



49ERS FIT

Club # 06740

Member #: _____

1600 Saratoga Avenue Store #46, San Jose, CA 95129 | info@49erfit.com

49ERS FIT IS THE OWNER OF THIS FACILITY AND FITNESS CENTER OPERATION AND HAS BEEN LICENSED BY FORTY NINERS FOOTBALL COMPANY LLC. ("LICENSOR") TO USE THE SAN FRANCISCO 49ERS MARKS IN CONNECTION WITH ITS OPERATION. NEITHER LICENSOR NOR ANY RELATED ENTITY IS CONTRACTUALLY OR OTHERWISE LIABLE TO YOU AS 49ERS FIT IS SOLELY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THIS FACILITY AND FITNESS CENTER OPERATION.

Membership Barcode: _____

Agreement Date: _____

Membership Type: _____

Start Date: _____

Membership Rep: _____

Obligation/Exp Date: _____

Member Name: _____

Your Membership Begins: _____

Address: _____

Your Membership Expires: _____

City, State, Zip: _____

Initiation Fee: _____

Birth Date: _____

First Month Dues: _____

Gender: _____

Last Month Dues: _____

Referred By: _____

Prepaid Amount: _____

Email: _____

Sales Tax: _____

Business Phone: _____

Total Due Today: _____

Cell Phone: _____

Date Paid: _____

Home Phone: _____

Emergency Contact: _____

Emergency Contact #: _____

Prepaid Membership**Prepaid Initial Annual Renewal Amount (Optional Renewal)**

Please check one box only.

 This Agreement is not renewable.

This Agreement is renewable. If renewable, you may choose to renew this membership for twelve (12) additional months by paying a renewal fee of \$_____ prior to the expiration of the then current term of this Agreement. This amount is for the first twelve (12) month renewal term immediately following expiration of the Paid Period. This amount does not include applicable taxes which shall be applied at the time of renewal. Member must be in good standing at the expiration of the Paid Period to be eligible for this renewal.

1st Pay. Schedule : DUES

Number of Payments	Monthly Payment Amount	Payment Due Date
	\$	

2nd Pay. Schedule :

Number of Payments	Monthly Payment Amount	Payment Due Date
	\$	

3rd Pay. Schedule :

Number of Payments	Monthly Payment Amount	Payment Due Date
	\$	

Member Signature _____

Annual Fee: An annual fee of \$_____ will be billed on _____ and on the same date each year thereafter.

Member Initials _____

The period covered by First Month's Dues, as well as any additional days of membership for which payment is received by 49ers Fit, is the "Paid Period" for the Dues Membership. The "Paid Period" is the term of this Membership Agreement.



PLEASE ATTACH A VOID OR BLANK CHECK REQUEST FOR PREAUTHORIZED PAYMENT. I/We hereby request the privilege of paying to ABC Financial Services, LLC ("The Company"), Sherwood, AR 72124, and further authorize the Company to draw items (checks, electronic fund transfers, charge card) for the purpose of paying said payments, including any late fees or service fees, on the account of _____

REQUIRED FOR ALL EFT AND CREDIT CARD DRAFT ACCOUNTS

Payment Method: _____

BANK NAME _____ ROUTING NUMBER (9 DIGITS) _____ ACCOUNT NUMBER _____ ACCOUNT TYPE _____ ACCOUNT OWNER _____

CARD TYPE _____ ACCOUNT NUMBER _____ EXPIRATION M/Y _____ CARD OWNER _____

Subject to the following conditions:

- The items outlined in Your Membership Agreement (monthly dues, annual fees, enrollment fees, etc.) shall be drawn on or about the date or dates set forth in the Membership Agreement. By signing below, You authorize the Company to draft via EFT said amounts from the account or card identified herein. The transactions on Your bank, debit, or credit card statement shall constitute receipts for payment on Your account.
- One-Time Transfers: When You provide a check as payment, You authorize the Company either to use information from Your check to make a one-time EFT from Your account or to process the payment as a check transaction. When the Company uses information from Your check to make an electronic fund transfer, funds may be withdrawn from Your account as soon as today's date.
- If the regular payments set forth in the Membership Agreement should vary in amount, You are entitled to notice at least 10 days before each payment of when it will be made and how much it will be. However, by executing this preauthorization, You choose to instead get this notice only when the payment would differ by more than \$50.00 from the most recent payment You have made.
- By executing this Agreement, You acknowledge Your awareness that certain disclosures required by the Electronic Funds Transfer Act and its regulations are available for Your review at the Company's website: www.abcfinancial.com under terms and conditions.
- The privilege of making EFT payments under this arrangement may be revoked by the Company if any item is not paid upon presentation.
- If this preauthorization payment arrangement is revoked for any reason, this does not release You from Your obligation under Your Membership Agreement.
- If any payment is not paid upon presentation to Your bank or credit/debit card company for any reason, a service fee will be assessed and drafted. A late fee will be assessed and drafted should any monthly payment become past due.

