising directly or indirectly out of the offer of, negotiation of, execution of, performance of, nonperformance, or breach of the Franchise Agreement and any related agreements between the parties and out of any other action or relationship between the parties, or any of the Released Parties, arising through the date of this Agreement (except provisions in the Franchise Agreement concerning Franchisee’s obligations upon termination).

It is expressly understood and agreed that this release is intended to cover and does cover not only all known losses and damages, but any further losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof.

[In consideration of the covenants and understandings set forth in this Agreement, Transferee does release and discharge Franchisor and its current and former owners, partners, directors, officers, members, employees and agents from any and all claims, demands, actions or causes of action of every name, nature, kind and description whatsoever, whether in tort, in contract or under statute, arising directly or indirectly out of the offer of, negotiation of, execution of, performance of, nonperformance, or breach of Transferee’s existing franchise or license agreement(s) with us and any related agreements between the parties and out of any other action or relationship between the parties arising prior to the date of this Agreement.]

Transferee represents that this release has been read and that it is fully understood and voluntarily accepted. The purpose of this release is to make a full, final and complete settlement of all claims against Franchisor, known or unknown, arising directly or indirectly out of Transferee’s existing franchise or license agreement(s) with us and the relationship between the parties through the date of this Agreement, including, but not limited to, economic loss.]

B. Waiver of Statute. With the advice of legal counsel, the Releasing Parties expressly waive any statute, legal doctrine or other similar limitation upon the effect of general releases. If applicable, the parties waive the benefit of any applicable statutory provision such as by illustration, California Civil Code Section 1542, which states: 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.

C. Covenant Not to Sue. Franchisee covenants not to initiate, prosecute, encourage, assist, or (except as required by law) participate in any civil, criminal, or administrative proceeding or investigation in any court, agency, or other forum, either affirmatively or by way of cross-claim, defense, or counterclaim, against any of the Released Parties with respect to any Claim.

D. Certain Obligations Not Released. The parties agree that the provisions of the Franchise Agreement concerning the obligations of Franchisee upon termination will continue in full force and effect. Without limiting the generality of the foregoing, Franchisee shall be liable to Franchisor for royalties and any other fees that accrue prior to the Effective Date.

E. Franchisee’s Acknowledgments. FRANCHISEE HEREBY ACKNOWLEDGES THAT FRANCHISEE HAS READ THIS RELEASE THOROUGHLY AND FULLY UNDERSTANDS IT; FRANCHISEE IS VOLUNTARILY EXECUTING THIS RELEASE; FRANCHISEE HAS BEEN GRANTED THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE EXECUTING THIS RELEASE; AND FRANCHISEE IS AWARE THAT BY SIGNING THIS RELEASE FRANCHISEE IS WAIVING CERTAIN LEGAL RIGHTS THAT FRANCHISEE MAY HAVE

AGAINST THE RELEASED PARTIES.

5. Indemnification. Franchisee, for themselves and their heirs, successors, representatives, assigns, subsidiaries, divisions, and agents and each of them, agree to indemnify and hold harmless Franchisor and its affiliates, subsidiaries, divisions, successors, assigns, officers, directors, employees and agents and each of them against any liabilities, losses, damages, deficiencies, claims, costs, expenses, actions, suits, proceedings, investigations, demands, assessments, judgments, and costs of any nature resulting, directly or indirectly, from the operation of the franchise by Franchisee or Franchisee's agents or employees. This paragraph shall not reduce the scope of the indemnities found in the Franchise Agreement.

6. Miscellaneous.

A. Entire Agreement. This writing is the entire agreement between the parties and may not be modified or amended except by written agreement signed by the parties.

B. Joint and Several Liability. If Franchisee consists of more than one individual or entity, then their liability under this Agreement will be joint and several.

C. Waiver. No waiver of any covenant or breach of this Agreement will be a waiver of any subsequent breach of the same or any other covenant or authorize the subsequent breach of any covenant or condition.

