Dear Franchisee,

Enclosed please find a form of Independent Contractor Agreement between you and your associates. This is only a template and should be modified as necessary to comply with applicable state laws, particularly laws relating to the treatment of employees and independent contractors. It is your responsibility to review this document in its entirety with your attorney and to make any necessary changes. Any proposed changes should be brought to our attention.

If you have any questions or concerns completing this document, please consult our onboarding department. Email: onboard@frannet.com . A fully executed Independent Contractor Agreement must be furnished to us before the Associate can begin working for you.

 **Independent Contractor Agreement**

This Independent Contractor Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Associate”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Company”). Associate and Company are hereafter collectively referred to as the “Parties.”

**Recitals**

The Parties enter into this Agreement based upon the following mutually-understood and agreed upon facts, understandings and definitions, some of which shall also be construed as covenants and obligations as is necessary to enforce or interpret this Agreement.

1. Company is a franchise consulting service business operating under a franchise agreement or license agreement (the “License Agreement”) with FranNet, LLC, a New Jersey Limited Liability Company *dba* FranNet (hereinafter referred to “FranNet”). FranNet is engaged in the business of consulting with and/or representing franchisors, would-be franchisors, licensors, and other business opportunity companies (herein referred to collectively as “Franchisor” or “Franchisors”) in connection with the sale of their franchises, business opportunities, licenses, or existing resales of same (herein referred to collectively as “Franchise” or “Franchises”).
2. In the course of conducting its business, Company meets with potential franchisees (“Prospects”) and provides them with information to help them determine what type of Franchise and which Franchisors might be the most suitable for the Prospect.
3. Some Prospects enter into Franchise agreements with Franchisors as a result of services provided to them by the Company (hereafter, “Engagement”). An Engagement typically results in the payment of monies by the Franchisor to FranNet. A payment generally consists of one of the following types of payments:
	1. In the event a Prospect enters into one and/or subsequent Franchise agreement(s) with, and pays an “up-front” fee or other payment to, a particular Franchisor, that Franchisor may make a payment to FranNet for the Company’s services. This “up-front” fee or payment by the Franchisor to FranNet is often in the form of a percentage or a fixed amount of the initial franchise fee or payment made by the Prospect to the Franchisor. This type of payment from the Franchisor to FranNet is hereinafter referred to as “Up Front Fees”. In lieu of and/or in addition to any other Up Front Fees paid by any Franchisor, FranNet may receive a one-time flat fee payment or continuing payments for a specified period from certain Franchisors for the referral of a Prospect who enters into a Franchise agreement with, and pays a fee or other payment to, that particular Franchisor. These payments, which may be a one-time flat fee or on a continuing basis, are usually in the form of a percentage of ongoing sales by the Franchisee and/or continuing franchise fees paid by the Franchisee to the Franchisor, are often called residual fees or royalties, and are hereinafter referred to as “Residual Fees.”

Any and all such payments from a Franchisor to FranNet based upon services provided by the Company, including but not limited to Up Front Fees and Residual Fees, are hereinafter referred to as “Gross Consulting Income.” When the Gross Consulting Income is paid to FranNet, it then pays a portion of the Gross Consulting Income to the Company, after accounting for various deductions, fees, charges, expenses, commissions and prorations made, charged or taken by FranNet. The amount of the Gross Consulting Income actually received by the Company from FranNet, after accounting for such deductions, fees, charges, expenses, commissions and prorations, is hereinafter referred to as “Net Consulting Income.” The amount of such deductions, fees, charges, expenses, commissions and prorations may vary from time to time, and may vary depending upon the Franchisor and the License Agreement between the Company and FranNet. Net Consulting Income includes “Net Up Front Fees” and “Net Residual Fees.” Consistent with the foregoing definition of Net Consulting Income, the phrase “Net Up Front Fees” means the amount of Up Front Fees that are actually received by the Company from FranNet, after accounting for any and all deductions, fees, charges, expenses, commissions and prorations made, charged or taken by FranNet. Similarly, the phrase “Net Residual Fees” means the amount of Residual Fees that are actually received by the Company from FranNet after accounting for any and all deductions, fees, charges, expenses, commissions and prorations made, charged or taken by FranNet. Company and Associate understand and acknowledge that neither Company nor Associate are permitted to receive payments directly from Franchisors; all payments from Franchisors must be paid to FranNet.