- By executing this Agreement, You authorize Club and Club's agents, including its third party payment processing companies ("Club's Agents"), to store the account or card information provided by You on or in relation to this Agreement and/or Your Club Membership Agreement ("Club Agreement"), as well as any other account or card information provided by You through any means to Club or Club's Agents (including information provided in person, online or over the phone) for purposes of making any payment in relation to this Agreement and/or Your Club Agreement (hereinafter, "Payment Information"). Club and/or Club's Agents will use the stored Payment Information to process payment of all dues, fees, taxes, purchases and incidental charges that are due or will become due, including all items on the Payment Schedule, fees identified in Your Club Agreement, membership-related obligations, retail transactions, personal training purchases, group exercise purchases, childcare fees, or other purchases. Club and/or Club's Agents may also use the stored Payment Information to process payments owed in relation to all subsequent Agreements entered between You and Club. The fixed dates or intervals on which transactions will be processed and the transaction amounts (including all associated fees, taxes, and charges) and/or a description of how they will be calculated are more specifically set forth in the Payment Schedule and other terms of Your Club Agreement. If Your Club Agreement will automatically renew at the end of the term defined therein, the stored Payment Information will be used to process payments owed in relation to the renewal term. This consent to store Payment Information will not expire unless it is expressly revoked. The general cancellation and refund policies provided in Your Club Agreement will apply to this consent. If any changes are made to the terms of this consent, an e-mail notifying You of such changes will be sent to the e-mail address provided by You on the face of Your Club Agreement or, if an e-mail is not provided, notice will be sent to the mailing address provided on Your Club Agreement.
- This preauthorization payment arrangement shall apply to the following Applicant(s): _____

Date _____

Account Holder Signature _____

BUYER'S RIGHT TO CANCEL- You, the buyer, may choose to cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail, email, or deliver a signed and dated notice, that states that you, the buyer, are cancelling this agreement, or words of similar effect. The notice shall be sent to via first-class mail, via email from an email address on file with the health studio, or delivered in person at 1600 Saratoga Avenue Store #46 San Jose, CA 95129 or to info@49erfit.com. Date this contract was signed: _____.

I understand I am signing a _____ month contract.

The term of this agreement shall not exceed 36 months.

CANCELLATION POLICIES

1. **Consumer's Right of Rescission:**

- A. If this contract for health studio services requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 20 days after the contract is executed.
 - B. If this contract for health studio services requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 30 days after the contract is executed.
 - C. If a contract for health studio services requires payment of two thousand five hundred one dollars (\$2,501) or more, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 45 days after the contract is executed.
2. If, by reason of death or disability, the person agreeing to receive services is unable to receive all services for which he has contracted, he and his estate shall be relieved from the obligation of making payment for services other than those received prior to death or the onset of disability, and that if he has prepaid any sum for services, so much of such sum as is allocable to services he has not taken shall be promptly refunded to him or his representative. For the purposes of this section, 'disability' means a condition which precludes the buyer from physically using the facilities and the condition is verified by a physician.
 3. If the person agreeing to receive health studio services moves further than 25 miles from the health studio and is unable to transfer the contract to a comparable facility, such person shall be relieved from the obligation of making payment for services other than those received prior to the move, and if such person has prepaid any sum for health studio services, so much of such sum as is allocable to services he or she has not taken shall be promptly refunded. Such person may be charged a predetermined fee not exceeding one hundred dollars (\$100), or, if more than half the life of the contract has expired, such person may be charged a predetermined fee not exceeding fifty dollars (\$50).
 4. Your membership is non-transferable and cannot be cancelled without the notice required in this agreement unless one of the above exceptions applies.

ADDITIONAL MEMBERSHIP AGREEMENT TERMS

(1) MEMBERSHIP PAYMENT AND TERMS

(1.1) Description of Services. This is a club membership agreement and not an optional services agreement such as personal training which is a separate agreement. This club membership agreement entitles Member to access the facility designated above during business hours. This club membership agreement provides Member access to cardiovascular, strength and conditioning machines. It also provides Member access to certain exercise classes if available at the facility and included in your selected membership type.

(1.2) Rules, Regulations and Schedules. Member agrees to abide by the rules, regulations and schedules of 49ers Fit, which may be posted at the facility or issued orally, and which may be amended from time to time at 49ers Fit's sole discretion. Upon joining, Member and/or Buyer must pay the appropriate initial charges. At the sole discretion of 49ers Fit, a Member's membership may be revoked or suspended at any time if in the judgment of 49ers Fit (a) Member consistently fails to observe the Rules and Regulations, (b) has otherwise behaved in a manner contrary to the best interests of 49ers Fit or any of 49ers Fit's Members, (c) Member has instituted any type of legal action against 49ers Fit, including but not limited to civil actions, arbitrations and/or mediations, and/or (d) 49ers Fit has instituted any type of legal action including but not limited to civil actions, arbitrations and/or mediations against Member. Nothing in this Agreement shall be construed as waiving the Member's right to make any statement regarding 49ers Fit, its employees or its good or services.

(1.3) Member's Obligation. Member and/or Buyer shall not be relieved of the obligation to make payments agreed to and no deduction from any payment shall be made because of Member's failure to use the 49ers Fit facilities. Dues are for the period stated in the Agreement. Member and/or Buyer may not transfer this Membership to another Person. If a family membership drops to two members, dues will be reduced to reflect the dues charge to the couple rate in effect at the time of the drop. If a family or couple membership drops to one member, the dues for that member will change to the single membership rate in effect at the time of the drop. If the member responsible for paying the family or couple dues ("Primary Member") fails to timely pay the dues, another member must make arrangements to pay the dues, or 49ers Fit has the right to terminate all the memberships. If the Primary Member cancels a membership, the membership will effectively be cancelled unless 49ers Fit has received a notice of change of status of the Primary Member. 49ers Fit will accept notice of a change of status (in writing) only if it's signed by the member whose status has changed and the new Primary Member.

(1.4) Initiation Fee. There may be a one-time initiation fee which Member and/or Buyer shall be required to pay upon execution of the Agreement and acceptance of these Terms and Conditions with 49ers Fit or as otherwise agreed to by 49ers Fit. This fee will change from time to time at 49ers Fit's discretion. This fee is nonrefundable. Resignation from 49ers Fit shall not terminate the obligation to pay the initiation fee in full. There will be no further initiation fee as long as the Membership has not terminated or expired.