D. Time of Essence. Time is of the essence of this Agreement.

E. Injunctive Relief. In addition to other remedies available at law or in equity, any party may seek and obtain in any court of competent jurisdiction specific performance and injunctive relief to restrain a violation by the other party of any covenant contained in this Agreement.

F. Dispute Resolution. The parties agree that any and all disputes between them arising under or related to this Agreement, except as to monies owed, shall be submitted to a neutral professional mediator who shall hear both sides of the dispute in informal mediation sessions and make suggestions and recommendations for the resolution of such dispute. Mediation shall take place in the county in which Franchisor is headquartered at the time of the dispute (currently Maricopa County, Arizona) unless otherwise mutually agreed by the parties. The party demanding mediation must provide written notice to the other party of the demand for mediation. If the other party does not respond to the mediation demand within 30 days of written notice, or indicates a refusal to participate in mediation, then the party providing notice may proceed with other forms of dispute resolution. If the parties agree to resolve the dispute after the mediation sessions, then an agreement of resolution shall be entered into by the parties. If no resolution of the dispute can be accomplished, then the parties may proceed with judicial enforcement proceedings. The parties agree to equally share the costs of mediation. Injunctive relief and or claims of specific performance sought pursuant to or authorized by this Agreement, are not subject to, nor can be avoided by, the mediation terms of this Agreement, and may be brought in any court of competent jurisdiction.

G. Costs and Attorneys' Fees. The prevailing party in any suit or action to enforce this Agreement will be entitled to recover its court costs and reasonable legal fees to be set by the court, including costs and legal fees on appeal.

H. Governing Law and Venue. This Agreement is accepted in the State of Arizona and will be governed by the laws of Arizona, which laws will prevail, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051, et seq.) and except in those states whose franchise laws require exclusive application of those laws. This choice of laws will not include and does not extend the scope of application of the Arizona franchise or business opportunity laws (if any). Any portion of this Agreement that requires enforcement in any other state and is enforceable under the laws of that state but not of Arizona, will be construed and enforced according to the laws of that state. Any action brought to enforce any right or obligation created under this Agreement or arising in any manner from the relationship and dealings between the parties hereto, shall be solely brought in the county in which Franchisor is headquartered at the time of the dispute (currently Maricopa County, Arizona) or the nearest Federal District Court (as applicable).

I. Successors and Assigns. This Agreement will benefit and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

J. Legal Representation. The parties acknowledge they have been represented by counsel and have been advised of the significance and ramifications of executing this Agreement.

K. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which will be deemed an original, but all of which, together, will constitute one and the same instrument.

L. Definition of "Including." In this Agreement, including means "including but not limited to" unless expressly stated otherwise.

[7. Effective Date. The effective date of this Agreement shall be the date the last party signs.]

IN WITNESS WHEREOF, the parties have executed this Agreement.

Franchisor: FITNESS 1440, INC.

By (Signature): _____

Printed Name: _____

Title: _____

Franchisee:

By: _____
_____, an individual

[ENTITY NAME]

By (Signature): _____

Printed Name: _____

Title: _____

[Transferee][New Entity]:

[ENTITY NAME]

By: _____

Name: _____

Title: _____

[By: _____
_____, an individual]

Instructions for signatures (above) for "Franchisee" and "Transferee": If you are a corporation, limited liability company or other business entity, then this Agreement should be signed by a company officer or owner authorized to sign on behalf of the company. Additionally, this Agreement must be signed by all officers and owners of the company as individuals.

EXHIBIT G

SBA ADDENDUM TO FRANCHISE AGREEMENT

This Addendum is for use only with franchisees that are getting Small Business Administration (SBA) lender financing.

This Addendum is subject to change based on requirements that the SBA may impose.

[See following pages.]



