



5TH GEAR FITNESS, LLC

1076 East Brandon Blvd., No. 211, Brandon, FL 33511

813-662-4044

www.5gearfit.com

CLIENT AGREEMENT

1. **PARTIES.** This Agreement is between **5th GEAR FITNESS, LLC** (hereinafter (“5th GEAR FITNESS” or “Company”), registered with the state of Florida as a Health Studio Facility Registration Number HS11963, and:

Buyer Information (Name on Credit Card or Bank Account used to Pay)

Buyer Name: _____

Client Information (Person using services, with address of above account)

Client Name: _____

Address: _____

Home #: _____ Cell #: _____

Work #: _____ DOB: _____

Email: _____

2. PAYMENT TERMS

1. Today’s date is _____
2. Agreement begins on _____ and expires in _____ month(s).
3. Total sales price including enrollment fees is \$ _____
4. Amount of Down Payment is \$ _____
5. Payments are due on day _____ of each month.
6. Amount of each Monthly Payment: \$ _____
7. First Payment Due Date: _____

3. **PAYMENT AUTHORIZATION.** *To the extent permitted by law, you hereby authorize us to initiate separate EFT/Credit Card charges from the account you identify and/or any replacement or substitute account (the “Account”) for the following amounts: (1) the payments shown above; (2) your monthly training fees and the cost of any monthly Services Add-Ons; (3) a \$5 “no show” fee for failure to cancel a reservation at least 1 hour prior to the class start time; (4) a \$25 returned item fee for any EFT charge that is returned unpaid or on a credit/debit card return; and (5) any other fee for Personal Training or other goods or services we provide you from time to time if you instruct us orally or in writing to bill the charge to your Account on file, as authorized by you at that time. You may cancel your EFT/Credit Card authorization for the payment of monthly dues by giving us 30 days written notice of cancellation per the terms of this Agreement.*

I understand that these charges, listed above, will appear on my credit card statement and/or bank statement under the name of 5th GEAR FITNESS and I accept full financial responsibility for payment of these charges. I certify that the information that is stated above is true and accurate. The payments shall be drawn on or about the date or dates of the Payment Plan. The transactions on your bank statement will constitute receipts for payment on your account. I also agree to contact 5th GEAR FITNESS about any matter of chargeback or stop payment that may pertain to this agreement in order to attempt to resolve the matter prior to stopping payment or charging back payment(s). If any negative action is taken and the action is ruled in favor of 5th GEAR FITNESS and the cardholder/bank account owner did not contact 5th GEAR FITNESS prior to the negative action, the cardholder/account owner will be legally liable for all items and fees as noted above. 5th GEAR FITNESS may be reached at 813-662-4044. 5th GEAR FITNESS (The Club) hereby reserves the right to change the Designated Billing Company at their discretion and without warning or notice. If such a change is made, the full terms and conditions of this Agreement will continue to apply and you agree to authorize the new Designated Billing Company to continue drafting your account.

4. **NOTICE OF EFT AUTO-RENEWAL. IMPORTANT!** As an EFT Client, you acknowledge and consent to a recurring monthly draft on your account. You understand that unless you submit a written notice of cancellation to 5th GEAR FITNESS within thirty (30) days of the next scheduled EFT payment, this Agreement will continue to automatically renew from month-to-month.

Sign below:



SIGNATURE 1

5. **TERMS AND CONDITIONS.** Unless you pay in full for your training, you may cancel this Agreement at any time, for any reason, with a 30-day advance written notice. 5th GEAR FITNESS reserves the right to charge your card for the last billing cycle.

If you pay in full for your training, you understand that you are purchasing your training as a “package deal” that you would own immediately upon making payment; as a result, a paid-in-full (“PIF”) client cannot be cancelled or refunded except under the very limited circumstances stated elsewhere in writing in this Agreement.

By purchasing training from 5th GEAR FITNESS, you have permission to use the facility, the equipment and the services purchased as directed by the trainer; this license, however, is a privilege and not a right, and it may be revoked by 5th GEAR FITNESS in its sole and absolute discretion by refunding pro rata any unused portion of your training sessions.

We expect all clients to be courteous of others while in the studio. In certain situations, it may be appropriate to suspend training, or, in egregious situations, to terminate his/her client agreement. Situations which may warrant suspension of training include non-payment of training fees, failure to abide by Client Policies, Rules and Regulations, or any other conduct inimical to a harmonious club experience. Situations which may warrant termination of a client agreement outright include repeated non-payment of training fees, sexual harassment (repeated and unwanted advances or suggestive remarks, indecent exposure, or discriminatory remarks), intimidation or harassment of other clients, fighting, excessive shouting or foul language, or any other severe violation of the Client Policies, Rules and Regulations. Where suspension and/or termination is for cause as outlined in this paragraph, no refunds, credits or offsets shall be due to the client. By signing this Agreement, you consent and agree that this policy is fair and reasonable.