(1.5) Monthly Dues, Annual Fee, and other Fees. Member or Buyer shall pay, in advance, monthly Membership dues as set forth in the Agreement. Forty Niners M6 Fit may adjust the monthly Membership dues and the Annual Fee upon giving Members thirty (30) days prior notice, posted in a Forty Niners M6 Fit facility, sent by email to Member's email address on file with Forty Niners M6 Fit, and/or sent by mail to Member or Buyer. Except as otherwise set forth herein, Forty Niners M6 Fit may adjust any fees at any time at its sole discretion. Forty Niners M6 Fit has the right to add to the monthly Membership dues any tax imposed by the government.

(1.6) Prepaid Membership Renewal Amount. If the Member has a prepaid Membership, then 49ers Fit will not increase the Initial Annual Renewal amount on page 1 of this Agreement, but may increase all subsequent annual renewal amounts. 49ers Fit will send notice to the Member or Buyer of the new annual renewal amount each year thereafter prior to the end of the then current term. 49ers Fit has the right to add to the Prepaid Membership any tax imposed by the government.

(1.7) Payment Authorization and Disclosures. PLEASE READ CAREFULLY. Monthly dues, Annual Fee, and incidental charges are payable by Electronic Funds Transfer ("EFT") from the Member or Buyer's checking account, savings account, credit card account, or debit card account designated in this Agreement. Members or Buyers must authorize payments to be made through a third party administered electronic funds transfer system. Members or Buyers maintain full control and privacy over their accounts at all times, and the transfer of the funds affects only those fees that have prior authorization of the Member or Buyer. The transfer will take place automatically once every month unless Forty Niners M6 Fit notifies the Member or Buyer otherwise by giving Members thirty (30) days prior notice, posted in a Forty Niners M6 Fit facility, sent by email to Member's email address on file with Forty Niners M6 Fit, and/or sent by mail to Member or Buyer.

References to "I" in this Section 1.7 refer to the Member or Buyer. The authorization in this Section 1.7 applies to the account designated on the front page of this Agreement or an updated account provided by the Member or Buyer (the "Designated Account"). The Dues, Fees and Charges reflected in the Monthly Amount Due on the front of this agreement will be transferred from or charged to the Designated Account on the 5th or 20th day of each month unless Forty Niners M6 Fit notifies the Member or Buyer otherwise by giving Members thirty (30) days prior notice, posted in a Forty Niners M6 Fit facility, sent by email to Member's email address on file with Forty Niners M6 Fit, and/or sent by mail to Member or Buyer. These are "Scheduled Payments."

(a) Authorization for Payments by Credit Card. I authorize Forty Niners M6 Fit to charge the Designated Account for the purpose of paying the Total Due Now and for making Scheduled Payments (if applicable). I also authorize Forty Niners M6 Fit to charge the Designated Account for all other Dues, Fees and Charges listed on the front of this Agreement as and when such Dues, Fees and Charges are due.

(b) Authorization for Payments by EFT. I authorize Forty Niners M6 Fit to charge the Designated Account for the purpose of paying the Total Due Now and for making Scheduled Payments (if applicable). I also authorize Forty Niners M6 Fit to charge the Designated Account for all other Dues, Fees and Charges listed on the front of this Agreement as and when such Dues, Fees and Charges are due. I also understand that I may stop any Scheduled Payment by notifying the financial institution which holds the Designated Account at least three (3) business days before the scheduled date of the transfer.

(c) How to Revoke this Authorization. This authorization will remain in full force and effect during the term of this Membership Agreement, unless I revoke it. I understand that I may revoke this authorization at any time by notifying Forty Niners M6 Fit at 1600 Saratoga Ave. Store #46, San Jose, CA 95129. Note: The revocation will only be effective as to transfers that are scheduled to occur at least ten (10) business days after Forty Niners M6 Fit receives the notice. If the revocation cannot be processed prior to the scheduled date of the charge or transfer, Forty Niners M6 Fit shall refund the debited amount. Revocation of this authorization, or my stopping any payment, does not relieve me of my obligation to pay amounts due to Forty Niners M6 Fit under this Membership Agreement, and I will remain liable for such amounts until they are paid in full.

(d) Compliance with Designated Account Agreement. I certify that I am authorized under the terms of my agreement (the "Designated Account Agreement") with the financial institution that holds the Designated Account (the "Financial Institution") to use the Designated Account for payments to Forty Niners M6 Fit. I further certify that all statements made by me to Forty Niners M6 Fit in connection with the Designated Account are true and correct to the best of my knowledge. I understand that any failure by the Financial Institution to pay any charge in full does not release me from any liability for any obligations owing to Forty Niners M6 Fit. I agree to comply with the terms of the Designated Account Agreement at all times while this authorization is in effect.

(1.8) Dishonored Check or Credit Card. If any check, account debit, or credit card charge payable to 49ers Fit by Member and/or Buyer is returned, rejected or dishonored, 49ers Fit management shall, in each instance, to the extent permitted by law, (a) assess a charge equal to any charge imposed by the financial institution, any costs and expenses incurred in connection with collection, and (b) charge such other fees as may be permitted by applicable law.

(1.9) Limited Memberships. Memberships may be limited so that Members may have reasonable access to 49ers Fit facilities. It is to be expected that there may be occasional delays, especially during peak hours, in using the fitness equipment; or that Members may not always be able to attend preferred exercise classes. The availability of classes and equipment are subject to demand and are available on a first-come first-served basis.

(1.10) Unpaid Balances. All balances owed by Member and/or Buyer that are in arrears are subject to monthly service charges. These fees may be adjusted from time to time. Any unpaid balances for membership fees, goods or services may result in suspension of membership privileges. Members and/or Buyer shall be obligated to pay any cost incurred by 49ers Fit for collection. The renewal fee for paid in full annual memberships must be paid by 12:00 midnight on the anniversary date of the annual membership or Member's privilege to use 49ers Fit facilities may be suspended and a new initiation fee will be required. 49ers Fit reserves the right to charge past due balances, plus applicable charges, to the Membership account under the EFT authorization.