ADDENDUM TO FRANCHISE¹ AGREEMENT

THIS ADDENDUM (“Addendum”) is made and entered into on _____, 20____, by and between _____ (“Franchisor”), located at _____, and _____ (“Franchisee”), located at _____.

Franchisor and Franchisee entered into a Franchise Agreement on _____, 20____, (such Agreement, together with any amendments, the “Franchise Agreement”). Franchisee is applying for financing(s) from a lender in which funding is provided with the assistance of the U. S. Small Business Administration (“SBA”). SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

In consideration of the mutual promises below and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree that notwithstanding any other terms in the Franchise Agreement or any other document Franchisor requires Franchisee to sign:

CHANGE OF OWNERSHIP

- If Franchisee is proposing to transfer a partial interest in Franchisee and Franchisor has an option to purchase or a right of first refusal with respect to that partial interest, Franchisor may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of Franchisee. If the Franchisor’s consent is required for any transfer (full or partial), Franchisor will not unreasonably withhold such consent. In the event of an approved transfer of the franchise interest or any portion thereof, the transferor will not be liable for the actions of the transferee franchisee.

FORCED SALE OF ASSETS

- If Franchisor has the option to purchase the business personal assets upon default or termination of the Franchise Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the Franchisee owns the real estate where the franchise location is operating, Franchisee will not be required to sell the real estate upon default or termination, but Franchisee may be required to lease the real estate for the remainder of the franchise term (excluding additional

¹ While relationships established under license, jobber, dealer and similar agreements are not generally described as “franchise” relationships, if such relationships meet the Federal Trade Commission’s (FTC’s) definition of a franchise (see 16 CFR § 436), they are treated by SBA as franchise relationships for franchise affiliation determinations per 13 CFR § 121.301(f)(5).

renewals) for fair market value.

COVENANTS

- If the Franchisee owns the real estate where the franchise location is operating, Franchisor has not and will not during the term of the Franchise Agreement record against the real estate any restrictions on the use of the property, including any restrictive covenants, branding covenants or environmental use restrictions. If any such restrictions are currently recorded against the Franchisee’s real estate, they must be removed in order for the Franchisee to obtain SBA-assisted financing.

EMPLOYMENT

- Franchisor will not directly control (hire, fire or schedule) Franchisee’s employees. For temporary personnel franchises, the temporary employees will be employed by the Franchisee not the Franchisor.

As to the referenced Franchise Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the Franchisee.

Except as amended by this Addendum, the Franchise Agreement remains in full force and effect according to its terms.

Franchisor and Franchisee acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. 1001 and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729 -3733.

Authorized Representative of FRANCHISOR:

By: _____

Print Name: _____

Title: _____

Authorized Representative of FRANCHISEE:

By: _____

Print Name: _____

Title: _____

Note to Parties: This Addendum only addresses “affiliation” between the Franchisor and Franchisee. Additionally, the applicant Franchisee and the franchise system must meet all SBA eligibility requirements

EXHIBIT H

FRANCHISE AGREEMENT AND FRANCHISE DISCLOSURE DOCUMENT STATE LAW ADDENDUM

Maryland

The Disclosure Document (Item 17) and franchise agreement, including its exhibits (such as the multiple franchise purchase addendum) (the “Franchise Agreement”) are amended to include that any provision which provides for termination upon bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

Pursuant to COMAR 02.02.08.16L, the general release required as a condition of renewal, sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. Item 17 of the Disclosure Document and Sections 3, 20 and 24.5 to the Franchise Agreement are amended.

Provisions in the Disclosure Document (Item 17) and Franchise Agreement requiring franchisee to file any lawsuit in a court in the State of Arizona may not be enforceable under the Maryland Franchise Registration and Disclosure Law. Franchisees may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. The Disclosure Document (Item 17) and Franchise Agreement are amended.

