

5. Waiver

The Facility will not lose or waive any of its rights under the Agreement if it delays in enforcing them or fails to enforce such rights.

6. Agreement and Understanding of Terms

I acknowledge that, before I signed the Membership Agreement, including the Waiver and Release of Liability and Assumption of Risk in Section III of this Agreement, I had the reasonable opportunity to examine it.

7. Acknowledgement of 24/7 Facility and No Supervision

I understand that I am purchasing a membership at a 24/7 facility that allows access at any time. As such, I am aware that there will be no supervision or assistance except during staffed hours. Staffed hours may change at the sole discretion of the gym. I am aware that if I get injured, become unconscious, suffer a stroke or heart attack or any other medical emergency or event that there will likely be no one to respond to my emergency and that the gym has no duty to provide assistance to me while I am at the gym. I understand that even though the gym is equipped with surveillance cameras, these records, but are not monitored continuously; help will not be available during non-staffed hours. However, a first aid station, AED and emergency alarms are located in the facility that, when activated, will alert emergency services.

8. Associated Risk of Taking Advice From and/or Working with A Fitness and Medical Professional

It is my understanding and I have been informed that there exists the remote possibility during exercise of adverse changes including, but not limited to, abnormal blood pressure, fainting, dizziness, disorders of heart rhythm, and in very rare instances heart attack, stroke, or even death. I further understand and I have been informed that there exists the risk of bodily injury including, but not limited to, injuries to the muscles, ligaments, tendons, and joints of the body. Every effort, I have been told, will be made to minimize these occurrences by proper staff assessments of my condition before each personal fitness training session, staff supervision during exercise and by my own careful control of exercise efforts. I fully understand the risks associated with exercise and working with a personal trainer, nutritionist and physical therapist, including the risk of bodily injury, heart attack, stroke or even death, but knowing these risks, it is my desire to participate as herein indicated.

III. WAIVER AND RELEASE OF LIABILITY AND ASSUMPTION OF RISK

In consideration of being allowed to use the health club facility and participate as a guest, non-member, member, personal training client, nutrition client and/or physical therapy patient in programs, services and/or events at N'Force Fitness, INC, I the Participant, and the Participant's parent(s) or legal guardian(s) if the Participant is a minor, do hereby agree, to the fullest extent permitted by law, as follows:

1. **TO WAIVE ALL CLAIMS** that they have or may have against the Facility arising out of the Participant's participation in the Programs or the use of any equipment provided by the Facility ("Equipment"). The Participant and his/her Parents or legal guardian(s) specifically understand that they are releasing any and all claims that arise or may arise from any **negligent** acts or conduct of the Facility, its owners, affiliates, operators, employees, agents, and officers, to the fullest extent permitted by law. However, nothing in this Agreement shall be construed as a release for conduct that is found to constitute gross negligence or intentional conduct;
2. **TO ASSUME ALL RISKS** of participating in the Programs, Services and using the Equipment, even those caused by the **negligent** acts or conduct of the Facility, its owners, affiliates, operators, employees, agents, and officers. The Participant and his/her Parents or legal guardian(s) understand that there are inherent risks of participating in the Programs, Services and using the Equipment, which may be both foreseen and unforeseen and include serious physical injury and death;
3. **TO RELEASE AND INDEMNIFY** the Facility, its owners, affiliates, operators, employees, agents, and officers from all liability for any loss, damage, injury, death, or expense that the Participant (or his/her next of kin) may suffer, arising out of his/her participation in the Programs, Services and use of the Equipment; and

Arbitration

The Participant, and the Participant's parent(s) or legal guardian(s), if Participant is a minor, hereby agrees to submit any dispute arising from participation in the Programs, for which Participant intends to seek damages in excess of \$75,000.00, to binding arbitration. Submission shall be unlimited. For such disputes, there shall be a three-member arbitration panel, consisting of two party-appointed arbitrators (one arbitrator to be appointed by each party) and one neutral arbitrator (collectively, the "Panel"), to be chosen by the party-appointed arbitrators. The neutral arbitrator shall be an officer or director of any entity that operates a minimum of five health club or fitness center locations in the United States. In the event that the two party-appointed arbitrators are not able to agree on a third, neutral arbitrator, the neutral arbitrator shall be appointed by the United States District Court, for the [District], utilizing the selection criteria for the neutral as set forth above. Each party shall pay its own costs, including the costs associated with the party-appointed arbitrators, and the parties shall share equally the costs associated with the neutral arbitrator. The arbitration proceeding shall proceed in the county and state in which the Programs occurred and shall be governed by the Federal Rules of Evidence. The Panel shall establish a reasonable and appropriate discovery schedule to expeditiously resolve this matter. In the event that Participant, or the Participant's parent(s) or legal guardian(s), if Participant is a minor, files a lawsuit in any court relating to, and/or arising from, Participant's participation in the Programs, Participant and/or Participant's parent(s) or legal guardian(s), by signing this document, stipulate to a cap on Participant's damages of \$75,000.00, exclusive of interests and costs. As a threshold matter, the Panel, or the Court (if a lawsuit is filed), shall confirm whether the Waiver and Release contained in this Agreement are enforceable under applicable law.

The Participant understands that his/her participation in the Programs is voluntary and further understands that he/she has the opportunity to inspect the Facility before any participation. The Participant understands that he/she is obligated to follow the rules of the Programs and that he/she can minimize his/her risk of injury through the exercise of common sense and by being aware of his/her surroundings. If, while participating in the Programs, the Participant observes any unusual hazard, which he/she believes jeopardizes his/her personal safety or that of others, he/she will remove himself/herself from participation in the Programs and immediately bring said hazard to the attention of the Facility.

I HAVE READ AND UNDERSTAND THIS AGREEMENT AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I MAY BE WAIVING CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE.

Participant's Signature

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x

PARENT/GUARDIAN SIGNATURE

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EMERGENCY PHONE

**FOR PARENTS/GUARDIANS OF PARTICIPANTS OF MINORITY AGE
(UNDER AGE 18 AT TIME OF REGISTRATION)**