(1.11) Membership Term. The period covered by the first month's dues, as well as any additional days of Membership for which payment is received by 49ers Fit, or any prepaid period are the "Paid Period" for the Dues Membership. The "Paid Period" is the term of this Membership Agreement.

(1.12) Cancellation of Membership.

(1.12.1) Member has five (5) business days to cancel the Agreement from date of purchase. To cancel this Agreement, mail, email, or deliver a signed and dated notice that states that you, the buyer, are cancelling this Agreement, or words of similar effect. The notice shall be sent via first-class mail, via email from an email address on file with the health studio, or delivered in person to : 49ers Fit at: 1600 Saratoga Ave. Store #46 San Jose, CA 95129 It is recommended that (you) Member send (your) Member's cancellation notice by registered or certified mail or statutory overnight delivery, return receipt requested, in order to prove that (you) Member did cancel. If Member hand delivers Member's cancellation to a 49ers Fit facility, Member should be sure to receive a signed statement from a 49ers Fit employee acknowledging Members' cancellation.

(1.12.2) Death or Disability. If, by reason of death or disability, you are unable to receive all of the services for which you contracted under this Agreement, you and your estate shall be relieved from the obligation of making payment for services other than those received prior to your death or the onset of your disability. If you prepaid any sum for services, so much of the sum as allocable to services not taken prior to your death or disability shall be promptly refunded to you or your representative. For purposes of this provision "disability" means a condition which precludes you from physically using the facilities. Your disability must be confirmed in writing by a physician.

(1.12.3) Close of Facility and/or Move. Under this contract, no further payments shall be due to anyone, including any purchaser of any note associated with or contained in this contract, in the event the facility at which the Agreement in entered into permanently ceases operation and fails to offer an alternate location, substantially similar, within twenty-five (25) miles.

(1.12.4) New Facility. You may cancel the contract and receive a pro rata refund if the health club fails to provide the specific facilities advertised or offered in writing by the time indicated. Health studio services shall provide that performance of the agreed upon services will begin within six months after the date the contract is entered into.

(1.12.5) Opening of Club. If the facility first identified above has not opened as of the date of this Agreement, Member and/or Buyer may cancel this Membership Agreement at any time prior to midnight of the fifth (5TH) business day after the date such facility opens for business, excluding Sundays and holidays. To cancel this Membership Agreement, mail, email, or deliver a signed and dated notice stating that Member and/or Buyer, as applicable, is cancelling this Membership Agreement, or words of similar effect. Such notice shall be sent via first-class mail, via email from an email address on file with the health studio, or delivered in person to 49ers Fit at 1600 Saratoga Ave. Store #46 San Jose, CA 95129. Member or Buyer, as applicable, is entitled to receive a refund within ten (10) days of receipt of the notice of cancellation, less payment for any services rendered prior to such cancellation.

(1.12.6) Relocation. Member may cancel this Agreement if they can provide proof that Member is permanently moving more than twenty-five (25) miles away from any 49ers Fit facility. Proof such as a utility bill, lease agreement, driver's license, military orders or any other document that could validate such proof will be accepted. Should you move further than 25 miles from the club and be unable to transfer this membership to a comparable facility, you shall be relieved from your obligation of making payment for services other than those received prior to your move, and if you prepaid any sum for services other than those received prior to your move, so much of such sum as is allocable to services you have not received shall be promptly refunded. Notwithstanding the above you will be charged an administrative fee of \$25 if you cancel this Agreement.

(1.12.7) Material Changes in Services. Member may cancel this Agreement if the health club materially changes the services promised as part of the initial contract.

(1.12.8) Written Requests. Memberships cannot be cancelled by phone or verbal conversation. Cancellation requests will only be honored if sent in writing or filled out at a 49ers Fit facility. All paperwork is deemed a request until a 49ers Fit employee can validate paperwork and approve such cancellation. A cancellation that has been denied will be sent in writing back to Member along with reason of denial or instructions for acceptance and refund.

(1.12.9) Cancellation of Monthly Membership.

(1.12.9.1) If you have a monthly payment membership, you may terminate this Membership Agreement by providing at least ten (10) days' notice prior to the next bill date to Forty Niners M6 Fit. Such notice shall be sent via first-class mail, via email from an email address on file with the health studio, or delivered in person to: Forty Niners M6 Fit at 1600 Saratoga Ave Store #46 San Jose, CA 95129. The termination will be effective at the end of the Paid Period, and you may continue to use the facility during the Paid Period. Forty Niners M6 Fit shall not charge your credit card or initiate any EFT payments which are scheduled to occur more than ten (10) days after the termination notice is received by Forty Niners M6 Fit. If the termination cannot be processed prior to the scheduled date of the charge or transfer, Forty Niners M6 Fit shall refund the debited amount. No further charges will be incurred if last month's dues were paid at the execution of this Agreement.

(1.12.10) Cancellation of Prepaid Membership

(1.12.10.1) If you have a Prepaid Membership, you may not terminate it during the Paid Period (or receive a refund), unless specifically stated above. To cancel a Prepaid Membership for any of the reasons stated above mail, email, or deliver a signed and dated notice stating that Member and/or Buyer, as applicable, is cancelling this Membership Agreement, or words of similar effect. Such notice shall be sent via first-class mail, via email from an email address on file with the health studio, or delivered in person to 49ers Fit at 1600 Saratoga Ave. Store #46 San Jose, CA 95129. Member or Buyer, as applicable, is entitled to receive a refund within ten (10) days of receipt of the notice of cancellation, less payment for any services rendered prior to such cancellation. If you do not renew your Prepaid Membership by the renewal date, your Prepaid Membership automatically expires.