The Franchise Agreement (including its exhibits) is amended as follows: All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Disclosure Document and Section 23 of the Franchise Agreement (and any other relevant provisions in the Franchise Agreement and its exhibits) are hereby amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

FDD Item 5; Franchise Agreement, Section 1; Multiple Franchise Purchase Addendum, Section 6

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 open. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

Signature Page for Maryland State Law Addendum

Franchisor: FITNESS 1440, INC.

Franchisee: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Virginia

FDD Items 9 and 17

Additional Disclosure. The following statements are added to Item 17.h.

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 grounds for default or termination stated in the franchise agreement do 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.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

FDD Item 5; Franchise Agreement, Section 1.B(1);
Multiple Franchise Purchase Addendum, Section 6

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.

Franchisor: FITNESS 1440, INC. Franchisee: _____

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

PERSONAL GUARANTY

THIS PERSONAL GUARANTY (this “**Guaranty**”) is given this _____ day of _____, 20____, by _____, jointly and severally (collectively, the “**Guarantors**”).

1. General. In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (including its exhibits) of even date (the “**Agreement**”) by FITNESS 1440, INC., a Pennsylvania corporation (the “**Franchisor**”), with _____ a _____ [corporation/limited liability company] (the “**Franchisee**”), each of the undersigned (“**Guarantor(s)**”) personally and unconditionally (a) guarantees to the Franchisor, and its successor and assigns, that the Franchisee will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement; and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement and its exhibits, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including but not limited to the provisions related to confidentiality and non-disclosure of confidential information, non-competition, use of trademarks and other intellectual property, monetary obligations, dispute resolution, and indemnification. In this Guaranty, “**Agreement**” includes the Franchise Agreement and its exhibits and attachments as presently constituted and as they may be renewed, extended or modified.

2. Certain Waivers. Each of the undersigned waives: (1) acceptance and notice of acceptance by the Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations guaranteed; (4) any right the undersigned may otherwise have to require that an action be brought against the Franchisee or any other person as a condition of liability; (5) the defense of the statute of limitations in any action under this Guaranty or for the collection of any indebtedness or the performance of any obligation guaranteed by this Guaranty; and (6) any and all other notices and legal or equitable defenses to which it may be entitled.

3. Certain Consents and Agreements. Each of the undersigned consents and agrees that: (1) each Guarantor’s liability under this undertaking is direct, immediate, and independent of the liability of, and is joint and several with, the Franchisee and the other owners of the Franchisee; (2) the undersigned will render any payment or performance required under the Agreement upon demand if the Franchisee fails or refuses punctually to do so; (3) the liability of each of the undersigned is not contingent or conditioned upon pursuit by the Franchisor of any remedies against the Franchisee or any other person (including others of the undersigned); (4) the Franchisor may proceed against the Guarantor without having commenced any action, or having obtained any judgment, against the Franchisee; (5) the liability of each of the undersigned will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which the Franchisor may grant to the Franchisee or to any other person, including the acceptance of any partial payment or performance, or the compromise or release of any claims, or any amendment to the Agreement, none of which shall in any way modify or amend this Guaranty, which shall be continuing; (6) neither the Guarantor’s obligations to make payment or render performance in accordance with the terms of this Guaranty nor any remedy for the enforcement of this Guaranty will be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of the Franchisee or its estate in bankruptcy or of any remedy for the enforcement of this Guaranty, resulting from the operation of any present or future provision of the U.S. Bankruptcy

Code or other statute, or from the decision of any court or agency; and (7) any obligations or debt owing from Franchisee to the undersigned shall be subordinate to Franchisee's obligations under the Agreement and this Guaranty.

4. Miscellaneous.

4.1 Guarantor further agrees to reimburse the Franchisor for all costs and expenses which the Franchisor may incur in the enforcement of any of its rights under this Guaranty, including reasonable attorneys' fees.

4.2 Nothing in this Guaranty shall be deemed or taken to be a condition or limitation of any of the rights of the Franchisor against the Franchisee.

