



GENERAL WAIVER OF LIABILITY for Special Access

This Waiver of Liability for Special Access (“**Special Waiver**”) is a legally-binding document expressly waiving the rights of the below signed (“**Participant**”); parents or legal guardians possessing the authority to act on behalf of a minor child are expressly waiving their rights *and* the rights of the minor child. Participant, who does not possess an active XYMOGYM membership, is permitted to access, and be present at, the XYMOGYM Health Studio (Registration No. HS15750) (“**XYMOGYM**”) because they are participating in, or affiliated with, an authorized activity (“**Activity**”) directed and supervised by an authorized licensee (“**Licensee**”). This Special Waiver is valid as of the below date and will continue in full force and effect until the time Participant is no longer participating in Licensee’s Activity. Please read, then initial next to, each of the following statements:

- Participant certifies that they (i) are at least eighteen (18) years of age or older and (ii) possess the requisite authority to sign this Special Waiver. By initialing this subsection, Participant is expressly declaring that (i) the preceding statement is true and accurate, and that (ii) they are fully aware of the fact that this Special Waiver is a substantial waiver of their rights.
(Please Initial: _____)
- Participant is fully aware that their (i) physical presence at XYMOGYM and (ii) participation in Licensee’s Activity at XYMOGYM is voluntary. However, Participant is fully aware that, before they will be permitted to access XYMOGYM to participate in Licensee’s Activity, they must sign this Special Waiver. By initialing this subsection, Participant is expressly declaring that they will be signing this Special Waiver under their own freewill and accord.
(Please Initial: _____)
- In consideration of being allowed to (i) be physically present at XYMOGYM and (ii) participate in Licensee’s Activity at XYMOGYM, the Participant does hereby voluntarily and forever waive, release, and discharge XYMOGYM and its officers, agents, employees, volunteers, representatives, executors, and all others acting on their behalf (collectively, the “**Released Parties**”) from any and all claims and liabilities for injuries (including death), damages, or losses sustained by the Participant’s person and/or property—including, but not limited to, those injuries (including death), damages, or losses caused by the negligence and/or omissions of the Released Parties, or from Participant’s accidental exposure to infectious diseases, such as COVID-19—which arise out of, are connected with, and/or result from their (a) physical presence at XYMOGYM and/or (b) participation in Licensee’s Activity at XYMOGYM. (Please Initial: _____)
- Participant fully acknowledges that XYMOGYM has granted to Licensee—who is a wholly separate and independent entity in no way, shape, or form affiliated with, connected to, or supervised by XYMOGYM regardless of any marketing and/or cross-marketing initiatives that may occur, or have occurred, for which XYMOGYM may have been directly or indirectly involved—a special license to use one (1) or more of its facilities to provide the Activity to Participant. Moreover, Participant fully acknowledges that they are present at XYMOGYM as an invited guest of the Licensee, not of XYMOGYM. Therefore, Participant fully understands that they cannot and will not hold, or attempt to hold, XYMOGYM liable for any and all injuries (including death), damages, losses, or illnesses they might experience, or have experienced, while participating in Licensee’s Activity at XYMOGYM.
(Please Initial: _____)
- Participant fully understands that it is their sole responsibility to, not only be familiar with what is expected of them as a participant in Licensee’s Activity, but to also know the limits of their physical abilities as they relate to participation in Licensee’s Activity.
(Please Initial: _____)
- Participant is fully aware that participating in Licensee’s Activity is a potentially hazardous activity that puts them at risk of injury, including, but are not limited to, muscle strains, sprains, and spasms; heart attacks; raised blood pressure; broken, fractured, or dislocated bones; and, in some cases, death. Furthermore, Participant is fully aware that participating in Licensee’s Activity may put them at risk of exposure to infectious diseases, such as COVID-19. By initialing this subsection, Participant is making an express declaration that they are willingly assuming any and all risks associated with their participation in Licensee’s Activity, and that they do so with full knowledge, understanding, and appreciation of such risks.
(Please Initial: _____)
- Participant is fully aware that XYMOGYM highly recommends they participate in a physical examination and consultation with a licensed physician (“**Physical Examination**”) before participating in Licensee’s Activity at XYMOGYM. Moreover, Participant fully acknowledges that XYMOGYM highly recommends they participate in at least one (1) Physical Examination per calendar year to assess personal fitness and wellness, as well as to determine if their participation in Licensee’s Activity is still appropriate. By initialing this subsection, the Participant is certifying that they (a) have participated in a Physical Examination and received permission from their licensed physician to participate in Licensee’s Activity; or (b) have not participated in a Physical Examination but still fully intend on participating in Licensee’s Activity at XYMOGYM. Participants who have not participated in a Physical Examination do hereby assume all responsibility for their participation in Licensee’s Activity, and do so with full knowledge, understanding, and appreciation of the risks involved.
(Please Initial: _____)
- Participant does hereby declare that, to the best of their knowledge, they are physically sound and suffering from no condition, impairment, disease, infirmity, or other illness that would prevent, or should prevent, their participation in Licensee’s Activity. (Please Initial: _____)
- Participant fully acknowledges that XYMOGYM requires Participants to seek and receive medical treatment in the event of injury, accident, and/or illness. In the event that XYMOGYM and/or the Licensee deem immediate medical treatment necessary, Participant does hereby consent to receive such medical treatment. Furthermore, Participant does hereby agree to fully assume all financial responsibility associated with receiving such medical treatment. (Please Initial: _____)
- Participant fully accepts financial responsibility for any injuries (including death), damages, or losses they cause to themselves and/or other Participants, as well as to XYMOGYM and/or XYMOGYM’s members, staff, contractors, and Licensees, that is the result of their negligence, acts, and/or omissions. To the extent statute or case law does not prohibit releases for negligence, Participant further agrees to indemnify, defend, and hold harmless the Released Parties (described above) from liability for any injuries (including death), damages, or losses resulting from Participant’s negligence, acts, and/or omissions. Should any individual(s) covered by this subsection incur attorney’s fees and/or court costs while enforcing this Special Waiver, the Participant agrees to fully reimburse such