(1.13) Refunds. Refunds, if applicable, shall be made within ten (10) days of receipt of notice of cancellation.

(1.14) Change of Membership Type. Any membership can be changed by buying a new membership at the standard price and cancelling the previous membership.

(1.15) Freeze Policy. (a) Medical. If Member is medically unable to use the 49ers Fit facilities, Member may request a freeze of his or her membership in monthly increments for a minimum of 1 month and a maximum of 6 months per year. Members must provide a doctor's note at the time of requesting a freeze. 49ers Fit reserves the right to verify the note with the doctor and Member agrees to waive any Doctor/Patient privilege and execute any release required by such doctor solely with regards to the medical reasons stated in the doctor's note for the medical freeze. (b) Non- medical, if a Member desires to freeze his or her account for a non-medical reason, Member should consult with Member's 49ers Fit facility. All requests must be received at least fourteen (14) days prior to Member's next billing date period. Retroactive freezes will not be accepted. Certain fees may apply to any freeze of a Member's membership.

(1.16) Buyer's Indemnity. Buyer assumes full responsibility for any person who becomes a Member under the Agreement and these Terms and Conditions and shall indemnify 49ers Fit, its affiliates, agents and employees against any and all liability incurred by such Member during his or her use of any and all 49ers Fit facilities.

(2) MEMBER RISK. Member and Member's guests shall hold 49ers Fit harmless from any illness, loss, theft, cost, claim, injury, damage or liability ("Damages") incurred as a result of the use of a 49ers Fit facility and any other membership activities, except such Damages which result from the willful misconduct or gross negligence of 49ers Fit, its affiliates, agents or employees.

(2.1) Member's Health Warranty. Member and Buyer represent that Member is in good health and has no disability, impairment, injury, disease, known or obvious symptoms of or risks factors for a highly communicable disease (i.e. COVID-19), or ailment, preventing him or her from engaging in active or passive exercise or which could cause increased risk of injury or adverse health consequences as a result of exercise. Member assumes full responsibility for his or her use of a Forty Niners M6 Fit facility and shall indemnify Forty Niners M6 Fit, its affiliates, agents and employees, against any and all Damages arising out of Member's use of the facilities except as otherwise set forth in these Terms and Conditions. Physical examinations by Member's physician are recommended for members before commencing any exercise program, and especially for Members who are at risk, including but not limited to elderly or pregnant Members, or Members unaccustomed to physical exertion, or who have physical limitations, respiratory ailments or impairments, a history of high blood pressure, heart problems or other chronic illnesses, or members who have a history of heart disease.

(2.2) Warning. Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damaged liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. These health hazards are in addition to the civil and criminal penalties for unauthorized sale, use, or exchange of anabolic steroids.

(2.3) Medical Disclaimer. Member has been informed and acknowledges that Forty Niners M6 Fit has made no claims as to medical results that can or may be obtained through use of any Forty Niners M6 Fit facility and cannot and does not warrant that such facility is free from communicable diseases. Forty Niners M6 Fit has neither suggested nor will it suggest any medical treatment to Members. Only licensed medical professionals are qualified to give medical advice. Member represents that there is no medical or physical conditions or known symptoms or risk factors that would preclude the use of Forty Niners M6 Fit's facilities and each Member further represents that he or she has not been instructed by any physician not to use Forty Niners M6 Fit's facility or any similar facility.

(2.4) Orientation. Member is strongly encouraged to take advantage of the complimentary initial orientation and ongoing support available to ensure the proper safe and use of all equipment.

(2.5) Waiver of Liability. Any strenuous athletic or physical activity involves certain risks. Use of public facilities may increase the risk of transmission of communicable diseases. Member and Member's guests assume the risk of any and all accidents or injuries of any kind that may be sustained by, or in connection with, use of the facilities and release, hold Forty Niners M6 Fit harmless, discharge and absolve Forty Niners M6 Fit, its agents and employees from any and all Damages or responsibility except if such accident or injury is the result of willful misconduct or gross negligence of Forty Niners M6 Fit, its affiliates, agents or employees.

(2.6) Loss of Property. Members and Member's guests are urged not to bring valuables onto the premises of a 49ers Fit facility. 49ers Fit shall not be liable for the disappearance, loss, theft, or damage to personal property, including money, negotiable securities or jewelry of Member or Member's guests.

(3) GENERAL PROVISIONS

(3.1) Members and Guests Rules. Members and Member's guests shall abide by 49ers Fit's rules and regulations and any amendments and/or modifications thereto which may be made from time to time by 49ers Fit at 49ers Fit's sole discretion.

(3.2) Proof of Membership. Member shall receive one membership card (included with Member's membership) (the "Membership Card") from 49ers Fit and must present it to the reception desk personnel each time Member enters a 49ers Fit facility. Lost membership cards will be replaced for a fee of five dollars (\$5), which may be adjusted from time to time. The card must be replaced if lost. Member is required to notify 49ers Fit immediately of the loss of his or her Membership Card, and the Membership Card must be replaced by Member. Membership privileges are limited to the person in whose name the membership is issued. Improper use of the membership will result in confiscation of the Membership Card and can result in immediate cancellation of Member's membership. A Member wishing to use 49ers Fit facilities without his or her Membership Card will be required to provide proof of identity. (e.g. valid driver's license, etc.)

(3.3) Day Lockers. Lockers may be provided solely for the benefit and convenience of 49ers Fit members. 49ers Fit will remove any articles left in a locker overnight. Member must provide his or her own lock and should not leave any valuables in his or her locker.