4.3 This Guaranty shall continue in full force and effect until all of the obligations of the Franchisee have been satisfied.

4.4 The terms and provision of this Guaranty shall be binding upon and inure to the benefit of the successors and assigns of the Guarantor and Franchisor.

4.5 No provision of this Guaranty or right of Franchisor hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Franchisor.

4.6 This Guaranty may be assigned by Franchisor concurrently with the transfer or assignment of the License Agreement, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

4.7 Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

4.8 This Guaranty shall be governed by and construed in accordance with the laws of the State of Arizona. In any action brought under or arising out of this Guaranty, Guarantor hereby consents to the jurisdiction of any competent court within the county in which our headquarters are then located (currently Maricopa County, Arizona) and hereby consents to service of process by any means authorized by Arizona law.

4.9 This Guaranty shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Franchisor unless expressed herein.

IN WITNESS WHEREOF, each of the undersigned has affixed his signature on the same day and year as the Agreement was executed.

GUARANTOR(S):	PERCENTAGE OWNERSHIP IN FRANCHISEE:
Signed: _____ Print Name: _____	_____%
Signed: _____ Print Name: _____	_____%
Signed: _____ Print Name: _____	_____%

CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Confidentiality and Non-Competition Agreement (this “*Agreement*”) has been entered effective on the following date: _____. It is by and between FITNESS 1440, INC., a Pennsylvania corporation (“*Franchisor*” and “*we/us*”) and _____ (“*you*”).

RECITALS

A. We own valuable goodwill and have valuable Confidential Information (defined below), and distinctive business format and color scheme and utilize distinctive, uniform business formats, signs, equipment, layouts, systems, methods, procedures, designs and marketing and advertising standards and formats (the “*System*”). The Confidential Information and System are connected with the development and operation of FITNESS 1440 businesses.

B. Franchisor and _____ (“*Franchisee*”) signed that certain franchise agreement (“*Franchise Agreement*”) on or about _____ [DATE]. The Franchise Agreement requires the Franchisee’s owners, officers, directors, and persons occupying similar positions (who may obtain or who are likely to obtain knowledge concerning our Confidential Information) to execute a confidentiality and non-competition agreement.

AGREEMENT

Therefore, in consideration of the mutual promises and covenants contained in the Franchise Agreement and herein, the parties agree as follows:

1 PROTECTION OF CONFIDENTIALITY

- 1.1 **Confidential Information Defined.** In this Agreement, “Confidential Information” shall mean:
- a) Any information that relates to our proprietary ideas, trade secrets, business, products, technology, customers, finances, plans, proposals, or practices of us, including, but not limited to, plans and specifications for new products, discoveries, ideas, know-how, research and development, inventions, techniques, marketing strategies, customer lists, financing sources and suppliers, non-public financial information, budgets, data, and projections;
 - b) Our proprietary information and information we mark or designate as confidential;
 - c) Information, whether or not in written form and whether or not designated as confidential, which is known to you as being treated by us as confidential;
 - d) Information provided to us by third parties, which we are obligated to keep confidential.

The Confidential Information shall include information in any form in which such information exists, whether oral, written, video, digital, electronic, or other format or medium.

Confidential Information loses that status if: (1) The information becomes publicly available (unless because you breached this Agreement); (2) You get it without restriction from a third party who had the right to disclose it without restriction; or (3) You develop it independently, or already knew it when we gave it to you.

- 1.2 **Our Exclusive Property.** You acknowledge and agree that our System and all Confidential

Information is and shall continue to be our sole and exclusive property, whether or not disclosed or entrusted to you in connection with your relationship with us. Nothing in this Agreement will give you or others any right, title, or interest whatsoever in or to them. The Confidential Information shall be considered our trade secrets and shall be entitled to all protections provided by applicable law to trade secrets.

