

b FIT-BYRD LLC

d/b/a FIT-BYRD

[Fit-byrd@outlook.com](mailto:Fit-byrd@outlook.com)

## VIRTUAL TRAINING WAIVER OF LIABILITY

BY SIGNING THIS DOCUMENT YOU WILL WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE OR CLAIM COMPENSATION FOLLOWING AN ACCIDENT

PLEASE READ CAREFULLY!

FIT-BYRD LLC, D/B/A FIT-BYRD (THE “COMPANY”) STRONGLY RECOMMENDS THAT YOU CLEAR YOUR PARTICIPATION IN ANY PROGRAM WITH YOUR PHYSICIAN. THE PROTOCOLS OF THIS PROGRAM WILL INVOLVE YOU IN RELATIVELY HIGH INTENSITY WORKOUTS OR INTENSE BODYWORK AND IT IS IMPORTANT YOU UNDERSTAND THE FOLLOWING:

**ACKNOWLEDGEMENT OF DANGER:** I will be participating in physical training sessions provided by the Company (known as “Services”). I am fully aware that these Services are of a nature and kind that are extremely strenuous involving physical activities that may include, but are not limited to, running, weight training, biking, gymnastic movements, various aerobic conditioning, and various nutritional programs. I recognize and understand these Services are not without varying degrees of risk, which may include, but are not limited to the following: (1) PHYSICAL INJURY AND/OR DEATH including minor injuries and major injuries such as joint/shoulder/elbow/knee/back/foot injuries, broken bones, concussions, rhabdomyolysis, musculoskeletal injuries, muscle strains, pull or tears, shin splint, heat exhaustion, cardiovascular injuries, heart attack, stroke, brain injury, and injury to my fetus (if pregnant); and (2) property damage.

**ACCEPTANCE OF RESPONSIBILITY:** I willingly assume full responsibility for any and all risks that I am exposing myself to as a result of my participation in any Services, and accept full responsibility for any all risk of death, serious personal injury, temporary or permanent disability, or property loss and/or damage suffered by me or my property in connection with the Services whether or not described in this Agreement, known or unknown, inherent or otherwise.

**ASSUMPTION OF RISK:** Understanding, acknowledging, and accepting all the risks and hazards involved with the Services, I freely and voluntarily choose to participate, and I HEREBY VOLUNTARILY AND EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL RISK OF LOSS, DAMAGES, THEFT, INJURY OR DEATH THAT MAY OCCUR TO ME OR MY

PROPERTY AS A RESULT OF OR INCIDENT TO MY PARTICIPATION IN THE SERVICES, INCLUDING THE RISK I MAY BE INJURED BY THE ACTIONS, OMISSIONS, REPRESENTATIONS OR NEGLIGENCE OF THE COMPANY, ITS OWNERS, AGENTS, OFFICERS, PRINCIPALS, EMPLOYEES, INDEPENDENT CONTRACTORS, AND VOLUNTEERS (THE “RELEASED PARTIES”), OTHER PARTICIPANTS OR

THIRD PARTIES WHILE PARTICIPATING IN THE SERVICES. I understand and agree that this Agreement will be binding on me, my spouse (or registered domestic partner), my guardians, the executors or administrators of my estate, my heirs, my personal representatives, my assigns, my successors in interest, my children, and any guardian ad litem for said children (collectively, the “releasors”). I accept full and complete responsibility for the safety of myself, any guests, observers or other individuals who I have invited to participate with me, and property we use. I also accept full and complete responsibility for the consequences of taking unreasonable risks while participating in the Services, including, without limitation, attempting activities that I am not qualified to perform safely, causing any other participants/spectators an unreasonable risk of harm, or failing to follow correct safety procedures when participating in the Services.

USE OF EQUIPMENT: I acknowledge that I have voluntarily chosen to use my own equipment while participating in the services provided by the Company. I assume all risks associated with the use of my own equipment, including but not limited to improper use, equipment malfunction, defects, or failures that could result in injury, disability, death, property damage, or other losses. I agree that the Company is not responsible for ensuring the safety, proper functioning, or suitability of my personal equipment for use with the Services. The Company makes no warranties or representations regarding my personal equipment or its use. I agree to maintain my equipment in proper working condition. I understand the risks involved with using my own equipment and agree to assume full responsibility. I release and hold harmless the Company from any and all claims of liability, loss, damage, expense, or injury arising from the use of my personal equipment.

PUBLICITY RELEASE: For good and valuable consideration, the receipt of which is hereby acknowledged, I hereby irrevocably grant to the Company, the irrevocable, perpetual and unrestricted (except as expressly set forth below) right and permission, to use and publish my appearance (“publicity rights”) in any and all media now or hereafter known in connection with the Company, the Services, including any goods or products, or any related activities to any of the foregoing (all such medium in which the Publicity Rights are used shall be referred to as the “pictures”), for any commercial purpose whatsoever, without royalty, payment, or any other compensation whatsoever to me. For such use of the Publicity Rights and the Pictures, I understand and agree that I will not be entitled to any compensation or consideration beyond my participation in the Services. I further agree that the Company may edit, alter, digitize, synchronize, reproduce or otherwise change the Pictures for any such purpose. I acknowledge

that I shall have no, and hereby expressly disclaim, any ownership, authorship or moral rights in the Pictures or any part thereof.

**DIGITAL VIDEO USAGE:** I acknowledge and agree that the Company will be utilizing audio and visual technologies, including but not limited to videoconferencing platforms such as Zoom, to conduct virtual gym sessions and classes. I hereby waive any and all rights or claims associated with privacy or recordings in connection with the Company's use of such technologies. I consent to the Company's use of such technologies, including the recording of audio and video of me during any virtual gym session or class, and agree that the Company may store, use, and disclose such recordings as deemed necessary by the Company for business purposes.

