

# **EOS FITNESS ADDENDUM TO MEMBERSHIP AGREEMENT FOR THE PROVISION OF ADDITIONAL SERVICES ("Addendum")**

This is an Addendum to Member's existing Retail Installment Contract ("Membership Agreement"), and provides for additional services provided to Member for an additional fee as set forth below. Member hereby purchases the following additional services from Fitness Alliance, LLC (dba EōS Fitness) ("Club") as set forth below.

## **SEE SECTION ENTITLED "AUTOMATIC RENEWAL" BELOW FOR IMPORTANT INFORMATION ABOUT RENEWAL**

**NOTE – THIS ADDENDUM CONTAINS A RELEASE OF LIABILITY ABOVE THE SIGNATURE LINE TO WHICH YOU WILL BE BOUND. DO NOT SIGN THIS ADDENDUM WITHOUT READING THE RELEASE.**

**ANY CHANGES ON MONTHLY BILLABLE ACCOUNTS MUST BE DONE IN WRITING WITH 30 DAYS NOTICE**

**PAYMENT AUTHORIZATION AGREEMENT FOR AUTOMATIC ELECTRONIC TRANSFERS: I, authorize and agree to automatic payments for all amounts, timing and from the account indicated in the Section above entitled Dues Payment Plan (or such other account as I may designate in the future using the "Changing Payment Account" procedure described below).**

### **AUTOMATIC RENEWAL**

Payments will be made on the Payment Due Date set forth above and continuing throughout the term set forth above. Upon expiration of the term this Addendum will automatically renew under existing terms unless you provide a 30 day written notice of cancellation. Therefore, if you do not wish this Addendum to automatically renew you must provide written notice of cancellation at least 30 days prior to the expiration of the term. Please also take note that if a 30 day written notice of cancellation is given such that 30 days from the date notice is provided falls prior to a Payment Due Date, dues will have been paid through the following Payment Due Date. For example, if the Payment Due Date is the 1st of the month, and notice of termination is given on June 15, termination will become effective on July 15, and you will be billed for services through August 1. Thus, under this example if membership payment is made through electronic fund transfer, such transfer will be made for services through August. Please further note that cancellation of any Automatic Payment Option must be provided in writing to the facility where services are received 30 days before the cancellation is to take effect.

**NOTE: EXTENSION OF TERM OF MEMBERSHIP AGREEMENT AND RENEWAL.** Please note that in the event that your existing membership agreement is month to month or has a term that expires prior to the expiration of the term of this Addendum or any automatic renewals, by signing the Addendum you agree to extend the term of your existing membership agreement (under the same terms as exist at the time of the signing of this Addendum) to the date of the expiration of the term of this Addendum.

**The following terms and conditions apply to the Club's optional services provided for in this Addendum.**

1. **Incorporation of Terms of Membership Agreement:** This Addendum to Membership Agreement incorporates all terms and conditions contained in Member's Membership Agreement including, but not limited

to, the release, assumption of risk and indemnity provision. To the extent that there is any conflict between the language of the release, assumption of risk and indemnity provision below and the release, assumption of risk and indemnity provision of your Membership Agreement, the broadest enforceable language shall apply.

2. **Sign-in:** Where applicable Member must sign-in for each session or service. A Member will be deemed “signed-in” for all sessions cancelled without twenty-four (24) hours’ notification.
3. **Refunds:** No refunds will be issued except if by reason of death, disability or relocation of Member’s residence more than 25 miles from any facility operated by EOS Fitness (Member must provide proof of relocation), as more fully set forth in Member’s Membership Agreement. If Member relocates as provided above, a cancellation of \$100 will be charged during the first half of the term of the Addendum, or \$50 during the second half of the term of the Addendum.
4. **Late Arrivals:** Members arriving late will receive the remaining scheduled session time, unless arrangements have been made with the Member’s personal trainer, nutrition coach, or instructor.
5. **Provision of Services:** Where applicable the services subject to this Addendum are offered on a first come, first served basis, and the Club does not guarantee that Member will be able to participate in each or any activity Members chooses should that activity fill up prior to Member’s arrival. Club makes reasonable efforts to ensure Member gets the personal trainer/nutrition coach/instructor of their choice however, management reserves the right to substitute another personal trainer/nutrition coach/instructor, as Club deems necessary in Club’s sole discretion.
6. **Revisions to Activities:** Club makes all reasonable efforts to ensure that the activities contemplated by this Addendum will be available to Members at the same times and locations available at the time of the signing of this Addendum, however the Club reserves the right to increase, decrease or change the frequency and schedule of the activities as Club deems appropriate in Club’s sole discretion.
7. **No Assignment of Sessions:** Sessions purchased pursuant to this Agreement may not be assigned or transferred to any other party or Member.

By signing this Agreement, I acknowledge that I have read and understood the above warnings and terms and will use the protective eyewear provided by the facility at all times.

**WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY.** Upon signing this Agreement and forever thereafter, You (Buyer, each Member, on behalf of each child and all guests, cumulatively “You”) agree that if You engage in any physical exercise or activity or use any Club facility or are present on the premises or at any other EOS brand facility, You do so at your own risk and assume the risk of any and all injury and/or damage whether engaging in any physical exercise or activity or not. Your assumption of risk includes, without limitation, your use of any exercise equipment (mechanical or otherwise), the locker room, sidewalk, parking lot, stairs, pool, whirlpool, sauna, steam room, tanning, racquet courts, basketball court, lobby area, kid’s club, or any equipment in or about the Club facility. You agree to assume the risk of participation in any activity, class, program, instruction, EOS brand, or Club-sponsored event. You agree that You are voluntarily participating in the aforementioned activities and using any EOS brand or Club facilities and

premises and assume all risk of injury, illness, damage, or loss to You or your property that might result, including, without limitation, any loss or theft of any personal property. You agree on behalf of yourself (and all your personal representatives, heirs, executors, administrators, agents, and assigns) to forever release and discharge every EOS brand entity, Club and our affiliates (including, but not limited to Eos Fitness, and any of their related companies and their employees, agents, owners, officers, directors, representatives, successors, and assigns) from any and all claims or causes of action (known or unknown) arising out of the negligence, whether active or passive, of any EOS brand facility, the Club or any of its affiliates, owners, officers, directors, employees, agents, representatives, successors, and assigns. This waiver and release of liability includes, without limitation, injuries which may occur as a result of (a) your use of any exercise equipment or facilities which may malfunction or break, (b) Club's improper maintenance of any exercise equipment or facilities, (c) Club's negligent instruction or supervision, including personal training, and (d) You slipping and falling while at any EOS brand facility, the Club facility or any portion of those premises for any reason, including Club's negligent inspection or maintenance of its facility. By executing this Agreement, You hereby agree to indemnify and hold harmless every EOS brand facility and Club from any loss, liability, damage, or cost any EOS brand facility or Club may incur due to your presence at any EOS brand facility or the Club facility. Should any action or arbitration be instituted by any of the parties hereto in any court of law or equity, or any arbitrator, pertaining to the enforcement or breach of any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any judgment or decree rendered therein, all court costs and reasonable attorneys' fees and expenses. You further expressly agree that the foregoing release, waiver, and indemnity agreement is intended to be as broad and inclusive as permitted by the law in the State in which this Agreement is signed and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. This Agreement is not intended as an attempt to release gross negligence or intentional torts. You acknowledge that EOS brand facilities and the Club are designed to and do offer a service to its members encompassing the entire fitness spectrum. EOS brand facilities and the Club are not in the business of selling weight lifting equipment, exercise equipment, or other such products to the public, and the use of such items is incidental to the service provided by the EOS brand facility and Club. You acknowledge and agree that EOS brand entities and the Club do not place such items into the stream of commerce. By being on any EOS brand or Club premises or attending or participating in any EOS entity or Club activity, whether on or off the premises, you consent to being filmed, audio recorded and/or video recorded and to the use of any photographs, pictures, film, audio or videotape taken of you or provided by you for publicity, marketing, advertising, promotion, television, or any other use, and expressly waive any right of privacy, compensation, copyright or other ownership right connected to same. This provision shall survive termination of the Agreement. **YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ**

**THIS WAIVER AND RELEASE AND FULLY UNDERSTAND THAT IT IS A RELEASE OF LIABILITY, AND EXPRESS ASSUMPTION OF RISK AND INDEMNITY AGREEMENT. YOU ARE AWARE AND AGREE THAT BY EXECUTING THIS WAIVER AND RELEASE, YOU ARE GIVING UP A SUBSTANTIAL RIGHT, YOUR RIGHT TO BRING A LEGAL ACTION OR ASSERT A CLAIM AGAINST ANY EOS BRAND FACILITY OR THE CLUB FOR THEIR NEGLIGENCE, OR FOR ANY DEFECTIVE PRODUCT ON THEIR PREMISES. YOU HAVE READ AND VOLUNTARILY SIGNED THE WAIVER AND RELEASE OR AUTHORIZED ANOTHER TO SIGN IT ON YOUR BEHALF, AND FURTHER AGREE THAT NO ORAL REPRESENTATIONS, STATEMENTS, OR INDUCEMENT APART FROM THE FOREGOING WRITTEN AGREEMENT HAVE BEEN MADE. YOU AGREE, FOR YOURSELF AND YOUR SUCCESSORS, HEIRS AND ASSIGNS, THAT THE ABOVE REPRESENTATIONS ARE CONTRACTUALLY BINDING, AND ARE NOT MERE RECITALS, AND THAT SHOULD YOU OR YOUR SUCCESSORS ASSERT ANY CLAIM IN CONTRAVENTION OF THIS AGREEMENT, THE ASSERTING PARTY SHALL BE LIABLE FOR THE EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES) INCURRED BY THE OTHER PARTY OR PARTIES IN DEFENDING AGAINST ANY SUCH ACTION. YOU ACKNOWLEDGE THAT THIS RELEASE WAS NEGOTIATED BY AND BETWEEN THE PARTIES TO THIS AGREEMENT, AND THAT BY YOUR INITIALS ABOVE, AND/OR BY USING THE CLUB, YOU AGREE TO TAKE MEMBER'S MEMBERSHIP OR USE THE FACILITY SUBJECT TO THIS RELEASE, AND THAT OTHERWISE MEMBER'S MEMBERSHIP FEES WOULD BE SUBSTANTIALLY HIGHER. IF YOU WISH TO PURCHASE A MEMBERSHIP WITHOUT THIS RELEASE PLEASE VISIT [nowaiver.eosfitness.com](http://nowaiver.eosfitness.com).**

Member accepts and agrees to the foregoing release and express assumption of risk on Member's own behalf as well as on behalf of Member's spouse, children, or anyone else entering Club's premises, using Club facilities, or participating in any Club program or function in relation to or arising out of Member's membership.