1.3 **Safeguard of Confidential Information.** You agree to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure. You agree to accord to the Confidential Information the same degree of care and use the same confidentiality protection practices as you exercise or employ with respect to your confidential or proprietary information (but no less than a reasonable degree of care). This includes obligating employees and consultants who receive Confidential Information to covenants of confidentiality and non-use.

1.4 **Notice.** You agree that if you or your employees and agents are served with any subpoena or other compulsory judicial or administrative process calling for production of Confidential Information, you will immediately notify us in order that we may take such action as we deem necessary to protect our interests. You agree to execute any and all documents and to do all acts and things in the opinion of our counsel are necessary or advisable to protect our interests.

2. **COVENANT OF NON-DISCLOSURE.** You specifically acknowledge that you will receive valuable specialized and Confidential Information, including information regarding our operational, sales, promotional and marketing methods and techniques and the System. You agree not to disclose Confidential Information to any third party and to limit disclosure within your association to designated employees approved by us. Disclosures to designated employees will be done on a “need to know” basis to the extent necessary for them to perform the duties of their employment with you. Unless required by court order or applicable law, you agree not to copy, download, send, or divulge any Confidential Information directly or indirectly to any other person or enterprise outside of our franchise system. You will never communicate, divulge, or use in any manner, either for your benefit or the benefit of any other person, persons, partnerships, associations, companies or corporations any Confidential Information or proprietary information, knowledge or know-how concerning the System or any information we have communicated to you in written, verbal or electronic form, including intranet passwords, for the operation of your business.

3 **COVENANT OF NON-USE.** You agree not to use Confidential Information or the System, except as authorized by us. You will obligate your owners, board of directors, your employees, and your agents to the same non-use covenant. We must approve in writing any use of Confidential Information or System by you or your owners or your directors or employees.

4 **RETURN OF CONFIDENTIAL INFORMATION.** You agree that all originals and copies of records, data, reports, documents, lists, plans, drawings, correspondence, memoranda, notes, and other materials related to or containing any Confidential Information, in whatever form they exist, whether written, visual, audio, video, or other form of media, shall be our sole and exclusive property. Upon cessation of your association with Franchisee, or upon our earlier request, you will promptly return to us (or irretrievably delete or destroy) all documents or other tangible property that contains Confidential Information.

5 **NON-COMPETITION COVENANT.**

5.1 **Covenant.** During the term of your association with Franchisee and for two years thereafter, you will not directly or indirectly (including by or through any other person or entity) participate as an owner, director, officer, employee, consultant, licensor, licensee, distributor, or agent, or serve in any other capacity in any business engaged, in whole or in part, in offering health club, exercise, or spa services, or any other products or services that are substantially similar to those offered by the Franchisor or a majority

of its franchisees.

5.2 Geographic Scope. During the term of your association with Franchisee, the covenants described in Section 5.1 above shall apply worldwide. During the two-year period after your association with Franchisee, such covenants will apply within the Territory (as defined in Franchisee's Franchise Agreement), within a 25-mile radius of the Territory, and within a 25-mile radius of any location or designated territory where we operate or have granted the franchise to operate a FITNESS 1440 business.

6 NON-DIVERSION OF BUSINESS. During the term of your association with Franchisee and for two years thereafter, you will not:

- A. divert or attempt to divert any of our business or any of our customers to any competing establishment; or
- B. do anything harmful to our goodwill associated with the Marks and System.

7 REMEDIES: INJUNCTION AND DAMAGES. You acknowledge that any disclosure of Confidential Information will cause irreparable harm to us. You agree that it may be difficult to measure damage to us from any breach by you or your employees and agents of this Agreement. You agree that monetary damages may be an inadequate remedy for any such breach. Accordingly, you agree that if you breach or take steps preliminary to breaching this Agreement, we shall be entitled, in addition to all other remedies we may have at law or in equity, to a restraining order, temporary and permanent injunctive relief, specific performance, or other appropriate equitable relief, without showing or proving that we actual sustained any damage.

