

## Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Centers Q&A

Prepared 11/29/2021

### **Contract Period**

Q1: Can a fitness center sign a contract with the consumer with a contract period of over 3 years and one lump-sum payment for the membership fee?

A1: No, the single-payment (one-time payment) contract can only be signed with a contract period of less than 3 years.

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Q2: In the case that the contract period for the fitness center is 10 years with an agreed use period of 2 years, and the fitness center tells the consumer that the contract can be unconditionally terminated after 2 years, what should the consumer do after 2 years if the consumer mistakenly believes that the contract has ended but the payment deduction continues?

1. If there is a clause for an "agreed period of use" in the contract between and consumer and a fitness center , the contract will be terminated after the expiration of the contracted period of use, and the fitness center shall not charge any handling fees, default penalty or any fees with any other reasons.
2. If the consumer does not terminate the 10-year contract when the agreed period of use expires, the consumer may terminate the contract unconditionally if the fitness center provides a one-month notice before the expiration of the "contracted period of use." If the consumer does not inform the fitness center about the contract's termination, the contract will remain valid and the fitness center can continue to deduct money.
3. In fact, the contract is only required to specify the start and end time. Therefore, the consumer must confirm the multi-year contract period and related charges before signing the contract to safeguard their own rights and interests.

※Reminder: After the consumer has signed the contract, please remember to obtain the contract from the fitness center and confirm the contract expiration date when signing the contract to avoid disputes.

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Q3: Is the fitness center obliged to notify the consumer about the answers of the aforementioned questions before the agreed period of use?

A3:

1. The fitness center shall inform the consumer that the contract can be terminated unconditionally one month before the expiration of the agreed period of use.
2. If the fitness center fails to notify the consumer and the consumer therefore continues to use the fitness center, the fitness center shall not charge handling fees, default penalty or any fees with any other reasons.

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**Review period**

**Q4: How long is the shortest review period?**

**A4:** The consumer has at least 3 days to review all provisions of the contract. The consumer is not advised to sign the contract on the spot, but to take the contract home and read it carefully before deciding whether to sign it, because if a legal dispute arises in the future, the court will give ruling based on the written contract and the mandatory and prohibitory provisions once the contract is signed.

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**Q5: How is the review period calculated?**

**A5:**

1. Let's say the contract is obtained on January 1, and the review period starts from 0:00 a.m. of January 2. The contract cannot be signed until three days have passed, which is 1/5.
2. If the consumer has any doubts about any provisions of the contract during the review process, the consumer should ask the fitness center to explain about it/them in detail. In addition, if there is any verbal agreement between the two parties, remember to include it in the contract when signing it for proof purpose.

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**Q6: How is the refund calculated after the 3-day and 7-day review periods after the contract takes effect?**

**A 6:** The refund after the two periods is not calculated together. The review period refers to the time before the consumer signs the contract with a fitness center, during which the consumer has the right to take the contract home to understand the provisions of the contract before deciding whether to enter it. Therefore, before the consumer signs the contract with the fitness center, it needs to give the consumer at least 3 days to read the contract carefully; after the consumer signs the contract and the contract is formed, the consumer can get a full refund

if it is not used within 7 days after the contract takes effect.

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**Q7: Can the standard contract expressly stipulate that the review period will be waived?**

**A7:**

1. No, according to point 1 of Prohibitory Provisions in the standard contract, the fitness center shall not use a standardized clause to stipulate that the consumer waive the contract review period and the right to review the contract.
  2. As long as a fitness center allows the consumer to fully understand the rights and obligations of the contract before signing the contract, or allows the consumer to have a reasonable amount of time for reviewing the contract, the consumer cannot make a claim that the contract is invalid based on the aforementioned provision.
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**Q8: Can the consumer voluntarily waive the contract review period?**