(3.4) Pets and Bicycles. Pets (not including service animals) and bicycles are not permitted in or around a 49ers Fit facility.

(3.5) Dress Code. Proper athletic attire is required. 49ers Fit reserves the right to make the final determination in its sole discretion with regard to appropriate attire.

(3.6) Protective Eyewear. Racquet sports players are required to wear eye protection on the courts.

(3.7) Independent Contractors. From time to time, 49ers Fit may make the services of independent contractors available to Member or Member's guests. 49ers Fit does not warrant or guarantee the quality of these services and does not guarantee that these services will remain available to Member or Member's guests for a period of time.

(3.8) Member Guests. Member's guests are permitted in 49ers Fit, but only pursuant to such rules, regulations, fees, and schedules for guests as then may be in effect. 49ers Fit reserves the right to limit the number of times any one guest can use a 49ers Fit facility and reserves the right to exclude any Member's guests whose use of the facility, in the sole opinion of 49ers Fit would be detrimental to 49ers Fit or any of its members. All Members' guests must register at the front desk with valid identification.

(3.9) Spotting. 49ers Fit recommends to all Members and to all Member's guests, spotting by another member or 49ers Fit trainer when using any free weights.

(3.10) Change in Membership Information. Member must promptly notify 49ers Fit in writing of any changes in his or her billing information, address or telephone number. Notwithstanding anything else contained herein, all communications from 49ers Fit to Member shall be presumed to have been received by Member within five (5) business days after mailing to Member's address on file with 49ers Fit at the time of the mailing.

(3.11) Change in Facilities and Operating Hours. As a result of repair, maintenance or special occasions, or due to health and safety reasons, Forty Niners M6 Fit may be required to restrict the use or temporarily close one or more Forty Niners M6 Fit facilities or halt or modify a Forty Niners M6 Fit activity from time to time. There will be no reduction, suspension, abatement, or apportionment of membership fees or other charges during such time when the above-mentioned occurs. Forty Niners M6 Fit's hours of operation may be modified from time to time without prior notice to Member. Forty Niners M6 Fit reserves the right to change the facility from time to time, to eliminate some facilities and services, to add others, to add, modify and/or eliminate programs, activities, classes or equipment at Forty Niners M6 Fit's sole discretion.

(3.12) Special Events. Forty Niners M6 Fit may from time to time reserve the use of its facilities for special events, competitions and private functions.

(3.13) Closing of Facility. It is anticipated that a part of the facility or the entire facility will be temporarily unavailable from time to time while repairs or renovations take place or for health and safety reasons. Management will make every effort to minimize any disruption to members during these periods, and if possible, to schedule any work during off- hours or summer months. Forty Niners M6 Fit may be closed for holidays, and may be closed periodically for renovations. Forty Niners M6 Fit may also offer members the use of other conveniently located Forty Niners M6 Fit facilities during the period of unavailability.

(3.14) Interruption of Services. In case of a long term interruption of service (e.g. fire, state local or national governmental order or health and safety restrictions which prohibit or limit the use of some or all of the services, or other circumstances that restrict use of some or all services or make provision of services unadvisable), Forty Niners M6 Fit reserves the right to: (a) freeze memberships and add the lost time once service resumes; (b) transfer the member to another similar Forty Niners M6 Fit facility within a five-mile radius where available; or (c) provide goods and services of equal or greater value as solely determined by Forty Niners M6 Fit to make up the lost services. In the event that an act of God (hurricane, earthquake, national emergency, etc.) causes more than a temporary closing of a Forty Niners M6 Fit facility, Member's obligations under the Agreement and these Terms and Conditions will be suspended until such time as use of the facility can be resumed. Obligation for contractual dues will otherwise not be affected unless a Forty Niners M6 Fit facility cannot reopen within one year of the interruption of service.

(3.15) Non-Discrimination. Forty Niners M6 Fit represents that it will not discriminate against any person because of sex, race, creed, age, color, national origin, sexual orientation, or ancestry in considering applications for membership. The minimum age for Forty Niners M6 Fit membership is eighteen (18), unless the child is part of a family membership, or parental permission and Forty Niners M6 Fit's consent is given and approved by Forty Niners M6 Fit at Forty Niners M6 Fit's sole discretion.

(3.16) Children's Use. All children under eighteen (18) years of age must be accompanied by such child's parent or guardian at all times within a Forty Niners M6 Fit facility unless: (i) they are in a supervised activity, or (ii) they are seventeen (17) years of age and over, with parental permission and approval by Forty Niners M6 Fit (at Forty Niners M6 Fit's sole discretion) received by the facility. Some children's programs require fees to be paid in advance. Forty Niners M6 Fit reserves the right to discontinue use by any child who is unsupervised, or whose behavior is offensive or disruptive.

(3.17) Group Exercise Policies. Each class is limited to a set number of participants and social distancing policies that may apply. Members should not enter a class late without the instructor's consent. No one will be admitted ten (10) minutes after the scheduled class time. If Member is just starting a group fitness program or has an injury, prenatal conditions or problem that may prevent full participation, please discuss this with the group fitness instructor at least five (5) minutes before class. Proper clothing and footwear must be worn in all group fitness classes. Forty Niners M6 Fit reserves the right to change the group fitness schedule at any time including the addition or deletion of classes, as well as changes in instructors, class times and length of classes. Forty Niners M6 Fit reserves the right to change group fitness policies when necessary and require advanced reservations for heavily attended classes. Reservations may be released within five (5) minutes prior to the scheduled class time and Member may enter on a walk in basis provided there are openings in the class. Member's attending a class shall, in addition to the Terms and Conditions, follow any rules promulgated by such class' instructors.