8 MISCELLANEOUS

8.1 Duration. The obligations set forth in this Agreement related to non-disclosure and non-use of Confidential Information will continue during and beyond the term of your relationship with the Franchisee and for as long as you possess any Confidential Information in any manner.

8.2 Waiver. A waiver of any breach of any provision, term, covenant, or condition of this Agreement will not be a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition. Any waiver to this Agreement's provisions must be made in signed writing by the granting party.

8.3 Governing Law. This Agreement will be governed by the substantive laws of Arizona without regard to Arizona choice of law provisions. Arizona laws will prevail, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051, et seq.). This choice of laws will not include and does not extend the scope of application of any Arizona franchise or business opportunity laws except as they may otherwise apply pursuant to their terms and definitions. Any portion of this Agreement that requires enforcement in any other jurisdiction, and is enforceable under the laws of that jurisdiction but not of Arizona, will be construed and enforced according to the laws of that jurisdiction.

8.4 Venue. The venue for any action or legal proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be in the county in which our headquarters are then located (currently Maricopa County, Arizona). Each of the parties waives any objection to this venue provision.

8.5 Injunctive Relief and Specific Performance. Either party may obtain in any court of competent jurisdiction specific performance and injunctive relief to restrain a violation by the other party of any term or covenant of this Agreement.

8.6 Remedies Not Exclusive. No right or remedy conferred upon either party is exclusive of any other right or remedy in this Agreement or provided by law or equity. Each will be cumulative of every other right or remedy.

8.7 Attorneys' Fees. The prevailing party in any insolvency proceeding, bankruptcy proceeding, suit, or action to enforce this Agreement will recover its proceeding, and court costs and reasonable attorneys' fees. These will be set by the proceeding or court, including costs and attorneys' fees

on appeal or review from the proceeding, suit, or action. "Prevailing party" means the party who recovers the greater relief in the proceeding.

8.8 Lawful Scope. If, for any reason, any provision set forth in this Agreement exceeds any lawful scope or limit as to duration, geographic coverage, or otherwise, it is agreed that the provision will nevertheless be binding to the full scope or limit allowed by law or by a court of law.

IN WITNESS, the parties have executed this Agreement on the date written above.

Franchisor: FITNESS 1440, INC.

By: _____

Name: _____

Title: _____

Date: _____

You: _____

Signed: _____

Name: _____

Title/Position with Franchisee:

Date: _____

Acknowledged by Franchisee:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT K

AREA REPRESENTATIVE DISCLOSURES

The following is a list of our Area Representatives alphabetically by U.S. state and then by Canadian province. The disclosures respond to FDD Item 2 (“Business Experience”); Item 3 (“Litigation”); Item 4 (“Bankruptcy”); and Item 8 (with respect to supplier rebates).

Tennessee

Area Representative: BOREN, INC.
Nelson Boren
411 Metroplex Dr.
Nashville, TN 37211
615-477-5979

Area Representative Territory: The State of Tennessee

Item 2: BOREN, INC. has served as our Area Representative in the above-described Area Representative Territory since 2018.

Nelson Boren has been President of BOREN, INC. since 2016. He served as Vice President of Customer Experience for Genesco Inc. in Nashville, Tennessee from 2006 to 2015.

Item 3: No litigation is required to be disclosed in this Item for this Area Representative.

Item 4: No bankruptcy is required to be disclosed in this Item for this Area Representative.

Item 8: We are not aware of this Area Representative receiving any rebates from suppliers based on required purchases by unit franchisees.

Texas

Area Representative: DOWNING FITNESS, LLC
Owner: Stephanie M. Downing
103 W Loop 281
Longview, TX 75605
903-663-8998

Area Representative Territory: The State of Texas

Item 2: DOWNING FITNESS, LLC has served as our Area Representative in the above-described Area Representative Territory since 2018.

Stephanie M. Downing has been owner/manager for DOWNING FITNESS, LLC since 2015. She was a Registered Client Associate for Wells Fargo Advisors in Texas from 2013 to 2015.

Item 3: No litigation is required to be disclosed in this Item for this Area Representative.

Item 4: No bankruptcy is required to be disclosed in this Item for this Area Representative.

Item 8: We are not aware of this Area Representative receiving any rebates from suppliers based on required purchases by unit franchisees.

EXHIBIT L

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
Wisconsin	

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 M
RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If FITNESS 1440 INC. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale or grant. New York and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If FITNESS 1440 INC. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and your respective state agency listed in Exhibit A.

FITNESS 1440 INC. authorizes the respective state agencies identified on Exhibit A to receive service of process for it in the particular state.

FITNESS 1440 INC.'s franchise sellers for this offering are Steven Beach (our President), 870 East Williams Field Road, Gilbert, AZ, (724) 516-5824; [Nicholas Howard, All Ways Blue LLC, 5602 S. Caisson Way, Mesa, AZ 85212, (480) 648-7962]; and the following area representative if applicable:

_____.

Issuance Date: May 19, 2021. The Issuance Date is not the Effective Date. The Effective Date is listed on the State Effective Dates Page.

I received a disclosure document dated May 19, 2021 that includes the following Exhibits:

- | | |
|--|---|
| A) List of Agents for Service of Process and Applicable State Agencies | H) Franchise Agreement and FDD State Law Addendum |
| B) List of Franchised Units | I) Personal Guaranty |
| B-1) List of Franchisees Who Have Left the System | J) Confidentiality and Non-Competition Agreement |
| C) Standard Franchise Agreement | K) Area Representative Disclosures |
| D) Operations Manual Table of Contents | L) State Effective Dates |
| E) Financial Statements | M) Receipts |
| F) Form of General Release | |
| G) SBA Addendum to Franchise | |

Dated: _____, 20____

Prospective Franchisees:

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Name of Corporation/LLC/Partnership (if applicable): _____

Signed By: _____ Name: _____ Title: _____

Keep this copy for your records.

EXHIBIT M
RECEIPT

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If FITNESS 1440 INC. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale or grant. New York and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If FITNESS 1440 INC. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and your respective state agency listed in Exhibit A.

FITNESS 1440 INC. authorizes the respective state agencies identified on Exhibit A to receive service of process for it in the particular state.

FITNESS 1440 INC.'s franchise sellers for this offering are Steven Beach (our President), 870 East Williams Field Road, Gilbert, AZ, (724) 516-5824; [Nicholas Howard, All Ways Blue LLC, 5602 S. Caisson Way, Mesa, AZ 85212, (480) 648-7962]; and the following area representative if applicable:

_____.

Issuance Date: May 19, 2021. The Issuance Date is not the Effective Date. The Effective Date is listed on the State Effective Dates Page.

I received a disclosure document dated May 19, 2021 that includes the following Exhibits:

- | | |
|--|---|
| A) List of Agents for Service of Process and Applicable State Agencies | H) Franchise Agreement and FDD State Law Addendum |
| B) List of Franchised Units | I) Personal Guaranty |
| B-1) List of Franchisees Who Have Left the System | J) Confidentiality and Non-Competition Agreement |
| C) Standard Franchise Agreement | K) Area Representative Disclosures |
| D) Operations Manual Table of Contents | L) State Effective Dates |
| E) Financial Statements | M) Receipts |
| F) Form of General Release | |
| G) SBA Addendum to Franchise | |

Dated: _____, 20____

Prospective Franchisees:

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Name of Corporation/LLC/Partnership (if applicable): _____

Signed By: _____ Name: _____ Title: _____

You may return the signed receipt either by: Signing, dating and mailing it to FITNESS 1440, INC. at 870 East Williams Field Road, Gilbert, AZ 85295 or by e-signature via DocuSign.