By reserving a place in a class, you are committing to attend that class. 5th GEAR FITNESS reserves the right to charge a \$5 **"no show" fee** if you neglect to cancel that reservation without at least **1 hour** prior notice.

You may downgrade your class plan at any time prior to the 1st day of the next monthly billing cycle with advance written notice. The downgrade shall be effective the following billing cycle. You may upgrade your class plan at any time during the month. You will be billed the prorated difference between the lesser class plan and the upgrade from the date the upgrade is implemented.

You may cancel your 5th GEAR FITNESS class plan by providing notice either (1) in person, at the studio, to an authorized Company representative, and receiving written confirmation of the same; or (2) by sending a letter via U.S. Mail to *5th GEAR FITNESS, ATTN: Cancellations*, 1076 E. Brandon Blvd., Suite 211, Brandon, FL 33511. Such notice of cancellation shall also terminate automatically the client's obligation to any entity to whom the health studio has subrogated or assigned this client agreement. The customer service contact number for 5th GEAR FITNESS is (813) 662-4044. You agree that telephone, fax, email, and unregistered mail does not constitute binding notice to 5th GEAR FITNESS unless confirmed otherwise in writing.

IMPORTANT! You hereby acknowledge and agree that use by you or your minor children of 5th GEAR FITNESS's facilities, services, equipment and/or premises, including Kids Club, involves the risk of serious injury to persons or property. *You, on behalf of yourself or your minor children, expressly agree to assume full and complete responsibility for any and all such risks, even if caused by the negligence of 5th GEAR FITNESS, its owners, partners, directors, officers, employees, authorized agents, guests or clients.*

In consideration of you or your minor children being permitted to enter 5th GEAR FITNESS's facility for any reason, including but not limited to, observation, use of facilities, services or equipment, or participation in any way, *you agree to release and hold 5th GEAR FITNESS, its owners, partners, directors, officers, employees, and agents harmless from any and all liability to you, your partner, your children and/or your personal representatives, assigns, heirs and next of kin for any loss or damage, and forever give up any claim or demands therefore.*

You also hereby agree to indemnify 5th GEAR FITNESS from any loss, liability, damage or cost 5th GEAR FITNESS may incur due to the presence of you or your minor children in, upon, or about the 5th GEAR FITNESS premises, or in any way observing or using any facilities, services or equipment of 5th GEAR FITNESS, if caused by your ordinary or gross negligence, recklessness, or wanton or intentional act.

You represent (1) that you and/or your minor children are in good physical condition and have no known disabilities, illnesses or other conditions that could prevent you or your minor children from exercising without injury or impairment of health; (2) that you have consulted a physician concerning an exercise program that will not risk injury to you or your minor children or somehow impair your health; and that (3) you will not participate in 5th GEAR FITNESS activities to the extent that such participation would be at variance with any medical advice you have received.

You specifically acknowledge that exercise, particularly involving weights, pulleys, treadmills, thrown objects, bodyweight exercises, cardio training, resistance bands, ropes, ladders, jumping, bikes, Jacob's ladders, and other functional equipment carries inevitable risks that cannot be fully mitigated by 5th GEAR FITNESS.

You further acknowledge that risk of injury includes (but is not limited to): injuries arising from use of exercise equipment and machines; injuries arising from participation in supervised or unsupervised activities or programs at a Studio; injuries and medical disorders arising from physical exercise, such as heart attacks, strokes, heat stress, sprains, broken bones, torn muscles and ligaments, skin abrasion, laceration, or infection, damaged cartilage, concussion, coma, paralysis, and death among others; and accidental injuries occurring anywhere in Studio dressing rooms, showers and other facilities.

You further expressly agree that the foregoing release, waiver of liability and indemnity provisions are intended to be as broad and inclusive as is permitted by the law of the State of Florida, and that if any portion thereof is held invalid, it is agreed that the balance shall continue in full force and effect.

6. CANCELLATION OF PAID IN FULL CLIENTS. If you purchase a Paid in Full ("PIF") training package, you waive all rights to a refund. You agree that this provision is reasonable because special discounts or extras are provided with PIF clients. The only situations where a PIF client may be cancelled and refunded involve those limited circumstances involving death, disability or club closure, as described herein in the Statutory Provisions identified hereinafter.

7. AGREEMENT TO PAY COLLECTION FEES. You agree to pay all fees described in this Agreement, including, where applicable, a \$25 return-item fee for bounced checks or chargebacks on debit/credit cards, an enrollment fee, a Kids Club fee, processing fees and a "freeze" fee. The enrollment and processing fees are non-refundable. You understand that 5th GEAR FITNESS may and will initiate collection action if fees are not paid timely and agree that 5th GEAR FITNESS may recover all costs of collection, and that in the event of litigation, the prevailing party may additionally recover a reasonable attorney fee.

8. **CHANGES TO YOUR BILLING OR ACCOUNT INFORMATION.** It is your responsibility to ensure that 5th GEAR FITNESS has your most current, up-to-date billing and account information. By entering into this Agreement, you consent to allowing 5th GEAR FITNESS to inquire with third parties, including your bank or the credit card processor, of changes to account numbers and/or other financial information.

9. **MISCELLANEOUS PROVISIONS.** All guests must pay the required fee and be accompanied by their sponsoring client while using the facility. In addition, all guests must have a valid Guest Pass, must comply with all Rules and Regulations (which may be changed from time to time), and must sign a *Waiver and Release of Liability* prior to using the club facility. 5th GEAR FITNESS reserves the right to discontinue any guest privileges to clients, or a particular client, in its sole and absolute discretion.

5th GEAR FITNESS will only process cancellation requests for current accounts, meaning the account is fully paid-to-date, inclusive of any outstanding fees.

Clients agree to use only the services for which they have paid. Unauthorized or improper use of services may result in revocation or suspension of privileges.

Failure to use your 5th GEAR FITNESS training sessions without notice of cancellation will not relieve you of your payment obligation or entitle you to any refund, regardless of the circumstances. You acknowledge that 5th GEAR FITNESS has substantial fixed costs independent of utilization and that this provision is reasonable.

As part of your 5th GEAR FITNESS Client Agreement, you (and any guests) may be asked to provide a fingerprint and personal photograph that will work with the biometrics technology available at the 5th GEAR FITNESS facility. You consent to providing your fingerprint and personal photograph. 5th GEAR FITNESS will use reasonable care in safeguarding your fingerprint in its biometrics system.

You have three options for checking-in to the studio, either by (1) enrolling in the cardless check-in system which allows you to access the facility with a finger scan; (2) bring an original photo ID, or (3) use identification that will be issued by 5th GEAR FITNESS upon request. You are not required to enroll in the cardless check-in system, but if you choose not to do so you will need either an original photo ID or identification issued by 5th GEAR FITNESS to access the facility each time. Photo IDs can be an original driver's license, state ID, student ID, military ID or passport. 5th GEAR FITNESS' check-in procedure may request that you have your photo taken to activate your training sessions. If you refuse to have your photo taken, 5th GEAR FITNESS reserves the right to revoke your client agreement. If the health studio requires you to furnish identification upon entry to the facility and as a condition of using the services of the health studio, the health studio will provide the buyer with the means of such identification.

You consent to receiving push notifications, telephone calls or emails from 5th GEAR FITNESS, its affiliates and business partners, at any telephone number/email included in your Agreement or otherwise supplied to 5th GEAR FITNESS or otherwise ascertained by 5th GEAR FITNESS for any reason at any time.

You consent to the use of an electronic signature to record your commitment to the terms and conditions of this Agreement.

10. **CHANGE IN CLUB POLICIES, RULES OR REGULATIONS.** You agree that 5th GEAR FITNESS's Client Policies, Rules and Regulations may be revised, supplemented or amended in the sole and absolute discretion of 5th GEAR FITNESS, as may be appropriate from time to time, and any such changes shall become effective 30 days posting on the 5th GEAR FITNESS website.

11. **KIDS CLUB.** For Kids Club rules and regulations, please refer to the 5th GEAR FITNESS website under the "Rules and Regulations" tab, or view the rules and regulations posted in the Studio.

12. **NO WARRANTIES; NO GUARANTEED RESULTS.** 5th GEAR FITNESS issues no warranty or representation, express or implied, and your sole and exclusive remedy in the event of any breach of this Agreement shall be the cancellation of this Agreement. In no event shall 5th GEAR FITNESS be liable for any special, incidental or consequential damages.

13. **SEVERABILITY/GOVERNING LAW.** If any part of this Agreement is held to be void or unenforceable, the remainder of the terms and provisions of this Agreement shall remain in full force and effect. This Agreement shall be governed by Florida law. This Agreement conforms to the State statute governing "health studios," codified at Fla. Stat. 501.012 to 501.019.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between you and 5th GEAR FITNESS. Both parties agree that oral agreements outside of this Agreement are void and that this Agreement may not be modified except in writing signed or acknowledged by both parties.

15. **STATUTORY PROVISIONS.**

A. **Rescission Rights.** You are entitled to a copy of this contract at the time you sign it. You may rescind this contract at any time before midnight of the third (3rd) operating day, exclusive of holidays and weekends, after receiving a copy of this contract. If you choose to rescind this contract, you must either (1) send a signed and dated notice of rescission by sending a letter via U.S. Mail; or (2) personally deliver a signed and dated written notice of cancellation to 1076 East Brandon Blvd., No. 211, Brandon, FL 33511. If you rescind this contract within the three-day period, you are entitled to a full refund of your money. If the third operating day falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next operating business day when 5th GEAR FITNESS actually provides instruction at the aforementioned address.

B. **Club Closure.** If 5th GEAR FITNESS goes out of business, or moves its facility more than five (5) miles from the business location designated in the contract and fails to provide, within 30 days, a facility of equal quality located within five (5) driving miles of the business location designated in the contract, then 5th GEAR FITNESS will permit a penalty-free cancellation of

the Agreement and a refund for any unused portion of the Agreement. Should 5th GEAR FITNESS go out of business, you are directed to contact the Florida Department of Agriculture and Consumer Services (“Department”) within 60 days thereof.

C. **Notices.** Any notices sent to 5th GEAR FITNESS must be in writing and sent by U.S. mail to: 5th GEAR FITNESS, 1076 East Brandon Blvd, No. 211, Brandon, FL 33511.

D. **Processing OF ANY Refund.** Notwithstanding the foregoing, if the Florida Department of Agriculture and Consumer Services determines that a refund is due you, the refund shall be an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. 5th GEAR FITNESS may not be deemed out of business when temporarily closed for repair and renovation of the premises:

1. Upon sale, for not more than fourteen (14) consecutive days; or
2. During ownership, for not more than seven (7) consecutive days and not more than two (2) periods of seven consecutive days in any calendar year.

Any refund shall be issued within 30 days after receipt of the notice of cancellation made pursuant to this paragraph. Fla. Stat. 501.017(1)(b)(3).

E. **Death OR Disability.** If you die or become physically unable to avail yourself of a substantial portion of those services which you used from the commencement of this Agreement until the time of your disability, you will be eligible for a penalty-free cancellation of your Agreement and a refund. 5th GEAR FITNESS reserves the right to request proof of your death or disability. A physical disability sufficient to warrant cancellation of this Agreement shall be established if You furnish to 5th GEAR FITNESS a certification of such disability by a physician licensed under Fla. Stat. Chapters 458, 459, 460 or 461 to the extent the diagnosis or treatment of the disability is within the physician’s scope of practice.

F. **Military Service.** If you are a client of the U.S. military, including a client of the national guard or a reserve unit, and you are on active duty and are deployed outside of the state, you may cancel this Agreement and receive a refund for the unused portion of your PIF training sessions, or request that your PIF client be temporarily suspended; you will not be charged the \$5/mo. freeze fee. 5th GEAR FITNESS reserves the right to verify your military leave by requesting a copy of your official military orders or a written verification from your commanding officer. Your request for military cancellation or suspension must be made within 90 days after you receive military leave orders.

G. In accordance with Fla. Stat. 501.017(e), in no event will your contract continue beyond 36 months and thereafter shall only be renewable annually. A renewal contract may not be executed and the fee therefore be paid until 60 days or less before the previous contract expires.

H. If 5th GEAR FITNESS requires you to furnish identification upon entry to the facility, it will provide you with the means of such identification.

BUYER’S SIGNATURE PARENT OR LEGAL GUARDIAN CO-SIGNATURE *(It shall be the Buyer’s responsibility for requesting and receiving a copy of this Agreement)*



SIGNATURE 2

CLIENT’S SIGNATURE *(If Client is a minor, under the age of 18, he/she must have a parent or legal guardian co-sign this Agreement)*



SIGNATURE 3

5th GEAR FITNESS Authorized Representative:



SIGNATURE 4

Executed on _____, 2017, at 5th GEAR FITNESS, 1076 East Brandon Blvd, No. 211, Brandon, FL 33511.