



## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is made and entered into as of the [redacted] day of [redacted], 20[redacted] (the "Effective Date"), by and between Provision Security Solutions, Inc., a Minnesota corporation ("ProVision") and [redacted], ("Customer") having an Anytime Fitness Center located at the following address:

### 1. Services:

a. *Website Hosting Services.* ProVision agrees to perform and provide to Customer, services consisting of non-exclusive electronic access to a digital information processing, transmission and storage system ("Server") to store Customer's web site ("Site") and make the Site available on and via the global computer communications network ("Internet") as specified herein ("Hosting Services"). Customer agrees that the Hosting Services shall not include any web site development services, authorship or creation with respect to the Site.

b. *Checkin™ Software Installation and Support.* ProVision agrees to install the Checkin Software on Customer's Equipment (defined in Section 3.d.) for access control and to provide remote support of the Checkin Software ("Checkin Installation and Support Services" or "Checkin I&S Services"). The Checkin I&S Services may include the periodic upgrading of the Checkin Software with newer versions or releases. All support for the Checkin Software is provided remotely. Upgrades, updates or other changes to the Checkin Software may be made remotely and at such times as ProVision deems necessary or appropriate, in its sole discretion, with or without notice. Upon availability of a new release or version of the Checkin Software, ProVision may cease supporting prior versions or releases upon not less than thirty (30) days prior written notice. Any new or additional Equipment necessitated by a software upgrade will be the responsibility of Customer.

c. *Security Monitoring.* ProVision agrees to perform and provide to Customer security monitoring services ("Security Monitoring Services") if, and only if, Customer purchases all security equipment through ProVision pursuant to a separate purchase order and ProVision installs, or arranges for the installation of, that equipment. Customer acknowledges that the Security Monitoring Services will include the monitoring of the physical alarm system but such Security Monitoring Services do not include cameras or the monitoring of closed circuit televisions (CCTVs). *ProVision will not provide Security Monitoring Services for a security system purchased from or installed by a third party.*

d. *Availability of Services.* The Hosting Services, Checkin I&S Services and Monitoring Services (if applicable) are collectively referred to as the "Services." Subject to the terms and conditions of this Agreement, ProVision shall attempt to provide the Services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. Customer agrees that from time to time the Services may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which ProVision may undertake from time to time; or (iii) causes beyond the control of ProVision or which are not reasonably foreseeable by ProVision, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks network congestion or other failures. Customer agrees that ProVision has no control of availability of Services on a continuous or uninterrupted basis.

e. *ProVision Materials.* In connection with performance of the Services and at the sole discretion of ProVision with no obligation, ProVision may provide to Customer certain materials, including, without limitation, the Checkin Software or other computer software (in object code or source code form), data, documentation or information developed or provided by ProVision or its suppliers under this Agreement, domain names, electronic mail addresses and other network addresses assigned to Customer, and other know-how, methodologies, equipment, and processes used by ProVision to provide the Services to Customer ("ProVision Materials").

f. *Customer Content.* Customer shall be solely responsible for providing, updating, uploading and maintaining the Site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Site, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, metatags, domain names, software and text ("Customer Content"). The Customer Content shall also include any registered domain names provided by Customer or registered on behalf of Customer in connection with the Services.

## **2. Licenses, Access and Proprietary Rights**

a. *License of Customer Content.* Customer grants to ProVision, and ProVision accepts from Customer, a non-exclusive, worldwide and royalty free license to copy, display, use and transmit on and via the Internet the Customer Content in connection with ProVision's performance or enforcement of this Agreement.

b. *Access to Customer Equipment and Facilities.* Customer shall permit ProVision access to the facility at the above-referenced address to install and configure all Equipment and any ProVision Materials necessary for ProVision to perform the Services.

c. *License of ProVision Materials.* In consideration of Customer's payment of all compensation to ProVision pursuant to Section 4, ProVision grants to Customer, and Customer accepts from ProVision, a limited, non-transferable, non-exclusive license, for the term of this Agreement, to copy and use the ProVision Materials, solely in connection with the operation of the Anytime Fitness facility identified at the above referenced address and in connection with the Site for Customer's internal business purposes.

d. *ProVision Proprietary Rights.* ProVision shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in the ProVision Materials and all legally protectable elements, derivative works, modifications and enhancements thereto, whether or not developed in conjunction with Customer, and whether or not developed by ProVision, Customer or any contractor, subcontractor or agent for ProVision or Customer. To the extent that ownership of the ProVision Materials do not automatically vest in ProVision by virtue of this Agreement or otherwise, Customer agrees to and hereby does transfer and assign to ProVision all right, title and interest in the ProVision Materials and protectable elements or derivative works thereof. Upon any termination or expiration of this Agreement, Customer shall return all ProVision Materials to ProVision and erase and remove all copies of all ProVision Materials from any computer equipment and media in Customer's possession, custody or control.