**AUDIO/VISUAL PUBLICITY WAIVER:** I agree to indemnify and hold harmless the Released Parties, their agents, successors, and assigns, from any and all claims, demands, actions or causes of action,

liabilities, costs, dues, sanctions, fees, penalties, or expenses of any sort arising from the making of such recordings of me and their lawful and appropriate use. I further acknowledge that the Company exclusively owns all rights to these recordings regardless of the form in which they are produced or used.

**COPYRIGHTS:** The rights granted to the Released Parties herein include, without limitation, all rights of every nature whatsoever in connection with use of the Pictures, including without limitation all copyrights (and any other intellectual property rights) therein and renewals and extensions thereof. I acknowledge and agree that all copyrights and right of every other kind relating or pertaining to the Pictures described above are the sole property of the Company and I have no claim to the copyrights (or any other intellectual property rights) in the Pictures.

**WAIVER:** In full consideration of the above mentioned risks and hazards and in full consideration of the fact that I am willingly and voluntarily participating in the Services, I HEREBY WAIVE, RELEASE AND FOREVER DISCHARGE ANY AND ALL CLAIMS OR CAUSES OF ACTION, NOW KNOWN OR HEREAFTER KNOWN IN ANY JURISDICTION THROUGHOUT THE WORLD, AGAINST THE RELEASED PARTIES, INCLUDING, WITHOUT LIMITATION, ANY BODILY INJURY OR DISABILITY, ILLNESS OR DISEASE, ACCIDENT, DEATH, FINANCIAL LOSS, PROPERTY LOSS, DAMAGE, DESTRUCTION, DELAY, INCONVENIENCE OR OTHER HARM OF WHATEVER NATURE THAT MAY BE DIRECTLY OR INDIRECTLY RELATED TO, ARISING FROM OR SUSTAINED FROM PARTICIPATION IN THE SERVICES OR OTHER NEGLIGENT ACT OR OMISSION OR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OF ANY RELEASED PARTIES OR OTHERWISE, provided that nothing in this Section shall be

deemed to release any Released Party from liability arising from their own willful or intentional injury to me or my property.

**INDEMNIFICATION:** To the fullest extent permitted by law, I agree to indemnify, defend, and hold harmless the Released Parties from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs, or expenses of any kind whatsoever (including, without limitation, attorneys' fees and costs) incurred by or asserted against any of the Released Parties as a result of my use of the Company's facilities, equipment, or services; my breach of any term, covenant, or condition of this Waiver or any rules or policies of the Company; any negligent or willful act or omission of mine or my guests while on the Company's premises; any injury, illness, or death sustained by me or my guests while using the Company's facilities, equipment, or services, except to the extent directly caused by the Company's gross negligence or willful misconduct.

The indemnification obligations under this clause shall include, without limitation, all costs, expenses, and liabilities incurred in connection with any claim, action, or proceeding brought with respect to the matters indemnified hereunder, including all court costs and actual attorneys' fees incurred. The Company shall promptly notify me of any claim or action subject to indemnification and shall cooperate fully in the defense of such claim or action, at my expense. I shall have the right to assume the defense of any claim or action subject to indemnification with counsel of its choice, subject to the Company's approval, which shall not be unreasonably withheld. I shall not enter into any settlement or compromise of a claim or action subject to indemnification without the Company's prior written consent, which shall not be unreasonably withheld.

The indemnification obligations under this clause shall survive the termination or expiration of my membership or use of the Company's facilities, equipment, or services.

**COVENANT NOT TO SUE:** I agree, for myself and all my heirs, not to sue the Released Parties or initiate or assist in the prosecution of any claim for damages or cause of action against the Released Parties which I or my heirs may have as a result of any personal injury, death or property damage I may sustain.

**SURVIVAL:** Any provision of this Release and Waiver of Liability agreement providing for performance by either party after termination of this agreement shall survive such termination and shall continue to be effective and enforceable.

**ENTIRE AGREEMENT; MODIFICATION; BINDING EFFECT:** This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the parties, whether written, oral, electronic, or otherwise. No change, modification, amendment, or addition of or to this agreement shall be valid unless in writing and signed by authorized representatives of the parties. This agreement

shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the parties.

**GOVERNING LAW AND VENUE:** This Release and Waiver of Liability agreement will be governed by and interpreted in accordance with the laws of the State of California, without giving effect to the principles of conflicts of law of such state. I agree that any action arising out of this Release and Waiver of Liability agreement must be brought exclusively in any state or federal court located in Santa Barbara County, California.

**SEVERABILITY:** If any provision or portion of this Release and Waiver of Liability agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

**PARENTAL CONSENT:** (if applicable) I, the undersigned parent or legal guardian of the minor child, have read the above and understood the foregoing assumption of risk, and release of liability, and agree to its terms on behalf of my child and myself. I understand that by signing below, I am giving up substantial rights on behalf of my child and myself.

I have fully read and fully understand the foregoing assumption of risk, and release of liability, and I understand that by signing, it obligates me to indemnify the parties named for any liability for injury or death of any person and damage to property caused by my negligent or intentional act or omission. I understand that by signing this form I am waiving valuable legal rights. I have been provided an opportunity to ask an attorney questions regarding this form and any fitness related program, as well as questions for clarity. By signing, I am verifying that I have received adequate and sufficient answers to all of my questions.

Date:

Participant's Signature:

Legal Guardian's Signature if necessary: