

TERMS AND CONDITIONS

- Assumption of Risk:** Gym Wizards CC (Hereafter Gym Wizards duly represented by Tania Williams) or user of Fitnastix (the “Purchaser”) expressly understands and agrees that the use of Fitnastix (the “Product”) presents risk to any user of the Product, both serious and minor. There is an express risk that the Purchaser may be hurt by using the Product. If you are unwilling to assume all the risks associated with the Product, do not accept the terms contained herein. **The Purchaser further acknowledges that the purchase and use of the Product does not in any way certify the Purchaser as an instructor in the techniques contained herein.** The purchaser hereby represents that they are duly certified and have complied with all local legislation permitting the Purchaser expressly and specifically assumes all risk of injury or harm in the use of the Product and assumes all responsibility for any, losses, costs and/or damages for any and all injuries suffered by the Purchaser or to the property of the Purchaser by any means and howsoever caused. The Purchaser further acknowledges that there may be other hazards and risks that may occur without warning.
- Waiver and Release:** The Purchaser and his or her heirs, executors, administrators, successors and assigns hereby waive, release, remise and forever discharge Tania Williams, FITNASTIX or Gym Wizards and their respective assigns, predecessors, affiliates, insurers, officers, directors, servants, agents and employees (collectively the “Released Parties”) of and from all actions, suits, debts, duties, accounts, covenants, contracts, claims and demands whatsoever. **Hold Harmless:** The Purchaser further agrees that if, despite this Disclaimer the Purchaser or anyone on the Purchaser’s behalf, makes a claim against any of the Released Parties, the Purchaser **WILL INDEMNIFY, SAVE AND HOLD HARMLESS EACH OF THE RELEASED PARTIES** from any litigation expenses, legal fees, loss, liability, damage or cost which any of the Released Parties may incur as the result of such claim. The Purchaser acknowledges this Disclaimer has been read in full and that the Purchaser fully and completely understands the terms and conditions contained herein. The Purchaser further understands that the Purchaser is giving up and is waiving substantial rights by accepting the terms of this Disclaimer. The Purchaser freely accepts this Disclaimer without any influence, inducement or assurance

of any nature and understands that this Disclaimer is intended it to be a complete and unconditional release of all liability of the Released Parties to the greatest extent allowed by local legislation

3. Insurance: Purchaser shall maintain:

- a) General comprehensive insurance coverage including product liability insurance for personal injury and property damage necessary to respond to any claim of liability arising in any way out of this Agreement or any of the transactions or activities contemplated by this Agreement or the actions of Purchaser; and
- b) Multimedia or professional indemnity and technology errors & omissions liability insurance (including, without limitation, coverage for copyright/trademark infringement, rights of privacy, libel, slander, personal and advertising injury). Limits of coverage shall not be less than \$500 000 per occurrence and \$2 000 000 in the aggregate.

4. Trademark Use:

4.1 Purchaser shall not, and shall not permit any third party to:

- a) Use the Licensed Marks and/or Licensed Materials, or offered Services, (or any part thereof) with any accompanying description, explanation or material which is in any way detrimental or disparaging to or, its affiliates, or the sport of fitness; or
- b) Use the Licensed Marks and/or Licensed Materials in any advertisement promoting the sale of goods or services of any person or organization or in any manner which implies an endorsement of the goods or services of any person or organization, unless expressly permitted by Gym Wizards.

4.2 Purchaser recognizes the value of the Licensed Marks and/or Licensed Materials, including any IP rights therewith. All use of the Licensed Marks and/or Licensed Materials and the goodwill associated therewith shall inure to the benefit of Gym Wizards and this Agreement shall not restrict Gym Wizards rights to use the Licensed Marks and/or Licensed Materials in any way.

4.3 Purchaser shall not file any application to register any copyrights or Licensed Marks and/or Licensed Materials, in whole or in part, or any mark that is confusingly similar to any of the

Licensed Marks and/or Licensed Materials, at any time. Purchaser shall not, during the Term or thereafter, challenge Gym Wizards' title to or rights in the Licensed Marks and/or Licensed Materials.

5. **Confidentiality:** During the term of this Agreement and thereafter, Purchaser shall keep in confidence all Confidential Information. Purchaser shall not use or disclose the Confidential Information, except to the extent required to perform its obligations under this Agreement. "Confidential Information" shall mean any trade secrets, confidential or proprietary information, materials (including the Licensed Materials) disclosed by Gym Wizards, to the Purchaser.

6. **Insolvency:** Notwithstanding any other provision of this Agreement, either party may immediately terminate this Agreement by providing written notice of termination if the other party:
 - a) Voluntarily or involuntarily files a petition in bankruptcy;
 - b) Is adjudicated bankrupt or insolvent;
 - c) Has a receiver appointed for its business or property; or
 - d) Has a trustee in bankruptcy or insolvency appointed under the laws as applicable.

7. **Duties of Termination:** Upon termination or expiration of this Agreement, all of the rights of the Purchaser under this Agreement shall terminate and immediately revert to Gym Wizards. Purchaser shall:
 - a) Remit payment of all amounts otherwise owed hereunder within 30 days of the date of termination or expiration;
 - b) Immediately terminate any and all use of and refrain from further use of the Licensed Marks and/or Licensed Materials except as specified in this Agreement; and
 - c) Immediately cease the performance of the Services.

The Instructor Licence is valid only for a year, failure to renew will result in termination.

8. **Obligations Surviving Termination:** Notwithstanding the termination or expiration of this Agreement, Purchaser's obligations under this agreement and Purchaser's obligation to pay the Royalties and other sums payable under this Agreement which are vested, accrued or accruable at or after the termination of this Agreement or exercise of such rights by the Purchaser shall survive termination of the Agreement.

9. Miscellaneous:

- 9.1 **Construction:** For purposes of resolving any dispute or ambiguity under this Agreement, the parties agree that this Agreement shall be interpreted and treated as though it were drafted without application of any rules of construction construing the Agreement either in favor of or against any party. In the event of a conflict between these Terms and Conditions and the Term Sheet, the Term Sheet shall control. The parties acknowledge that they have had the opportunity to review this Agreement with their respective legal counsel.
- 9.2 **Entire Agreement:** This Agreement contains the entire agreement of the parties to this Agreement with respect to the subject matter of this Agreement and shall be deemed to supersede all prior agreements, whether written or oral, and the terms and provisions of any such prior agreement shall be deemed to have been merged into this Agreement.
- 9.3 **Express Rights:** The parties are granted rights under this Agreement only to the extent expressly set forth in this Agreement. No rights are granted which are the property of any other persons or entities who or which are not a party to this Agreement other than as expressly set forth in this Agreement. Except as expressly set forth in this Agreement, this Agreement confers no rights of any kind to any third party.
- 9.4 **Force Majeure:** Neither party shall be liable to the other party for delay in the performance of its obligations under this Agreement to the extent any delay or nonperformance is due to causes beyond its control, including, but not limited to, acts of God, war, civil strife, acts of terrorism, rain, fire, strikes, inclement or severe weather (including lightning strikes), power outages or inability to obtain necessary labor or materials.
- 9.5 **Governing Law and Choice of Forum:** In the event of any dispute under this Agreement, the laws of South Africa shall govern the validity, performance, enforcement, interpretation and any other aspect of this Agreement, without regard to principles of conflicts of laws thereunder.

9.6 **Notices:** All notices, requests, or other communications required to be given under this Agreement or which the parties may desire to give under this Agreement shall be in writing and:

- a) Hand delivered personally;
- b) Sent by email; if the transmitting party receives confirmation of successful transmission; or
- c) Addressed and sent by certified or registered mail, postage prepaid and return receipt requested to the parties as set forth in the Term Sheet.

If either party wishes to alter the recipient/address to which communications to it are sent, it may do so by providing the new information, in writing to the other party. All communications addressed in accordance with this Agreement shall be effective:

- i) When received, if delivered by certified or registered mail;
- ii) On the date on which delivery is made, if personally delivered; and
- iii) On the date of transmission, if by email transmission.

Gym Wizards physical address: _____

SA Telephone Number: _____

mail address: _____

9.7 **Relationship of the Parties:** The Relationship of Gym Wizards and the Purchaser created by this Agreement shall be that of independent contractors. Nothing contained in this Agreement shall be construed or interpreted as creating a relationship of joint ventures, partners, franchise/franchisee, principal and agent, or employer and employee under any circumstances.

9.8 **Remedies:** All rights and remedies provided in this Agreement shall be cumulative and shall not be exclusive of one another or of any remedies available at law or in equity. Under no circumstances shall Gym Wizards or its affiliates be liable for consequential, special or incidental damages arising out of this Agreement.

9.9 **Successors:** This Agreement shall inure to the benefit of, may be enforced by, and shall be binding upon Gym Wizards and the Purchaser, and their permitted successors and assigns.

**THE RELEASED PARTIES AS THE PRODUCERS AND DISTRIBUTORS OF THE PRODUCT
DISCLAIM ANY LIABILITY OR LOSS ASSOCIATED IN ANY WAY WITH THE PRODUCT.**