## **3. Site and Services Terms and Limitations**

a. *Site Storage and Security.* At all times, Customer shall bear full risk of loss and damage to the Site and all Customer Content. Customer shall be solely responsible for undertaking measures to: (i) prevent any loss or damage to Customer Content; (ii) maintain independent archival and backup copies of the Site and all Customer Content; (iii) ensure the security, confidentiality and integrity of all Customer Content transmitted through or stored on the Server; and (iv) ensure the confidentiality of

Customer's password. The Server, ProVison and Services are not an archive and ProVison shall have no liability to Customer or any other person for loss, damage or destruction of any Customer Content. If Customer's password is lost, stolen or otherwise compromised, Customer shall promptly notify ProVison, whereupon ProVison shall suspend access to the Services by use of such password and issue a replacement password to Customer's authorized representative.

b. *Acceptable Use Policy.* Customer is solely responsible for all acts, omissions and use under and charges incurred with Customer's account or password or in connection with the Site or any Customer Content displayed, linked, transmitted through or stored on the Server. Customer agrees not to engage in unacceptable use of any Services, which includes, without limitation, use of the Services to: (i) disseminate or transmit unsolicited messages, chain letters or unsolicited commercial email; (ii) disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (iii) disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person; (iv) create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication; (v) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions; (vi) interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which Customer does not have authorization to access or at a level exceeding Customer's authorization; (vii) disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program; or (viii) engage in any other activity deemed by ProVison to be in conflict with the spirit or intent of this Agreement or any ProVison policy.

c. *Rights of ProVison.* Customer agrees that ProVison may, in its sole discretion, remove or disable access to all or any portion of the Site or Customer Content stored on the Server at any time and for any reason. ProVison has no obligation to monitor the Site or any Customer Content, but reserves the right in its sole discretion to do so.

d. *Equipment.* Customer shall be solely responsible for providing, maintaining and ensuring compatibility with all hardware, software, electrical and other physical requirements necessary for ProVison to perform the Services and for Customer to access the Site, including, without limitation, telecommunications and digital transmission connections and links, routers, local area network servers, virus software, firewalls, or other equipment (collectively "Equipment").

e. *Alarm Permit.* Customer acknowledges that an alarm permit may be required. Obtaining the alarm from the local authority (Police or Fire Departments) is the responsibility of Customer.

f. *Monthly Alarm Testing.* Customer agrees that a monthly test of the security system is required.

#### **4. Payment Terms**

a. *Payments.* Customer shall pay ProVison for the Services and license hereunder at Section 2(c) the amounts set forth below. ProVison expressly reserves the right to change its rates charged hereunder for the Services at any time, upon thirty (30) days notice to Customer.

User License Fee for ProVison Materials and Checkin I&S Services = \$89.00

Hosting Services Fee = \$19.99

Monitoring Services Fee (if applicable) = No charge.

*ProVision will not provide Security Monitoring Services for any security system purchased from or installed by a third party.*

*b. Invoices.* Customer will be invoiced on a monthly basis in advance for Services to be provided for such month. Customer is to promptly arrange for ProVision's invoices to be paid directly by Customer's member billing and processing service provider ("Customer's Billing Processor") that Customer was required to establish upon becoming a franchisee of Anytime Fitness, Inc. Customer hereby irrevocably appoints ProVision as Customer's attorney-in-fact to contact Customer's Billing Processor and to make all necessary arrangements on behalf of Customer so as to ensure all arrangements for payment of ProVision's invoices are timely made through Customer's Billing Processor. ProVision reserves the right to invoice on a pro rata basis for any part of a calendar month to allow for subsequent invoices to be calculated and paid on a calendar monthly basis. If Customer is delinquent in its payments, ProVision may suspend Services upon written notice to Customer until all payments are current and ProVision may modify the payment terms to require other assurances to secure Customer's payment obligations hereunder. All fees charged by ProVision for Services are exclusive of taxes and similar fees now in force or enacted in the future imposed on the transaction, all of which the Customer will be responsible for, except for taxes based on ProVision's net income. Customer agrees that amounts of any unpaid invoice shall accrue interest at one and one half percent (1.5%) per month or the maximum amount permitted by law, whichever is less. Customer shall pay all costs of collection, including reasonable attorney's fees and costs, in the event any invoice requires collection efforts.

*c. Taxes.* Customer shall promptly pay all federal, state and local taxes arising out of this Agreement and the Services and equipment described herein, including any sales or similar tax on any payments payable to ProVision under this Agreement. ProVision will not be liable for these or any other taxes, and Customer will indemnify ProVision for any such taxes that may be assessed or levied against ProVision which arise or result from the Services or equipment described in this Agreement.

## **5. Warranties and Disclaimer**

*a. ProVision Warranties.* ProVision warrants to Customer that: (i) ProVision has the right and authority to enter into and perform its obligations under this Agreement; and (ii) ProVision shall perform the Services in a commercially reasonable manner. Customer's sole remedy in the event of breach of this warranty will be to terminate the Agreement pursuant to Section 8.

*b. Customer Warranties.* Customer represents and warrants to ProVision that: (i) Customer has the power and authority to enter into and perform its obligations under this Agreement; (ii) Customer Content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violates any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and (iii) Customer has express written authorization from the owner to copy, use and display the Customer Content on and within the Site.

*c. Disclaimer of Warranty.* EXCEPT AS EXPRESSLY STATED AT SECTION 5(a), PROVISION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING ANY SUBJECT MATTER OF THIS AGREEMENT.

## 6. Limitation of Liability

EXCLUSIVE OF LIABILITY UNDER SECTION 7 (INDEMNIFICATION), IN NO EVENT SHALL HOST BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF PROVISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVISION'S TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL FEES PAID BY CUSTOMER TO PROVISION HEREUNDER FOR THE ONE (1) YEAR PERIOD PRIOR TO ANY ACT OR OMISSION GIVING RISE TO ANY POTENTIAL LIABILITY.

## 7. Indemnification

a. *By Customer.* Customer agrees to indemnify, hold harmless and defend ProVision and its directors, officers, employees and agents from and against any third party action, claim, demand, dispute, or liability, including reasonable attorney's fees and costs, arising from or relating to: (i) Customer's breach of this Agreement; (ii) any negligence or willful misconduct of Customer; (iii) any allegation that the Site or Customer Content infringes a third person's copyright, trademark or proprietary or intellectual property right, or misappropriates a third person's trade secrets; or (iv) any action or conduct of ProVision undertaken pursuant to this Agreement. Customer agrees that ProVision shall have the right to participate in the defense of any such claim through counsel of its own choosing.

b. *By ProVision.* ProVision agrees to indemnify, hold harmless and defend Customer and its directors, officers, employees and agents from and against any third party action, claim, demand or liability, including reasonable attorney's fees and costs, arising from or relating to any allegation that the ProVision Materials infringe a third person's copyright, trademark or proprietary or intellectual property right, or misappropriates a third person's trade secrets.

## 8. Term and Termination

a. *Term.* The term of this Agreement shall commence on the Effective Date and shall continue thereafter for one (1) year, unless sooner terminated by either party. This Agreement shall renew automatically for successive one (1) year terms unless terminated by either party with thirty (30) days of the expiration of the prior term.

b. *Termination.* This Agreement may be terminated: (i) by Customer upon sixty (60) days written notice to ProVision; (ii) by ProVision upon ten (10) days written notice to Customer, unless Customer's Franchise Agreement with Anytime Fitness, Inc. to operate an Anytime Fitness Center at the above identified location terminates for any reason, or expires, in which case ProVision may terminate this Agreement immediately upon written notice to Customer; or (iii) by a written agreement executed by the parties. Notwithstanding the foregoing, ProVision reserves the right, in its sole discretion and without prior notice, at any time, to suspend Customer's access to or use of the Server, Services or any portion thereof, in the event ProVision believes or has reason to believe that Customer is in violation or may be violating any term or condition of this Agreement. In the event of suspension of Services, ProVision shall thereafter provide prompt written notice to Customer of the suspension of Services and the reasons therefore.

c. *Rights Upon Termination.* In the event this Agreement is terminated for any reason, Customer shall pay ProVision, on a pro rata basis, for all Services provided to Customer up to the date of termination.

## 9. General

a. *Independent Contractors.* The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

b. *Assignment.* Customer may not assign any of its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be deemed void and/or a material breach of this Agreement.

c. *Waiver.* No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

d. *Severability.* If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

e. *Notice.* All notices shall be in writing and shall be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested. All notices shall be directed to the parties at the respective addresses given above or to such other address as either party may, from time to time, designate by notice to the other party.

f. *Amendment.* No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by both parties.

g. *Governing Law, Jurisdiction and Venue.* This Agreement shall be governed in all respects by the laws of the State of Minnesota without regard to its conflict of laws provisions. The parties hereto expressly agree that venue shall be exclusively in the state or federal courts located in Ramsey County, Minnesota. The parties hereto hereby consent to the exclusive jurisdiction of the federal and state courts in Ramsey County, Minnesota and expressly waive any objection to personal jurisdiction, improper venue and/or convenience of such forums.

h. *Survival.* The definitions of this Agreement and the respective rights and obligations of the parties under Sections 1(f), 2(a), 2(d), 3, 4, 5(b), 5(c), 6, 7, 8(c) and 9 shall survive any termination or expiration of this Agreement.

i. *Force Majeure.* If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

j. *Entire Agreement.* This Agreement constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement.

CUSTOMER

Provision Security Solutions, Inc.

Signed: 

Signed: \_\_\_\_\_

Printed: 

Printed: \_\_\_\_\_

Title: 

Title: \_\_\_\_\_

Date: 

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

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