1. Company, individually and/or in conjunction with FranNet, holds rights to certain proprietary and confidential systems, operating methods, training methods, computer and electronic systems (including the FranNet Intranet System or “FranNet.Net”), brand identification and contractual Franchisor relationships (hereinafter collectively referred to as “Confidential Information”).
2. Company is also engaged in the business of associating with independent individuals and entities that wish to participate in a business of the same general type and using the same operating system and brand name as Company, such as Associate. These independent individuals and entities, such as Associate, may request that Company provide them Confidential Information, as well as provide them with access to the Franchisors with whom Company, and FranNet has or will establish contractual relationships. They may also request that Company allow them the limited right to use the brand, logo and trade names of Company, and/or FranNet.
3. Associate is such an individual and desires to become such an independent contractor of Company engaged in the same type of business as Company using the Confidential Information of FranNet and Company as described above. Associate has also requested that Company provide Associate with training in the Company’s and FranNet’s procedures and standards, access to Franchisors, and the limited right to use the brand, logo, and trade names of Company, and/or FranNet in conjunction with the same. Company is willing to provide Associate limited use of Confidential Information, limited access to Franchisors, and the limited right to use the brand, logo, and trade names of Company, and/or FranNet under the terms and conditions that follow.

NOW THEREFORE, in light of the fact Company desires to engage Associate as an independent contractor and Associate desires to be engaged as an independent contractor and perform the duties and obligations stated in this Agreement, on the terms and conditions stated herein, the Parties agree as follows:

**Terms & Conditions**

1. COMPANY SERVICE

Company will perform the following services for Associate under the following terms and conditions:

* 1. System Documentation Materials. Company will loan, from time to time and as it deems necessary in its sole discretion, a copy of proprietary Company system-training materials, including all systems and procedures for dealing with Prospects and Franchisors (hereinafter referred to as “Proprietary Materials”) to Associate. Associate agrees to hold all such Proprietary Materials provided by Company in the strictest confidence during the terms of this Agreement and thereafter. Associate further agrees to return all such Proprietary Material and copies thereof to Company upon the expiration or any termination of this Agreement.
	2. Initial Training. Company will provide initial training to Associate covering all aspects of its systems and procedures for dealing with Prospects and Franchisors, or will direct Associate to a place and/or company that will do the same. Any initial training will be held at a location designated by the trainer. Associate will be solely responsible for all costs and expenses to travel and attend said initial training, including but not limited to any entrance, registration and/or attendance fees (which fees Associate understands must be paid in advance by Associate and is non-refundable) for the initial training.
	3. Advanced Training. FranNet may, from time to time, conduct advanced training sessions. Such sessions may be open to Associate to attend provided this Agreement has not expired or terminated. Associate will be responsible for all costs and expenses to travel and attend any advanced training sessions that are open to Associate, including but not limited to any entrance, registration and/or attendance fees (which fees Associate understands must be paid in advance by Associate and is non-refundable) for the advanced training.
	4. Ongoing System Support. After Associate’s initial training, Company may, in its sole discretion, provide informal advice or suggestions to Associate. The amount and method of any such informal advice or suggestions will be whatever is deemed to be reasonable and necessary by the Company.
	5. Franchisor Information. Company, in its sole discretion, may provide Associate with the name, address and other contact information of approved Franchisors with which it has or establishes a working contractual relationship. Should Company do so, any such information shall be considered Confidential Information and treated as such pursuant to the terms and conditions hereof.
1. ASSOCIATE DUTIES AND OBLIGATIONS

Associate shall, on behalf of Company, undertake the following duties and obligations.