individual(s) all incurred attorney’s fees and court costs without contention or undue delay.

(Please Initial: _____)

11. Participant does hereby consent to being photographed and/or recorded. Furthermore, Participant (i) relinquishes any potential ownership rights to the photographs and/or recordings; (ii) expressly grants to the Released Parties (described above) the unlimited, exclusive, irrevocable, sublicensable, and transferable right to reproduce, in any medium of their choosing, the photographs and/or video images taken of them, or their family members, for the purposes of publication, promotion, illustration, and advertising; and (iii) releases the Released Parties and their legal representatives from all claims and liabilities relating to such photographs and/or recordings.

(Please Initial: _____)

12. Participant does hereby agree to abide by XYMOGYM’s posted policies and procedures, as well as those policies and procedures imposed on them by the Licensee. Notwithstanding XYMOGYM’s insurance disclosure, Participant fully understands that XYMOGYM assumes absolutely no responsibility for the injuries, damages, illness, or losses they may sustain as a result of their participation in Licensee’s Activity at XYMOGYM. INSURANCE DISCLOSURE: XYMOGYM DOES HEREBY REPRESENT THAT IT MAINTAINS GENERAL LIABILITY INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE.

(Please Initial: _____)

13. **INDEMNIFICATION.** IN CONSIDERATION OF BEING ALLOWED TO (A) BE PHYSICALLY PRESENT AT XYMOGYM AND (B) PARTICIPATE IN LICENSEE’S ACTIVITY AT XYMOGYM, PARTICIPANT, ON BEHALF OF THEMSELVES AND THEIR HEIRS, EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVES, ASSIGNEES, AND SUCCESSORS IN INTEREST (COLLECTIVELY, THE “INDEMNIFYING PARTIES”), DOES HEREBY RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS XYMOGYM AND ITS OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, REPRESENTATIVES, EXECUTORS, AND ALL OTHERS ACTING ON THEIR BEHALF (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) FROM ANY AND ALL CLAIMS PARTICIPANT AND/OR THE INDEMNIFYING PARTIES MAY HAVE NOW, OR IN THE FUTURE, FOR INJURIES (INCLUDING DEATH), DAMAGES, LOSSES, AND/OR ILLNESSES (SUCH AS ILLNESS FROM EXPOSURE TO COVID-19 OR OTHER INFECTIOUS DISEASES) THAT PARTICIPANT MAY HAVE SUSTAINED TO THEIR PERSON AND/OR PROPERTY, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR NEGLIGENCE, THAT ARISE OUT OF, ARE CONNECTED WITH, AND/OR RESULT FROM THEIR (A) PHYSICAL PRESENCE AT XYMOGYM AND/OR (B) PARTICIPATION IN LICENSEE’S ACTIVITY AT XYMOGYM. PARTICIPANT HAS BEEN MADE AWARE THAT (A) BEING PHYSICALLY PRESENT AT XYMOGYM AND (B) PARTICIPATING IN LICENSEE’S ACTIVITY AT XYMOGYM INVOLVES A RISK OF INJURY (INCLUDING DEATH), DAMAGE, LOSS, OR ILLNESS (SUCH AS ILLNESS FROM EXPOSURE TO COVID-19 OR OTHER INFECTIOUS DISEASE). PARTICIPANT THEREFORE EXPRESSLY AGREES TO ASSUME ANY AND ALL RISKS ASSOCIATED WITH THEIR PARTICIPATION IN LICENSEE’S ACTIVITY AT XYMOGYM, AND DOES SO WITH FULL KNOWLEDGE, UNDERSTANDING, AND APPRECIATION OF SUCH RISKS. PARTICIPANT, ON BEHALF OF THEMSELVES AND THE INDEMNIFYING PARTIES, EXPRESSLY ACKNOWLEDGES THE ABOVE REPRESENTATIONS, ACKNOWLEDGEMENTS, AND RELEASES TO BE CONTRACTUALLY BINDING, AND THAT, SHOULD PARTICIPANT OR ANY OF THE INDEMNIFYING PARTIES ASSERT A CLAIM IN CONTRAVENTION OF THIS SPECIAL WAIVER, THE ASSERTING PARTY SHALL BE LIABLE FOR THE EXPENSES, INCLUDING ATTORNEY’S FEES AND COURT COSTS, INCURRED BY THE OTHER PARTY (OR PARTIES), IN DEFENDING THEMSELVES AGAINST ANY SUCH CLAIM. PARTICIPANT FURTHER AGREES THAT XYMOGYM SHALL HAVE THE UNRESTRICTED RIGHT TO SELECT ITS OWN LEGAL COUNSEL, PARTICIPATE IN ITS OWN DEFENSE, AND NEGOTIATE ITS OWN SETTLEMENTS.