**A8:**

1. Yes, as long as the fitness center has informed the consumer about the review period, the consumer can voluntarily waive the review period and agree to sign a standard contract with the fitness center right away.
  2. However, as waiving the review period can significantly affect the consumer ' rights, the consumer is not advised to do it, nor is it advised for the fitness center to use this approach for marketing purpose.
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### **Membership suspension**

**Q9: When the consumer asks for membership suspension, can a fitness center still proceed with deduction?**

**A9:** If the consumer asks for membership suspension for one of the following statutory reasons, the fitness center should help the consumer to suspend the membership within 7 working days, and the fee shall not be deducted during the suspension period:

1. Staying abroad for more than 1 month.
  2. Injury, illness or physical condition unsuitable for exercising.
  3. Pregnancy, baby-sitting, and taking care of parent(s).
  4. Military service that makes it difficult to execute the contract.
  5. Job changes or relocation that makes it difficult to execute the contract.
  6. Other reasons that make it difficult to execute the contract.
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**Q10: What does it mean by “other reasons that make it difficult to execute the contract.”?**

**A10:**

1. Serving a prison sentence or other reasons for which evidence can be provided.
2. The consumer must be isolated at home or quarantined at home for 14 days during the epidemic prevention period, according to the order of the Central Epidemic Command Center (hereinafter referred to as the “Command Center”).
3. If the consumer obtains relevant proof (documents) notified by the regulatory health authority that individuals should conduct "self-health management," it can be considered a reason that is not attributable to the consumer, and the consumer does not need to pay any fees for such membership suspension.

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**Q11: If a consumer is injured and not suitable for sports, can the consumer terminate the contract with the fitness center? Will the consumer be charged default penalty?**

**A11:** In principle, the consumer requesting to terminate the contract due to injury will be charged default penalty. Having said that, the consumer will not be charged default penalty if they meet all the following conditions:

1. The consumer suspends the membership of a fitness center due to injury or illness.
2. The consumer’s membership is therefore suspended for 6 months.
3. The consumer presents a certificate of diagnosis issued by a doctor with advice of no exercise **within the next 6 months**.

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**Q12: According to the Paragraph 2 of Point 8 of Mandatory Provisions for Fitness Center, after the consumer’s membership is suspended for six months due to an injury, disease or physical condition and the consumer shows a diagnosis certificate issued by a doctor within a period of 6 months that says the consumer shall not exercise within the following six months, the consumer can terminate the contract according to Point 10 of the Mandatory Provisions and the fitness center shall not charge the consumer for handling fees or make any deductions for any reasons. Does the aforementioned six months refer to a single**

**period for 6 months or can it consist of separate shorter periods?  
Can a fitness center raise the bar in terms of the aforementioned  
diagnosis certificate by laying down the requirement for  
diagnosis certificate issued by a teaching hospital or a medical  
center?**

**A12:**

1. In principle, the aforementioned diagnosis refers to a 6-month certificate issued by a doctor. This provision applies to the consumer who is not suitable for fitness center exercise due to a damage caused by illness.
2. In the case of six-month period consisting of separate shorter periods, they should be limited to the same cause.
3. As the diagnosis certificate is issued by a doctor based on the patient's condition according to the doctor's professional competence, a diagnosis certificate issued by a doctor legally practicing medicine will do. If the fitness center requires a diagnosis certificate issued by a doctor working in a teaching hospital or medical center, this might infringe the consumer's right.

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**Q13: How are “babysitting” and “taking care of parent(s)” defined and proved?**

**A13:**

1. For the definition of childcare, please refer to Article 16 of the Act of Gender Equality in Employment: "After being in service for six months, employees may apply for parental membership suspension without pay before any of their children reach the age of three years old. The period of this membership suspension is until their children reach the age of three years old but may not exceed two years. When employees are raising over two children at the same time, the period of their parental membership suspension shall be computed aggregately and the maximum period shall be limited to two years received by the youngest child."
2. The definition of “taking care of parent(s)” is that an immediate blood relative of the person or the spouse is an elderly (over 65 years old) or has to be taken care of due to serious injury or illness. The fitness center may request the consumer to provide a copy of the household registration and a certificate of serious injury/illness (according to

Article 10 of the Criminal Code and Article 36 of National Health Insurance Act).