* 1. Associate shall offer authorized Consulting Services to Prospects. Consulting Services consist of assisting a Prospect in identifying an appropriate Franchise for purchase by the Prospect utilizing the concepts, tools, and procedures licensed to Company by FranNet.
	2. Associate shall assist Franchisors in their dealings with Prospects.
	3. Associate shall meet and satisfy the Production Schedule attached hereto as Exhibit A.
	4. Associate shall make no separate or independent agreements with regard to any Franchisor which are not approved by Company.
	5. Associate shall not make any false or misleading statement or representation, either oral or written, to any Prospect regarding any Franchise or Franchisor, nor shall Associate make any false or misleading statement or representation, either oral or written, to any Franchisor regarding any Prospect. Furthermore, Associate shall not make any oral or written statement or representation of any kind (whether true or false) to any Prospect regarding any actual, projected, possible or potential earnings by any Franchise, but instead shall direct the Prospect to the Franchisor and/or other franchisees for such earnings information.
	6. Except as otherwise stated in this Agreement, Associate shall conduct all activities in accordance with the standards, written or verbal, set forth now or in the future by Company.
	7. Any Franchise which is in the FranNet inventory of approved businesses and/or opportunities shall be represented by Associate under the terms set forth by Company and FranNet. Company and Associate must comply with all provisions of Franchise Referral and Commission Agreements (or similar agreements) between FranNet and a Franchisor. Company and Associate are jointly and severally liable to FranNet, Franchisors, and any third party who may suffer damages as a result a breach or default by Company or Associate under any agreement between FranNet and a Franchisor. Company and Associate are encouraged to inquire about the content and scope of such agreements.
	8. Company pays FranNet to participate in a group “errors and omissions” insurance policy. The payment by Company to FranNet includes coverage for Associate. Company may charge Associate for a pro rata share of the premiums paid to FranNet. Upon expiration or termination of this Agreement, Associate must purchase extended coverage (or as more commonly known, a “tail”) for at least one year beyond the expiration or termination of this Agreement. Associate shall secure such tail policy with coverage in an amount of at least $1,000,000 per claim, from a reputable carrier (which carrier shall be approved by Company). Associate shall further obtain and maintain any and all other insurance as may be reasonably requested by Company from time-to-time. Associate shall be solely responsible for paying, at his or her own cost and expense, all premiums and deductibles for all insurance expressly required by this subsection and otherwise requested by Company to be carried by Associate pursuant to this subsection. Company and FranNet shall be named as additional insured under all such policies. Associate shall provide Company with copies of all certificates of insurance and policies evidencing Associate’s compliance with this subsection. The certificate of insurance shall include a statement by the insurer that the policy or policies shall not be canceled, subject to non-renewal, or materially altered without at least 30 days' prior written notice to the Company. Upon the Company's request, Associate shall supply it with copies of all insurance policies and proof of payment. Nothing in this subsection shall be construed as a limitation on any remedy.
	9. Within 60 days of the Effective Date, Associate must register as a franchise broker in New York and Washington. Associate must provide FranNet with proof of registration within such 60-day period, and proof of all annual renewals before expiration thereof.
	10. Within 180 days of the Effective Date, Associate must complete the FranGuard Compliance Program offered by the International Franchise Association and obtain FranGuard Certification. Associate must provide FranNet with proof of such certification within such 180-day period by mailing or emailing a copy to FranNet’s training and support representative.
1. ADDITIONAL TERMS
	1. Associate may obtain leads for Prospects from the Internet, print ads, Franchisors, or any other sources, but only in a manner and only to the extent allowed by any applicable law and that is consistent with all of the standards set forth by Company and FranNet
	2. During the term of this Agreement and provided Associate is not in default hereunder, Associate shall be permitted to use the trade name and trademarks that Company has been authorized to use by FranNet, but only in the manner and to the extent authorized by FranNet. When providing Consulting Services to Prospects and in all dealings with Franchisors, Associate shall only operate under the trade names or identities specified by Company from time to time. Associate may continue to operate its other businesses under trade names not confusingly similar to the trade names authorized by Company hereunder.
	3. Lead Assignment. It is anticipated by the Parties that Associate will generate most of his or her own leads. However, the Company may provide leads or lead assignments for Prospects to Associate that Company, in its sole discretion, deems appropriate. Company makes no representation or warranty regarding the amount or type of leads, if any, it will provide to Associate.
	4. Associate Non-Solicitation. Associate expressly agrees that he/she will not solicit or accept marketing contributions, payments or support from any Franchisor, except as otherwise expressly allowed by this Agreement or otherwise authorized by Company in writing. Any expressions of interest made by a Franchisor to Associate for providing any such marketing contributions, payments or support shall be referred by Associate to Company and FranNet.
2. ASSOCIATE TERRITORY RESTRICTIONS

The Associate shall locate and operate his/her business according to the following terms and conditions:

* 1. Office Location. Associate may conduct business at or from any location approved by Company and consistent with its License Agreement with FranNet. Associate shall be responsible for any mortgage or lease payments for such location, as well as any telephone, Internet, electricity, gas, electric, trash, sewage and any other charges for such location.
	2. Non-Exclusive Specific Territory Authorization. Company’s License Agreement with FranNet is subject to territory limitations, and thus any Consulting Services undertaken by Associate under this Agreement must be consistent with such territory limitations. Company’s territory limitations with FranNet are set forth in Exhibit C hereto and hereafter referred to as the “Designated Market Area” (“DMA”). Associate may only solicit Prospects and market his/her Consulting Services within the DMA. Associate agrees and understands nothing in this Agreement is intended to grant Associate any exclusive rights in or to the DMA or otherwise. Furthermore, Associate agrees and understands that Company may retain other independent contractors to provide the same or similar services of Associate in the DMA and/or other jurisdictions.
1. PAYMENTS

	1. Ownership of Gross Consulting Income. Associate agrees that all payments of Gross Consulting Income to FranNet that are generated directly through the efforts of Associate will be paid by Franchisor directly to FranNet, and Associate shall have no right, interest or title to such Gross Consulting Income. Rather, Associate shall only have a right to commissions, as provided for herein, on the Net Consulting Income actually received by the Company from FranNet. Furthermore, the Company shall have no duty, obligation or responsibility to attempt to secure or collect any part of the Gross Consulting Income received by FranNet for any services, activities or efforts by Associate, or to initiate legal action regarding the same. Rather, Company’s obligation to Associate in this regard is limited solely to paying to Associate the commissions as set forth herein on the Net Consulting Income actually received by the Company.
	2. Non-Monetary Considerations. Any non-monetary gifts presented to Associate by any Franchisor shall be the property of Associate. Franchisor shall declare the value of any such non-monetary gift as income to Company, Company shall have the right to declare the same value as income to Associate.
2. ASSOCIATE COMMISSIONS