(Please Initial: _____)

14. **COVENANT NOT TO SUE.** Participant fully understands that they are entering into a covenant not to sue XYMOGYM in any capacity. Moreover, Participant agrees that they will not (i) start a lawsuit, court action, or other

proceeding against XYMOGYM, nor will they (ii) join any lawsuits, court actions, or other proceedings against XYMOGYM, including those lawsuits, court actions, and other proceedings regarding claims of injury (including death), damage, or loss that may have been the result of XYMOGYM’s negligence and/or omissions. Participant, on behalf of their insurance provider(s), does hereby waive their rights to do the same.

(Please Initial: _____)

15. **GOVERNING LAW and VENUE.** Participant agrees that this Special Waiver shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any choice or conflict of law rule or provision; venue is Orlando, Florida.

(Please Initial: _____)

16. **MODIFICATIONS, NON-WAIVER, and SEVERABILITY.** This Special Waiver may not be modified orally. Any modification must be made in writing and signed by both XYMOGYM and the Participant, or their duly authorized representatives. Failure, at any time and/or for any period, to enforce one (1) or more of the provisions of this Special Waiver will not be construed as a modification or waiver of any such provision; the right to subsequently enforce all the terms of any such provision at any time remains, at all times, with the appropriate party. Should any provision of this Special Waiver (or portion thereof) be deemed unlawful, such provision (or portion thereof) will be severable; the remaining provisions will continue in full force and effect.

(Please Initial: _____)

17. Participant does hereby expressly declare that they (i) have read every provision of this special waiver in their entirety and (ii) fully understand all of the provisions contained in this special waiver, as well as (iii) fully acknowledge the risks associated with (a) being physically present at XYMOGYM and (b) participating in licensee’s activity at XYMOGYM. And with due consideration given to the provisions of this special waiver, as well as to the risks associated with (a) being physically present at XYMOGYM and (b) participating in licensee’s activity at XYMOGYM, participant has decided to voluntarily sign this special waiver under their own freewill and accord.

(Please Initial: _____)

18. PARTICIPANT FULLY UNDERSTANDS THAT AGREEING TO THE TERMS OF THIS SPECIAL WAIVER IS MATERIAL TO XYMOGYM’S DECISION TO ALLOW THEM TO (I) BE PHYSICALLY PRESENT AT XYMOGYM AND (II) PARTICIPATE IN LICENSEE’S ACTIVITY AT XYMOGYM; AND THAT, IN THE ABSENCE OF A SIGNED SPECIAL WAIVER, PARTICIPANT WOULD BE PROHIBITED BY XYMOGYM FROM (I) BEING PHYSICALLY PRESENT AT XYMOGYM AND (II) PARTICIPATE IN LICENSEE’S ACTIVITY AT XYMOGYM.

(PLEASE INITIAL: _____)



PARTICIPANT/PARENT OR LEGAL GUARDIAN

[Empty rectangular box for signature]

NAME:

TITLE:

DATE:

MINOR NAME: