

Preventative Maintenance Agreement

This Preventative Maintenance Agreement (“Agreement”) is made between Exercise Equipment Service, Inc. (“EES”) and (“Customer”) as listed on the front of this agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein (including the terms contained on the front of this Agreement), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, EES and Customer do hereby agree as follows:

Section 1. EQUIPMENT TO BE SERVICED. EES shall service and maintain, as set forth herein all exercise equipment listed on the front of this Agreement, and as more particularly described by model and serial numbers as located at each service address. EES and Customer further agree that additional exercise equipment may be added to the Agreement upon the same terms and conditions contained herein by written addendum executed by both parties.

Section 2. SERVICES TO BE PROVIDED. In consideration of the amounts set forth below and on the front of this Agreement, EES agrees to provide preventative maintenance recommended by the manufacturer for the exercise equipment listed on the front of this Agreement, a minimum of one time every ninety (90) days, or as specified on the front of this agreement. EES also agrees to provide all necessary labor to repair the listed equipment described and specified on the front of this agreement. EES agrees to provide a maximum of 2 service calls per month, per location, for listed equipment, on commercial and light commercial equipment and a maximum of 1 service call per month on listed residential equipment.

Section 3. COST OF SERVICES. In consideration for EES providing the services set forth in Section 2, Customer agrees to pay EES the quarterly rate, plus sales tax. EES agrees that all preventative maintenance and labor designated in Section 2 above shall be performed during the months listed on the front of this Agreement and shall be conducted between the 1st day and the 31st day of every scheduled month thereafter. EES agrees to perform said work between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (excluding holidays). Customer is responsible for making the exercise equipment available for service during the days and hours set forth herein. EES does not perform any services during weekends or holidays. EES shall invoice Customer for all services performed under this Agreement within thirty (30) days after the performance of said services and Customer shall pay such invoices within 15 days of the date of invoice. In the event that any payment is not made when due, EES may terminate this Agreement on notice to Customer, in accordance with Section 11 of this Agreement. EES shall impose and Customer agrees to pay a late fee for all past due payments not to exceed that maximum rate allowed by applicable law.

Section 4. COST OF ADDITIONAL LABOR. EES further agrees to provide to Customer such emergency or additional labor as is requested by Customer for repairs and maintenance over and above the regularly described preventative maintenance services or should Customer required service more than 2 service calls per month, per location for listed equipment, on commercial and light commercial equipment or should Customer require a maximum of 1 service call per month on listed residential equipment. Such emergency and additional labor service calls shall be provided by EES at the flat rate as listed on the front of this agreement, plus parts, handling and shipping charges. EES shall provide Customer with a written estimate of the applicable additional labor and parts charges prior to commencement of the repairs and maintenance. Notwithstanding the foregoing, failure to provide a written estimate shall not be deemed a waiver of EES’ rights to be paid for the additional services rendered to Customer.

Section 5. COST FOR REPLACEMENT PARTS. EES agrees to provide Customer with all necessary and factory approved replacement parts at the manufacturers suggested retail price “MSRP”, plus shipping, handling and applicable sales tax. EES shall charge a minimum of \$5.00 for all handling fees, but not exceed \$15.00. EES shall have a minimum shipping charge of \$5.00.

Section 7. WARRANTY. EES further warrants and agrees that work, services, labor and/or materials provided hereunder shall be done in a workmanlike manner and in accordance with all governmental laws, regulations, requirements, and standards of the United States of America and the State of Florida. EES agrees to warrant all provided labor only during the time that this Agreement is in effect.

Section 8. RELATIONSHIP OF PARTIES. It is understood and agreed by the parties that the relationship of EES to Customer is strictly that of an independent contractor and that EES is neither an employee of Customer nor does EES have any ownership in Customer's enterprise. The parties further agree that this Agreement shall not be construed as a joint venture or partnership and that EES is not and shall not be deemed to be an agent or representative of Customer. As an independent contractor, EES shall utilize its own employees, equipment and tools. The working conditions, wages, salaries and all other forms of compensation of EES employees shall be the sole responsibility of EES.

Section 9. INSURANCE. EES does further agree and covenant that it shall maintain Commercial Liability Insurance coverage in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 General Aggregate.

Section 10. TERM. Customer grants EES the exclusive right to provide maintenance and repair services for the exercise equipment described in this Agreement. The initial term of this Agreement shall be for one year, beginning from the initial date of service and this Agreement shall automatically renew for like terms thereafter unless either party shall give written notice of termination by certified mail to the other at least sixty (60) days prior to termination of the initial term or any renewal term.

Section 11. DEFAULT. If Customer defaults in compliance with any term or covenant contained herein, EES shall, at its sole option, have the right to declare a default and give the Customer five (5) days written notice to cure the default. If Customer, prior to the expiration date of the notice, has neither cured the default nor given EES adequate security for the remedy thereof, then EES may, at its option and without waiving or releasing any obligation or default on the part of the Customer, immediately terminate this Agreement without further notice or take any other such action available in law or equity as EES deems appropriate to remedy Customer's breach or default.

Section 12. TERMINATION. This Agreement shall remain in full force and effect until the earlier of the expiration of the term set forth in Section 10 or the expiration of the cure period following EES' election to terminate the Agreement following default in accordance with Section 11. Termination shall only be effective from and after the effective date of said termination and shall not affect claims, damages, liabilities, losses, and other causes of action which accrued prior to the effective date of said termination.

Section 13. HEADINGS. Headings in this Agreement are for reference and convenience only and shall not be used to interpret or construe its provisions.

Section 14. BENEFIT. The provisions of this Agreement shall be binding on and ensure to the benefit of the parties and their respective legal representatives, successors and assigns.

Section 15. ENTIRE AGREEMENT. This Agreement (including the terms contained on the front of this Agreement) supersedes all agreements previously made between the parties relating to its subject matter. This Agreement contains all of the agreements and conditions made between the parties hereto, and there are no other understandings or agreements between them, except as otherwise provided herein. This Agreement may not be modified orally or in any manner other than by agreement in writing signed by all parties hereto or their respected successors and interests.

Section 16. PARTIAL INVALIDITY. If any section, paragraph, sentence, or other portion of this Agreement or the application thereof to any party or circumstance shall, to any extent, be or become invalid or illegal, such provision is and shall be null and void, but, to the extent that said null and void provisions do not materially change the overall Agreement and intent of this entire Agreement, the remainder of this Agreement shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent provided by law.

Section 17. ATTORNEY'S FEES. It is further understood and agreed by and between EES and Customer that if, on account of breach or default by either party of any of their respective obligations hereunder, it shall become necessary for the either party to employ and/or consult with an attorney to give advice, or to enforce or demand and such parties rights or remedies hereunder, then, and in any such event, the non-performing party shall pay reasonable attorney fees, court costs and other expenses occasioned by such default(s).

Section 18. NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 19. NOTICES. All notices and communications required to be sent pursuant to the terms of this Agreement shall, unless otherwise provided herein, be given by personal delivery or shall be sent by certified mail, return receipt requested, United States postage, prepaid, as follows:

Notice to EES: Exercise Equipment Service 10211 Pines Blvd. #149 Pembroke Pines, FL 33026

Notice to Customer: _____

If no address is specifically provided for above for purposes of notice to Customer, notice shall be deemed proper if sent to the Billing Address reflected on the front of this Agreement.

Section 20. INTERPRETATION. Whenever used herein, and to the extent appropriate, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

Section 21. ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. An assignment shall include any transfer of 50% of stock or control in a publicly held company. Assignment shall also include a sale of all or substantially all of the assets of the Customer and the purchaser of the assets continues operation of the business or an enterprise at the same location.

Section 22. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any on of the parties hereto.

Section 23. JURISDICTION AND VENUE. The parties to this Agreement agree that jurisdiction and venue shall be proper in the County and Circuit Courts of Miami-Dade County, Florida, as well as any other courts that may have proper jurisdiction and venue under applicable laws of the State of Florida.

Section 24. RIGHT TO COMPETE. Customer grants EES the right to compete with any offer which Customer receives (or intends to make) relating to the provisions of exercise equipment maintenance and services upon the termination of this Agreement for any reason, and agrees to give EES written notice of any such offer and a reasonable opportunity to respond to it.

Section 25. MISCELLANEOUS. If any conflicts exist in this Agreement between terms which are printed and those which are typed, the typed language shall govern. The representations and warranties contained herein shall survive the termination of this Agreement. Both parties shall be relieved from performance under the terms of this Agreement when performance is impossible due to acts of God, including but not limited to Hurricanes, Storms, High-water, Wars, Riots, Fires, Explosions, Accidents, Arrests, Strikes or Lockouts, or any other cause not within the control of the parties.

Section 26. MATERIALS INCLUDED. EES agrees to supply lubricants, oils, shop supplies and cleaning supplies only under this agreement. Any and all other materials shall be considered an exercise equipment

“part” and as such Customer shall be responsible for the manufacturers suggested retail price, plus shipping, handling and sales tax.

Section 27. DISCOUNTS ON NEW EXERCISE EQUIPMENT PURCHASES. Customer shall be entitled to a ten percent (10%) discount on the purchase of any NEW exercise equipment at the listed price reflected on the EES web site, while this Agreement is in effect.

Section 28. DISCOUNTS ON REPAIRS ON NON-COVERED EQUIPMENT. Customer shall be entitled to a ten percent (10%) discount on any exercise equipment repairs on non-covered equipment. This Discount shall apply only during the time that this Agreement is in effect.

Section 29. HOURS OF OPERATION. EES agrees to provide maintenance and repair services during its normal hours of operation, Monday through Friday from 8:00 a.m. to 5:00 p.m. EST. EES recognizes all national holidays and is closed accordingly.