(3.18) Personal Training. In addition to these Terms and Conditions, any and all personal training provided by 49ers Fit shall be pursuant to any additional terms and conditions set forth in a separate personal training contract entered into by a Member and 49ers Fit. Use of personal trainers not approved by 49ers Fit is prohibited at all 49ers Fit facilities. Member may not train other members or guests, conduct business activity or solicit any business at any 49ers Fit facility. Any violation of this policy may result in legal action as well as forfeiture of any remuneration received by a Member or guest for such services.

(3.19) Dispute Resolution and Arbitration. At the election of either the Member or Buyer ("you") or 49ers Fit, including 49ers Fit's employees, parents, subsidiaries, affiliates, agents, successors and assigns (collectively for this section, "The Company" or "We"), any claim, dispute or controversy, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory ("Claim") by either you or The Company against the other, arising from or relating in any way to (i) this Agreement, (ii) your membership or use of The Company facilities, or (iii) (except as specifically provided in this Agreement) the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration under the Consumer Arbitration Rules of the American Arbitration Association ("AAA") in effect on the date a demand for arbitration is made. A copy of the AAA rules, including directions on how to initiate a claim, may be obtained from the AAA website at www.adr.org or by contacting The Company. The above notwithstanding, any Claim that relates to allegations of Member's or Buyer's personal injury shall be outside the scope of this arbitration provision as shall any Claim required to be filed in a court by state or federal law.

Claims made and remedies sought as part of a class action, private attorney general or other representative action (hereafter all included in the term "class action") are subject to arbitration on an individual basis, not on a class or representative basis. The arbitration will not determine class claims and will not be consolidated with any other arbitration proceedings. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to address that party's individual Claims.

ARBITRATION IS BINDING AND NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE A CLAIM WHICH IS SUBJECT TO ARBITRATION IN A COURT. YOU AND WE WILL NOT HAVE THE RIGHTS IN ARBITRATION THAT ARE PROVIDED IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JUDGE OR JURY. IN ADDITION, THE RIGHT TO DISCOVERY AND THE RIGHT TO APPEAL ARE ALSO LIMITED OR ELIMINATED BY ARBITRATION.

OPT-OUT. YOU MAY OPT-OUT OF ARBITRATION BY NOTIFYING THE COMPANY IN WRITING THAT YOU DO NOT WANT TO RESOLVE DISPUTES WITH THE COMPANY BY ARBITRATION. SUCH NOTICE SHOULD BE DELIVERED BY MAIL TO 49ERS FIT MEMBER SERVICES AT 1600 SARATOGA AVE STORE #46, SAN JOSE, CA 95129 WITHIN 90 DAYS OF THE DATE YOU SIGNED THIS AGREEMENT.

Alternatively, you and The Company may pursue a Claim within the jurisdiction of any appropriate Small Claims Court in the state of California, or the equivalent court in the state of California (each a "Small Claims Court"), provided that the action remains in that court, is made on behalf of or against you only and is not made part of a class action, private attorney general action or other representative or collective action. You and The Company also agree not to seek to enforce this arbitration provision, or otherwise commence arbitration based on the same claims in any action brought before the Small Claims Court.

All Claims, whether brought in arbitration or in court, will be barred unless the proceeding is commenced within 2 years before the date the complaining party knew or should have known of the facts giving rise to the Claim.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This Agreement and your membership will be governed by the laws of the state of California and, as applicable, federal law.

Judgment upon any arbitration award may be entered in any court having jurisdiction. In the event that there is a dispute about whether limiting arbitration of the parties' dispute to non-class proceedings is enforceable under applicable law, then that issue shall be resolved by litigation in a court rather than by the arbitrator. If it is determined that resolution of a Claim shall proceed on a class basis, it shall proceed in a court of competent jurisdiction rather than in arbitration. Unless the parties expressly agree otherwise, any in-person arbitration proceeding will take place within the boundaries of the federal judicial district court where the facility is located.

The Company will pay, or reimburse you for, all arbitration fees or costs to the extent required by law or the rules of the AAA. Whether or not required by law or such rules, if you prevail at arbitration on any Claim against The Company, The Company will reimburse you for any fees paid to the AAA or the arbitrator in connection with the arbitration proceedings. If you are required to advance any fees or costs to the AAA, but you ask The Company to do so in your stead, The Company will consider and respond to your request.

This arbitration agreement applies to all Claims now in existence or that may arise in the future. This arbitration agreement survives the termination of this Agreement and the completion of your membership, including your payment in full, and your filing of bankruptcy.

(3.20) Entire Agreement. The Agreement, these Terms and Conditions, and all rules and regulations of 49ers Fit, as revised from time to time, constitute the entire and exclusive agreement between 49ers Fit and Member, and supersedes all prior promises, representations, understandings and/or agreements relating to this membership purchase. Notwithstanding the foregoing, if Member/Buyer enrolled as a Member through a corporate program, then the terms of the agreement of the corporate program shall control in the event of any inconsistencies with this Agreement. The Agreement may be modified only by an instrument in writing; However, 49ers Fit or any assignee of the Agreement is authorized to correct patent errors in the Agreement (and in other related documents) and Member and/or Buyer may verbally authorize payment of the outstanding balance of the membership fee by the automatic payment plan. In addition, 49ers Fit or any assignee of the Agreement may modify the Agreement at any time as necessary to comply with changes in applicable law. 49ers Fit may void the Agreement if it is not completed by a 49ers Fit employee in accordance with the current pricing and payment programs, or if there has been any misrepresentation by Member. No written alterations or amendments to the Agreement and/or these Terms and Conditions shall be valid and **49ers Fit employees are not authorized to make any changes written and/or verbal, additions or modifications to this Agreement.** If you have any questions regarding this Agreement or these Terms and Conditions please contact 49ers Fit Member Services at 1600 Saratoga Ave. Store #46, San Jose, CA 95129.

(3.21) Governing Law. This Membership Agreement shall be interpreted under the laws of the State of California. Any litigation under this Membership Agreement shall be resolved in the courts of the State of California or a federal court sitting in California.

(3.22) Privacy Policy. Members may review Forty Niners M6 Fit's privacy policy at <https://www.49erfit.com/privacy-policy>.

Default and Late Payments. Should you default on any payment obligation as called for in this agreement, the club will have the right to declare the entire remaining balance due and payable and you agree to pay allowable interest, and all costs of collection, including but not limited to collection agency fees, court costs, and attorney fees. A default occurs when any payment due under this agreement is more than ten days late. A service fee will be charged immediately for any check, draft, credit card, or order returned for insufficient funds or any other reason. Should any monthly payment become more than ten days past due, you will be charged a late fee. If the Member is paying monthly dues by electronic funds transfer (EFT), the club's billing company, ABC Financial Services, LLC, reserves the right to draft via EFT all amounts owed by the member including any and all late fees and service fees. Subject to appropriate State and Federal Law. **NOTE: Members paying monthly dues by EFT are subject to \$10.00 per month increase of monthly dues if EFT payment is stopped or changed. This will not affect any other provisions of this agreement.**

Consent to Contact. Member affirms, acknowledges and attests that Member's mailing address, telephone number, cellular telephone number and e-mail address provided on the face of this agreement are accurate and were provided by Member voluntarily. Subject to applicable law, Member agrees that 49ers Fit and ABC Financial Services, LLC, including its agents and affiliates, may contact Member at any mailing address, telephone number, cellular telephone number or e-mail address set forth on the face of this agreement, or subsequently provided by Member to 49ers Fit and/or ABC Financial Services, LLC.

Collection of Your Personal Information. ABC collects information about you that is provided in conjunction with your purchase of services from one of ABC's health club clients, including information provided on your health club membership agreement(s) and personal training agreement(s). Information about you is typically obtained from the agreement you sign with the club from whom you purchase services. Your personal information may also be collected from you when you provide information directly to ABC in any manner, or when you update account or contact information at the club or online. The information ABC collects about you may include your name, postal address, email address, phone numbers, bank account or credit card information, audio recordings of phone calls with you or made in relation to your account, photographs voluntarily taken at the club, and e-mail correspondence with you or in relation to your account. ABC collects such personal information about you for the purpose of processing and collecting payments owed by you to the club, to contact you in relation to your health club account, and to otherwise provide third party payment processing and administrative services to your club. ABC uses information it collects to communicate with health club members, collect payments owed to its health club clients, and maintain up to date account information for members. ABC's Privacy Policy is available at <https://www.abcfinancial.com/privacy-policy/>.

E-SIGN Consent. Certain laws and regulations may require 49ers Fit and/or ABC Financial Services, LLC, to provide Member with written notices and disclosures on paper. With Member's consent, this information may be provided to Member electronically. Member's consent hereto shall apply to each and every disclosure, notice, agreement, statement, term and condition, and any other information (collectively, the "Documents") that 49ers Fit and/or ABC Financial Services, LLC, may provide Member. Member's consent to receive the Documents electronically shall continue until expressly withdrawn by Member. Notwithstanding, Member may request a paper copy of all electronic Documents by contacting 49ers Fit and/or ABC Financial Services, LLC, and requesting a paper copy. Member may withdraw its consent at any time by notifying the customer service department of 49ers Fit and/or ABC Financial Services, LLC. Upon withdrawing consent, Member shall no longer receive the Documents electronically. Member acknowledges that withdrawing consent may result in additional fees for Member's receipt of the Documents. Member agrees to maintain a valid email address with 49ers Fit and/or ABC Financial Services, LLC, and to promptly notify 49ers Fit and/or ABC Financial Services, LLC, of any changes to Member's email address. If Member has provided another type of electronic contact information, such as a phone number, then Member may change that contact information by contacting the customer service department of 49ers Fit and/or ABC Financial Services, LLC. To access, view and receive the Documents electronically, Member agrees and acknowledges that it must have: (i) a computer, mobile device, tablet or smartphone, (ii) a version of internet browser software that is up-to-date and supported by Member's electronic device, (iii) an internet connection, (iv) software that is capable of accurately reading and displaying electronic PDF files, (v) a computer or electronic device operating system capable of supporting the items above, and (vi) a printer or electronic storage device if Member desires to print any electronic Documents. Member acknowledges that it may also need a certain brand or device that can support applications intended for Member's electronic mobile devices, tablets and smartphones. In the event the required software or hardware is modified in such a way that would create a material risk to Member to access the Documents electronically, then 49ers Fit and/or ABC Financial Services, LLC, will notify Member following such material modification. **By accepting the terms of this Agreement, Member does hereby agree to the terms and conditions of this paragraph and consents to the same. Member does also confirm that Member has the software and hardware described above, that Member has the means necessary to access, view and receive the Documents electronically, and that Member has provided a valid and active email address to 49ers Fit and/or ABC Financial Services, LLC.**

Member Initials _____

NOTICE: ANY HOLDER OF THIS AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Tax: Notwithstanding any other provisions of this Agreement, you understand and agree that the amount of your monthly membership dues is based on current sales tax rates and to the extent such rates should increase during your membership, the club has the right to increase your monthly membership dues by the amount of such increase. If you have requested the privilege of paying your monthly dues by pre-authorized electronic funds transfer, the monthly amount so transferred will be adjusted to reflect any increase in the sales tax rate.

FOR ALL BILLING INQUIRIES PLEASE CONTACT ABC Financial Services, LLC. AT: 1-888-827-9262 or abcfinancial.com