Associate will be paid a commission on the Net Consulting Income received by Company from FranNet, directly due to the efforts and activities of Associate on the following terms, condition and schedule:

* 1. Commission on Net Consulting Income. So long as this Agreement has not expired or been terminated, any Net Consulting Income received by the Company from FranNet based upon the activity of the Associate referring a Prospect to a Franchisor who subsequently enters into a Franchise Agreement with, and pays Up Front Fees and/or Residual Fees to, a Franchisor, will qualify for the commissions described on Exhibit B. Associate agrees and understands that Net Consulting Income is the amount actually received by the Company from FranNet, and that if the Company does not receive any monies from FranNet for an Engagement, there is no Net Consulting Income for that Engagement. Upon the expiration or termination of this Agreement, Associate shall no longer be entitled to any commission on any Net Consulting Income subsequently received by Company based upon any Engagement, even if the activity that resulted in the Net Consulting Income occurred prior to the expiration or termination of this Agreement, and any subsequently-received Net Consulting Income received by Company shall belong solely to Company and Associate shall have no right to such Net Consulting Income.
	2. Bonus. Associate shall be entitled to a bonus as described on Exhibit B.
	3. Income Recognized as Received. Company shall not be required to use any form of accrual accounting in determining any commissions due Associate. Any commission due Associate shall be payable to Associate only upon receipt of the Net Consulting Income by Company and only so long as this Agreement has not expired or been terminated.
	4. Refunds. A Franchisor may elect, in certain cases, to refund part or all of the fees paid to it by a Prospect referred to Franchisor by Associate. Such a refund may result in Company being obligated to return part or all of the Net Consulting Income it received for such referral. If this happens, the Associate’s share of the refund shall be the same percentage of the Net Consulting Income Associate received on the referral, and Associate shall promptly pay such amount to Company or, if Company so directs, to FranNet. Associate’s obligation to do so shall survive any expiration or termination of this Agreement.
1. INDEPENDENT CONTRACTOR
	1. It is the intent of the Parties that Associate enters into this Agreement as, and will remain throughout the term of this Agreement, an independent contractor. Associate agrees he/she is not and will not become an employee, partner, manager, member or principal of Company or FranNet by reason of this Agreement or any acts performed pursuant thereto. Associate represents and warrants that he/she will not make any oral or written representation to any third party that he/she is an employee, partner, manager, member or principal of Company or FranNet. Associate agrees he/she is not entitled to any of the rights and benefits afforded to any of Company’s, or FranNet’s employees, including but not limited to: (i) salary, (ii) payroll withholding and taxes, (iii) medical, disability, unemployment and any other insurance, (iv) workers’ compensation, (v) sick leave, (vi) retirement benefits, and (vii) any other employment benefit. Company will not control the means by which Associate provides its Consulting Services, or the hours which Associate must devote under this Agreement. Associate agrees and understands that nothing in this Agreement nor any acts pursuant thereto shall be construed as creating any right or benefit of Associate in the goodwill or business of Company or FranNet.
	2. Company shall pay Associate all commissions and any other sums as a Form 1099 payee. Associate is responsible for paying, when due, all taxes arising from any commissions and other sums paid to him/her by Company, including but not limited to any applicable income taxes, estimated taxes, employment taxes, and sales and use taxes.
	3. Associate is fully responsible for all his/her costs and expenses in performing all of his/her obligations under this Agreement, including but not limited to all costs and expenses associated with his/her office, any necessary licensing and registration fees, insurance premiums and deductibles, travel expenses, telephone and Internet fees, shipping and postage expenses, tools and equipment, and office supplies and equipment.
	4. Associate shall have complete, sole and exclusive control over the manner and means of Associate’s performance under this Agreement. Associate is free to exercise his/her own judgment with respect to the manner, time, place, and persons he/she conducts their business, so long as it is otherwise in accordance with this Agreement, the License Agreement, and all applicable federal, state and local laws, regulations and ordinances. There is no minimum amount of hours that Associate must devote to seeking Prospects or otherwise dealing with the matters set forth herein, nor is Associate required to do the same during any particular time.
	5. Associate shall not have any right, power, or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding Company or FranNet. Except as expressly otherwise provided for in this Agreement, the Parties shall not have the authority to act for the other in any manner to create obligations, liabilities, or incur any debts or expenses binding the other and shall not be liable or responsible for the same.
	6. During the term of this Agreement and for a period of two years after its termination, Associate may engage in any other profession(s) with any amount of effort and time he/she desires. However, Associate is prohibited from providing Consulting Services or similar services during such period of time to Franchisors, and to competitors of Company or Frannet, throughout the United States and Canada.
	7. Associate represents and warrants to Company that: (a) it has reviewed this Agreement with Associate’s own counsel, and that Associate and its counsel are of the opinion that the relationship created by this Agreement is a bona fide independent contractor relationship and not one between an employer and employee; and (b) Associate is not solely dependent on income from its relationship with Company, and that it has income from other sources.
2. INDEMNIFICATION

Associate shall defend, indemnify, and hold harmless Company, FranNet, and any person or entity who already has assigned or hereafter assigns any territorial rights to Company, each of the parent companies and subsidiaries of the foregoing, and all officers, directors, managers, members, employees, insurers, attorneys, successors and assigns of the foregoing, from and against any and all claims, actions, orders, suits, demands, lawsuits, causes of action, costs, fines, losses, damages, expenses (including attorneys’ fees and court costs), obligations, liabilities, fees, penalties, and interest arising out of or relating to, directly or indirectly: (i) any act or omission by Associate, including but not limited to any violation by Associate of any franchise, business opportunity or similar laws; (ii) any breach of this Agreement by Associate, and/or (iii) any and all federal, state and local taxes, charges, fees, withholdings and contributions required, directed or ordered to be paid or withheld by Company and/or FranNet with respect to Associate, including but not limited to any unemployment insurance, social security and payroll taxes. Nothing in this section shall be construed as a limitation on any remedy. This section shall survive any expiration or termination of this Agreement.
3. RELEASE

 By executing this Agreement, Associate, for itself, its heirs, successors and permitted assigns, forever releases and discharges the Company and FranNet and their respective members, managers, stockholders, officers, directors, representatives, employees and agents (collectively, the "Released Parties"), from any and all claims of any kind, in law or in equity, that may exist as of the date hereof relating to this Agreement or any other agreement between the parties, or relating in any other way to the conduct of the Released Parties before the date hereof, including but not limited to any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, business opportunity, securities, antitrust or other laws of the United States, any state or locality.  This release shall survive termination or expiration of this Agreement.

1. CONFIDENTIALITY

Associate acknowledges that he/she may have access to and receive from Company and/or FranNet information of a confidential nature or proprietary nature to Company and/or FranNet including, but not limited to, Confidential Information and Proprietary Materials. Such information may include, for example, scripts, procedures and other components of the Company’s, and/or FranNet’s operating and consulting system; any non-public information about the Company’s, and/or FranNet’s methods of doing business; any non-public information about the Company’s or FranNet’s financial affairs; any non-public information about the Company’s and/or FranNet’s business plans; and non-public information relating to Franchisors; and any other non-public information provided to Associate (all of which shall be included within the previous definitions of “Confidential Information” and “Proprietary Materials”). Associate agrees not to use any Confidential Information or Proprietary Materials disclosed to him/her except in furtherance of this Agreement, and shall not disclose any Confidential Information and Proprietary Materials to any other parties except as reasonably necessary to perform under this Agreement. This section shall survive any expiration or termination of this Agreement as set forth above.
2. TERM OF AGREEMENT

The term of this Agreement shall be from the Effective Date through the last day of the year in which this Agreement is executed. So long as Associate has fully met and satisfied the Production Schedule attached hereto as Exhibit A for that year and this Agreement has not otherwise been terminated by Company or Associate due to any breach of this Agreement by the other party or by operation of this Agreement (*e.g*., Section 28), this Agreement shall automatically renew on the first day of the next calendar year, and on the first day of each subsequent calendar year. Each automatic renewal of this Agreement shall be on the same terms and conditions existing as of the end of immediately preceding year, except that the annual quota for new engagements in the renewal term shall be as described on the Production Schedule.

1. TERMINATION

12.1 Notice Without Opportunity to Cure. Upon occurrence of any of the following events of default, Company may, at its option, terminate this Agreement and all rights granted hereunder, without affording Associate any opportunity to cure the default, effective immediately upon the date of written notice of termination to Associate (in the manner provided in Section 23 of this Agreement) :

 12.1.1 If Associate abandons or ceases his or her franchise consulting activities for more than thirty (30) days without Company’s advance written approval;

 12.1.2 If Associate makes any material misrepresentation or omission in applying for Associate status under this Agreement;

 12.1.3 If Associate is convicted by a trial court, or pleads no contest to a felony or other crime or offense that is likely to adversely affect Associate’s reputation, Company’s reputation, FranNet’s reputation, or the reputation of any other FranNet businesses;

 12.1.4 If Associate makes any unauthorized direct or indirect transfer of this Agreement;

 12.1.5 If Associate makes any unauthorized use, duplication or disclosure of any Confidential Information, Proprietary Materials or trademarks;

 12.1.6 If associate commits any act that is detrimental to the reputation and/or business operations of Company and/or its owners, and/or FranNet.

 12.1.7 If Associate is in violation of any law, ordinance or regulation relating to terrorist activities or Associate’s assets, property or interests are “blocked” under any such law, ordinance or regulation;

 12.1.8 If Associate fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to pay when due ant amounts due to Company or FranNet or its affiliates, or otherwise fails to comply with this Agreement, whether or not those failures to comply are corrected after Associate receives notice of default;

 12.1.9 If Associate fails to achieve the annual quotas (Production Schedule) as set forth in Exhibit A:

 12.1.10 If Associate provides services to a Franchisor that is not under contract with FranNet without Company’s prior approval;

 12.1.11 If any of the Company’s contractual relationship(s) with FranNet is, for any reason whatsoever, voluntarily or involuntarily (i) materially modified in any way, (ii) terminated, and/or (iii) expired, including but not limited to any modification, termination or expiration resulting from any intentional act or omission by Company. Associate knowingly and voluntarily accepts the risk of such termination.

12.2 Notice with Opportunity to Cure. Upon any other default by Associate, Company may terminate this Agreement by giving written notice of termination (in the manner set forth under Section 23 of this Agreement) stating the nature of the default to Associate at least thirty (30) days prior to the effective date of termination; provided, however, that Associate may avoid termination by curing it to Company’s satisfaction, and by promptly providing proof thereof to Company within the applicable cure period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Associate, effective immediately upon the expiration of the applicable cure period or such longer period as applicable law may require. Defaults which are susceptible of cure hereunder include the following illustrative events:

 12.2.1 If Associate fails to make payment of any amounts due to Company, FranNet or its affiliates and does not correct that failure within ten (10) days after written notice of the failure is delivered to Associate; or

 12.2.2 If Associate fails to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure that Company prescribes.

1. POST-EXPIRATION AND POST-TERMINATION PROVISIONS

In addition to any other terms, conditions, obligations and duties herein that survive any expiration or termination of this Agreement, upon any expiration or termination of this Agreement, Associate and Company agree to the following:

* 1. Return of Materials. Associate agrees that he/she will immediately return to Company, at Associate’s sole cost and expense, all Proprietary Materials and Confidential Information, and any other Company and FranNet’s identified materials in the Associate’s possession, custody or control or in the possession, custody or control of any representative, contractor, agent or attorney of Associate. Associate will not retain copies of any Proprietary Materials or Confidential Information in any form, and shall immediately cease using anything bearing the Company’s, and/or FranNet’s name, logo, or service mark.
	2. Non-Solicitation. During the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement, Associate will not, directly or indirectly, urge, entice, solicit, take away or refer to another company or person: (a) any Prospect for whom Associate was providing Consulting Services or otherwise met during the term of this Agreement; or (b) any Franchisor with whom Company or FranNet has entered into an agreement to provide Consulting Services or similar services.
	3. Commissions. As stated elsewhere in this Agreement, upon any expiration or termination of this Agreement, Associate shall no longer be entitled to any commissions on any Up Front Fees or Residual Fees, even if the activity of Associate that resulted in the same occurred prior to the expiration or termination of this Agreement, and any such right to any such commissions shall revert back to the Company upon any expiration or termination of this Agreement.
	4. For a period of two (2) years following the termination or expiration of this Agreement, Associate shall not, directly or indirectly, provide Consulting Services or similar services to any person or entity which competes with the Company or FranNet in the Territory described in the DMA in which the Company or FranNet operates, or in any territory covered by any other Licensee or Franchisee of FranNet.
1. ASSIGNMENT

Associate may not assign his/her rights and obligations under this Agreement without the express written consent of Company. Company may assign this Agreement without the consent of Associate.
2. NON-WAIVER

No failure or delay by any of the Parties in exercising any right or remedy under this Agreement shall constitute a waiver of any such right or remedy. Any waiver of any term, condition or breach of this Agreement shall not be deemed to be a waiver of any other term, condition or breach.
3. AMENDMENT

This Agreement may be modified or amended only by an instrument in writing duly executed by Associate and Company.
4. AGREEMENT NOT TO BE CONSTRUED AGAINST DRAFTER; TITLES NOT CONTROLLING

Associate and Company agree that the rule of contract interpretation by which any ambiguities in a contract shall be construed against the party who drafted the contract shall not apply to this Agreement. Furthermore, the titles given to the various paragraphs and sections in this Agreement are for the sake of convenience only and shall not be considered in the event it is necessary to enforce, interpret or construe any provision of this Agreement.

1. FORCE MAJEURE

In the event the performance by either party of its obligations hereunder (except payment of monies due) is prevented, restricted or interfered with by reason of fire or other casualty or accident; strikes or labor disputes; unavailability of materials, power or supplies; war or other violence; any law, order, proclamation, regulation, ordinance demand or requirement of any governmental agency or intergovernmental body; any earthquake, tornado, hurricane or other Act of God, or any other act or condition whatsoever beyond the reasonable control of the party affected thereby, the party so affected shall be excused from such performances to the extent of such prevention, restriction or interference. A party effected by a force majeure event shall promptly notify the other party in writing.