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**Q14: If the consumer signs a one-year contract, can the membership suspension exceed the one-year contract period (over 12 months)?**

**A14:** As long as the consumer's request for membership suspension is based on one of the reasons listed in related regulations, the fitness center shall not limit the time and number of the consumer ' requests for membership suspension.

※It should be noted that the consumer can terminate the contract if the consumer's membership suspension lasts for more than one year and the fitness center can charge a handling fee for the contract termination according to the Paragraph 3 of Point 10 of Mandatory Provisions of Standard Form Contracts for Fitness Coaches. If the contract is terminated according to second paragraph of Point 9, the fitness center cannot charge a handling fee.

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**Q15: Regarding the calculation of the number of days of membership suspension, in the case that there are 28 days from 2/1 to 2/28, and 31 days from 2/5 to 3/4, this will result in a difference in the calculation of the actual number of days for membership fee refund. Will the difference 1 to 2 days affect the definition of one month and half a month?**

**A15:** Any period less than 15 days is regarded half a month, and any period exceeding 15 days is regarded as one month. That is, if the consumer's membership has passed 2 months and 16 days, it will be considered 3 months, and if it has passed 2 months and 14 days, it will be considered as 2.5 months.

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**Q16: What is the definition of "community infection" in the second paragraph of point 8 of Mandatory Provisions for Fitness Centers?**

**A16:**

According to the Facebook announcement of the Ministry of Health and Welfare on February 17, 2021, "community infection" refers to " an infection that people may get by simply walking in their community" and meet the following four criteria:

1. The source of infection could not be identified in confirmed cases.

2. The number of local people infected has far exceeded the number of imported cases.
3. Continuing chain of transmission has emerged. (For example, one person passes the infection to ten people or ten people pass the infection to one hundred people)
4. Clustering events occur extensively (wide spread).

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**Obligation of notification**

**Q17: Should the fitness center notify its consumers when it relocates? What happens if it does not give such notification?**

**A17:**

1. The fitness center should notify its consumers with the method agreed by both parties more than 24 hours away from the original service time, and it should make an announcement at the conspicuous place of the fitness center and on the website.
2. If the fitness center fails to give the aforementioned notification or fails to prove that it makes such notification and announcement and the rights of the consumer's rights as a member is therefore infringed, the fitness center shall pay compensation unconditionally without charging any fees.

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**Q18: Does the fitness center have the obligation to notify the consumer if the consumer fails to pay the fee? What happens if it does not give such notification?**

**A18:**

1. For example, if the fitness center fails to deduct the fee on 1/1, which is the payment deadline, the fitness center should notify the consumer with the method agreed by the two parties between 1/2 and 1/11. If the consumer receives the notification between 1/2 and 1/11, the consumer shall pay the fee by 1/12 //1/31.
2. If the consumer does not make the payment by 1/31, the contract will be deemed terminated from the date of expiration of the notification period (1/31), and the fitness center can request the consumer to choose refund or supplementary payment according to Point 10 of the Provisions.
3. In addition, if the consumer has not paid the fee, and the fitness center has issued a reminder, the fitness center can refuse the consumer to enter the venue during the reminder period.

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**Q19: After the agreed period of use expires, is there anything the fitness center is obliged to notify the consumer? What happens if the consumer does not receive such notification?**

**A19:**

1. The fitness center should notify the consumer about expiration of the agreed period of use one month before it expires.
2. If the fitness center fails to give the consumer such notification, and the consumer is not aware of the expiration, the fitness center shall not charge the consumer for the fees incurred afterward.

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**Q20: Does a subscription-based fitness center need to notify the consumer about the expiration of the monthly contract before it expires every month?**

**A20:**

1. According to Point 11 of the Prohibitory Provisions of Standard Contracts for Fitness Centers, the fitness center shall not agree in advance to automatically renew the contract without notifying the consumer or reach similar agreement. Therefore, the fitness center must obtain the consumer's consent before the monthly contract expires before the contract can be renewed and the deduction can be made to avoid consumption disputes.
2. It is advised that when a subscription-based fitness center signs a contract with a consumer, the contract just specifies the start and end time (such as 6 months, 1 year, 2 years, 3 years, etc.) of the contract period, and the consumer shall be notified of the expiration the agreed use period 1 month beforehand.
3. In addition, as the subscription-based fitness center collects the fee via monthly deduction, it is advised that the fitness center can send notifications to remind the consumer about the fee deduction via an mobile app and ask the consumer whether he/she agrees to renew the contract before the next deduction. Or the fitness center can attach a list to the contract for the two parties to sign and ask the consumer to check the box of whether he/she agrees to the renewal and deduction each month.

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**Q 21: Can a fitness center require the consumer to contact it in writing only?**



**A21:**

1. According to paragraphs 1 and 2 of Point 1 of the Provisions, the contact method agreed by both parties shall be clearly specified in accordance with the regulations.
2. The aforementioned requirement is set to make sure that both parties will receive important notifications. If a fitness center agrees to contact the consumer by telephone, in writing, and via email, but requires the consumer to contact the fitness center only in writing, it goes against the spirit of the regulation related to this point, places additional restrictions on the consumer and violates the first point of the Provisions.
3. For fairness, therefore, the customer can contact the fitness center with the same methods the fitness center contacts the consumer; regarding the method(s) used by the fitness center to notify the consumer the service change specified in Article 17, the expiration of the agreed period of use specified in Article 18, and the failure to make pay the fee specified in Article 19, the consumer can notify the fitness center about termination of the contract with the same method(s).

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**Termination of the contract**

**Q22: What should the consumer do if the membership fee and other fee are over double? What is the legal effect?**

**A22:**

1. According to 4th paragraph of Article 17 of the Consumer Protection Act, if a firm 's standard contract terms violate the Mandatory and Prohibitory Provisions of Standard Contracts announced by the regulatory authority, such standardized contract terms are invalid.
2. Therefore, according to the Paragraph 4 of Point 5 of Mandatory Provisions of Standard Contracts, the portion of the membership fee and other fee exceeding double are invalid, and the maximum amounts shall be double the amounts.

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**Q23: Can the consumer terminate the contract before the contract expires?**

**A23:** Yes, the consumer can do so according to Point 10 of the Mandatory and Prohibitory Provisions of Standard Contract, but the fitness center can charge the consumer a handling fee (default penalty).

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**Q24: What does “the portion of actual elapsed time” mean?**

**A24:** The “portion of actual elapsed time” refers to the number of actual elapsed days, not the portion of the days in a month. Any period less than 15 days is regarded half a month, and any period exceeding 15 days is regarded one month. That is, if the consumer’s membership has passed 2 months and 16 days, it will be considered 3 months, and if it has passed 2 months and 14 days, it will be considered as 2.5 months.

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**Q25: In the case that the consumer signs a 1-year contract with the fitness center, the monthly fee for the promotion package is NTD 1,000 (original price NTD 2,500), and the consumer wants to terminate the contract early with the fitness center after the first 3 months, how shall related fees be calculated?**

**A25:**

1. The calculation of handling fee (default penalty) is  $1,000 \times (12-3) \times 20\% = \text{NTD } 1,800$ .
2. If the **membership fee is paid on monthly basis**, the contract can be terminated by paying a penalty of NTD 1800.
3. If it is a **prepaid membership**, the fitness center should return  $(1,000 \times 12) - (1,000 \times 3) - 1,800 = \text{NTD } 7,200$  to the consumer.