1. BINDING EFFECT

This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

1. GOVERNING LAW

This Agreement and its enforcement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_.

1. ARBITRATION

Except as provided below, any controversy or claim between the Parties arising out of or relating to this Agreement shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association. Judgment on any award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the award. Such judgment is binding, final, and non-appealable. The provisions of this Section shall be construed as independent of any other covenant or provision of this Agreement. But if a court of competent jurisdiction determines that any such provisions are unlawful in any way, such court shall modify or interpret such provisions to the minimum extent necessary to have them comply with the law. Notwithstanding any provision of this Agreement relating to the state laws by and under which this Agreement shall be governed and construed, all issues relating to arbitrability or the enforcement of the agreement to arbitrate contained in this Agreement shall be governed by the United States Arbitration Act (9 U.S.C. § 1 et seq.) and the Federal common law of arbitration. To the fullest extent permitted by law, the parties waive any right to, or claim for, any punitive or exemplary damages against the other. Each party is limited to recovering the actual damages it sustains. This arbitration provision is self-executing and remains in full force and effect after the expiration or sooner termination of this Agreement. If either party fails to appear at any properly noticed arbitration proceeding, notwithstanding such failure to appear, an award may be entered against such party by default or otherwise. If any arbitration, legal action, or other proceeding is instituted for the enforcement of this Agreement, or because of an alleged dispute, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties is entitled to recover reasonable pre-institution and post-institution attorneys' fees, arbitration costs, court costs and all expenses even if not taxable as arbitration or court costs (including all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in connection with such action or proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees include paralegal fees, administrative costs, investigative costs, costs of expert witnesses, court reporter fees, sales and use taxes, if any, and all other charges billed by the attorneys to the prevailing party. Notwithstanding anything in this Agreement to the contrary, the obligation to arbitrate is not binding upon the Company or FranNet, and the Company and/or FranNet need not arbitrate any of the following matters: (a) claims to protect Confidential Information; (b) claims to enforce restrictive covenants; and (c) claims requesting injunctive or other equitable relief, including requests for restraining orders, injunctions, or other procedures to obtain specific performance in a court of competent jurisdiction when such court considers the restraining order, injunction, or specific performance necessary to preserve the status quo or prevent irreparable injury pending resolution of the actual dispute between the parties by arbitration.
2. VENUE

Venue for any arbitration required under this Agreement, or for the filing of any necessary motions, applications or the like with any court, shall be \_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_\_\_.
3. NOTICES

Any notice or communication that Associate or Company desires to give, or is required to give to the other pursuant to the terms hereof, shall be in writing and either served personally by a neutral third party, sent by prepaid, registered or certified mail, return receipt requested, sent via facsimile with confirmation of delivery, or by any reputable “overnight” or “one day” mailing service addressed to such other party at the address(es) set forth below. Notice shall be deemed communicated within three (3) business days from the date of mailing if mailed, within one (1) business day if sent via overnight delivery, on the same day if faxed provided the fax is received on a business day during normal business hours (otherwise, on the next business day) or on the date of actual receipt if personally served. The addresses for notices are as follows:

TO COMPANY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and

TO ASSOCIATE:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 and

 FranNet LLC

 10302 Brookridge Village Blvd., Suite 201

 Louisville, KY 40291

 Attn: President

1. SEVERABILITY

Should any provision(s) of this Agreement be determined to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
2. AUTHORITY

The signatories below warrant and represent that they have the authority to enter into this Agreement on behalf of the Parties for whom they are signing.
3. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto states the entire agreement of the Parties with respect to the subject matter hereof and supercedes any prior and other contemporaneous written and oral negotiations, representations agreements and understandings between Associate and Company. Both Parties acknowledge that no representations, warranties, inducements, promises or agreements, oral or written, have been made by any of the Parties, Company or FranNet, or anyone acting on their behalf, that are not contained in this Agreement. Associate further understands there is no guarantee they will earn any amount of commissions or achieve any particular level of success in their endeavors pursuant to this Agreement, and Associate knowingly and voluntarily assumes this risk. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Associate Initials

1. ADDITIONAL REPRESENTATIONS AND WARRANTIES

Each of the Parties to this Agreement represents, warrants and agrees as follows: (1) they have made such investigation of the facts and matters pertaining to and/or referred to in this Agreement which they deem necessary, (2) they had an opportunity to consult with an attorney regarding this Agreement before entering into this Agreement, and (3) they have read this Agreement and understand the contents of this Agreement.

1. TERMINATION

The Company may terminate this Agreement if any of the Company’s contractual relationship(s) with FranNet is, for any reason whatsoever, voluntarily or involuntarily (i) materially modified in any way, (ii) terminated, and/or (iii) expired, including but not limited to any modification, termination or expiration resulting from any intentional act or omission by Company, and Associate knowingly and voluntarily accepts the risk of such termination.
2. THIRD PARTY BENEFICIARY

Except as otherwise provided herein, nothing in this Agreement, whether express or implied, confers any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective personal or legal representatives, heirs, successors, and permitted assigns. Notwithstanding the foregoing, FranNet is a third party beneficiary of this Agreement and has the independent right to enforce the provisions hereof against Associate. FranNet may seek and obtain injunctive relief against threatened or actual conduct that is or will be a breach of this Agreement and need not establish any actual or irreparable damage nor post any bond or other security. If FranNet incurs any costs to enforce its rights under this Agreement, including reasonable attorneys fees, Associate must promptly reimburse FranNet for such costs.

Company and Associate hereby acknowledge and represent that they have each been represented by separate counsel of their own choosing, and that such counsel has reviewed this Agreement on behalf of their client and are satisfied that the terms and conditions contained in this agreement are lawful under applicable law, and that this Agreement is enforceable in accordance with its terms. \_\_\_\_\_\_\_\_\_\_

 Initial

 \_\_\_\_\_\_\_\_\_\_

 Initial

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the date first set forth below.

 ASSOCIATE
 (“COMPANY”)

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

LIMITED JOINDER

The parties signing below constitute all of the Associate's beneficial and legal owners. Each of such parties agrees that he or she is jointly and severally liable with the each other and the Associate for all of the Associate's obligations under this Agreement and is bound by all the terms thereof as if he or she were the Associate hereunder.

|  |  |
| --- | --- |
|  ***Print Name***: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ownership Percentage: % ***Print Name:*** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ownership Percentage: % |  ***Print Name***: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ownership Percentage: % **Print Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ownership Percentage: % |

**EXHIBIT A**

**ASSOCIATE PRODUCTION SCHEDULE**

Calendar Year 1

New Engagements

resulting from activity of Associate:

Calendar Year 2

New Engagements:

resulting from activity of Associate:

Calendar Year 3

New Engagements:

resulting from activity of Associate:

Calendar Year 4

New Engagements:

resulting from activity of Associate:

Calendar Year 5

New Engagements:

resulting from activity of Associate:

All Future Calendar Years (Per Calendar Year)

New Engagements:

resulting from activity of Associate:

Note: Year 1 production schedule will be pro-rated based upon the Effective Date through the end of calendar year, with any pro-rated production schedule rounded down to nearest whole number according to the following example: If the Effective Date is March 15, there are 291 days remaining in the calendar year. 291 x 5 = 1455 ÷ 365 = 3.98, rounded down to 3. The Production Schedule for Year 1 shall be 3. No subsequent years shall be pro-rated.

**EXHIBIT B**

**ASSOCIATE COMMISSION SCHEDULE**

**1. Commission on Net Up Front Fees actually received by Company based upon an Engagement resulting from activity of Associate:**

* If Company provided Prospect lead to Associate: \_\_\_% of Net Up Front Fees actually received by Company.
* If Company did not provide Prospect lead to Associate: \_\_\_\_% of Net Up Front Fees actually received by Company.

**2. Commission on Net Residual Fees actually received by Company:**

* Associate will be entitled to commissions on Net Residual Fees only after Years 1 and 2 have been completed, or fifteen (15) Engagements have resulted from the activity of the Associate, whichever occurs first. Thereafter, Associate will be entitled to \_\_\_\_ % of Net Residual Fees actually received by Company for any subsequent Engagement(s) resulting from the activity of Associate or, alternatively and in lieu of receiving any commission on the Net Residual Fees for any such subsequent Engagement(s) resulting from the activity of the Associate, Associate may elect to increase his/her commission on the Net Up Front Fees for any subsequent Engagement (with the same franchisor), resulting from the activity of the Associate by 5% (from 65% to 70%, or 70% to 75%, as the case may be), provided such election is made by the Associate in writing within thirty (30) days of first receiving any commission on the particular Engagement.

**3.** **Bonus:**

* For each Engagement in a given year that is above and beyond the minimum number of Engagements set forth in Exhibit A for that same year, Associate shall receive an increase of 5% in his/her commission on Net Up Front Fees to be paid to the Associate for any additional Engagement(s) during that year. For example, if in year 2 during which at least eight (8) Engagements are required, ten (10) Engagements result from the activity of the Associate, Associate would be entitled to a bonus as to the last two Engagements that year, and for those last two Engagements, Associate’s commission on the Net Up Front Fees for such Engagements would increase from 65% to 70%, or 70% to 75%, as the case may be.

Note: The terms “Net Up Front Fees” and “Net Residual Fees” mean the amount of Up Front Fees and Residual Fees, respectively, that are actually received by the Company from FranNet after accounting for any and all deductions, fees, charges, expenses, commissions and prorations made, charged or taken by Company and FranNet.

**EXHIBIT C**

**DESIGNATED MARKETING AREA (“DMA”)**

**[To Be Inserted]**