**※If the contract does not specify a handling fee (default penalty), the fitness center shall not charge it (default penalty) to the consumer.**

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**Q26: In the case that the consumer signs a 1-year contract with the fitness center with free membership for two months, the fitness center charges a membership fee of NTD 1,200 and other fee of NTD 500, the monthly fee of the promotion plan is NTD 1,000 (original price NTD 2,500), and the consumer wants to terminate the contract early with the fitness center after the first 3 months, how shall related fees calculated after contract termination?**

**A26:**

1. The average monthly price is the total contract amount divided by the total number of months specified in the contract (including the free membership period as a gift), and the membership fee and other fee are not included in the refund calculation.
2. So, the **average monthly price** is  $1,000 \times 12 / 14 = \text{NTD } 857$  (rounded up).

3. The amount of Membership fee + other fee cannot exceed double the average monthly price, that is, the maximum charge is only NTD 1,714 in this case. As  $200+500=$  NTD1,700, which does not exceed NTD1,714, this amount does not exceed the aforementioned limit.
4. The handling fee (default penalty) is  $857*(14-3) *20%=$  NTD 1,885 (rounded up).
5. The total amount that the consumer needs to pay (including the non-fixed/variable amount of handling fee) is:  $1,200+500+857*3+1,885=$  NTD 6,156
6. The amount of fee that has been paid by the consumer:  $1,200+500+1,000*3=$ NTD4,500.
7. The amount to be paid by the consumer for the handling fee (default penalty) is  $6,156-4,500=1,656$ , and this amount shall not exceed NTD 6,000.
8. The early termination fee that this consumer should pay is  $6,156-4,500=1,656$ .

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**Q27: In the case that the consumer signs a 2-year contract with the fitness center, the monthly fee for the promotion package is NTD 1,688 (original price NTD 2,500), and the consumer wants to terminate the contract early with the fitness center after the first 2 months, how much shall the consumer pay for the handling fee (default penalty)?**

**A27:** The handling fee (default penalty) shall be  $1,688*(24-2) *20%=$ NTD 7,427. As the default penalty shall not exceed 6,000, however, the handling fee (default penalty) is NTD 6,000.

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**Q28: The refund shall be calculated by the average monthly price. Shall the average monthly price be calculated by the original price or the preferential price?**

**A28:**

1. The calculation of refund of the first fee specified in Paragraph 3 of Point 5 of the Mandatory Provisions of Standard Contracts for Fitness Centers when the contract is terminated shall be based on the price agreed by both parties when the contract was signed.
2. Therefore, when a fitness center signs a contract with a preferential price, the average monthly price should be calculated based on the preferential price.

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**Q29: In the case that the consumer must purchase a magnetic buckle (NTD 1,780) when signing the contract for the first time and pay the membership fee of NTD 2,500, as the consumer only needs to buy ONE magnetic buckle and make one-time payment or it, the total of the magnetic deduction fee and the membership fee must not exceed double the monthly average?**

**A29:**

1. According to Paragraph 4 of Point 5 of the new version of the Mandatory Provisions of Standard Contracts for Fitness Centers, the total amount of the membership fee and other fee shall not exceed double the amount of the average monthly price. Therefore, the magnetic buckle price should be considered another fee, and the total of the magnetic buckle price and the membership fee shall not exceed double the amount of average monthly price.
2. As the legal ground for old legislations did not establish a limit for the amount of other fee or membership fee, fitness centers often “charged” 0 membership fee, but charged high amount of “other fee,” which cannot be refunded if the consumer terminate the contract, resulting in damage to the consumer’s rights.
3. In order to prevent fitness centers from soliciting customers with low use fee but charging a high one-time fee, the total amount of the contract handling fee and other fee shall not exceed double of the average monthly price.

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**Q 30: When a member terminates the contract without using it within 7 days after becoming a member, the fitness center shall refund the payment in full. Shall such refund include the membership fee and handling fee?**

**A 30:** The refund shall include the membership fee and handling fee as the legal ground of this point is that the consumer can regret the decision of (membership purchase). So, it should be a full refund, which is in line with the original intention of the legislation.

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**Question about gifts**

**Q 31: How can a fitness center prevent the consumer from requesting a full refund within 7 days after receiving a gift?**

**A31:**

1. According to Point 20 of Mandatory Provisions of Standard Contracts for Fitness Centers, (1) The total value of the gifts given by the fitness center to the consumer shall not exceed 20% of the total contract amount. (2) If a fitness center gives the consumer a product or other commodity, it shall not request return of the gift or make a claim that the expense of the gift shall be deducted from the refund at the time of contract termination.
2. Therefore, if a fitness center gives the consumer a gift (e.g., a chest strap) as it sells the membership, it cannot ask the consumer to return it when the consumer wants to terminate the contract early.
3. The fitness center is not advised to use high-priced gifts as a means of marketing. According to the Point 20 of the Provisions, the total value of the gift should not exceed 20% of the total contract price, or it can be paid in installments, in order to prevent the consumer from taking advantage of the unconditional termination of the contract within seven days in order to get a free gift.

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**Q32: When the fitness center gives a gift, can it amend the contract by not allowing consumer to get a gift until the 8th day after the contract takes effect, given “unconditional contract termination within 7 days after the contract takes effect”?**

**A 32:** A fitness center can decide when the consumer can get a gift.

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**Q33: In the case that a period of membership is given to the consumer as a gift when the contract is signed, and then another period of membership is given to the consumer for free after a period of contract execution (as a means of marketing), should the additional membership be included in the calculation of the monthly average fee?**

**A33:** In the case that the fitness center says that a period of free membership will be given away as a gift to the consumer when a certain period of time passes after the consumer signs the contract, it should be included in the monthly average fee calculation; if the gift is completely unexpected by the consumer as it is not directly linked with the membership contract, it may be excluded from the calculation.

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**Announcement obligation**

**Q34: According to Point 6 of Mandatory Provisions of Standard Contracts for Fitness Centers, a fitness center should voluntarily inform its consumers of equipment maintenance/repair in the fitness center and announce it on the website for the consumer to know. If it is a treadmill maintenance, does it also need to be announced?**

**A34:**

1. According to Paragraph 2 of Article 6 of Mandatory Provisions of Standard Contracts for Fitness Centers, a fitness center shall list the quantity, number of users, names and terms of use of the sports equipment for normal use in the contract, or present such information in an attachment. If the equipment provided by a fitness center is being maintained or repaired, such information should be voluntarily announced in a conspicuous place in the fitness center and on the fitness center 's website for the consumer to know.
2. In the case that it is written in the contract or in the attachment that the fitness center will provide at least a specific number of sports equipment that function normally, for example, the contract states that at least 5 treadmills will be available for its consumers to use, and the fitness center provides 10 treadmills and 1 ~4 of them is/are being maintained or repaired, it does not need to announce the maintenance/repair information voluntarily on its website; in the case that the fitness center has only one spa and it is being maintained/repared, such information should be disclosed on the website.
3. As long as the number of equipment provided by the fitness center is less than the number specified in the contract, the fitness center shall provide the maintenance/repair information voluntarily in a conspicuous place in the fitness center or on its website.

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**Applicable Regulations**

**Q35: If the consumer signed the contract before December 31, 2021, should the new or the old version of the Provisions apply to the consumer?**

**A35:** The revised version of " Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Centers" took effect from January 1, 2021. If the consumer signed contract with a fitness center before December 31, 2021, the old version shall apply.

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**Q36: If a subscription-based contract is signed before December 31, 2021, should the new version or the old version of the Provisions apply?**

**A36:** As subscription-based contract charges the consumer monthly, and the contract is limited to one month, so if the contract month spans 2021 and 2022 years, the new standard shall apply from January 1, 2022.

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