

## ACKTIVE FITNESS RENTAL AGREEMENT

This Equipment Rental Agreement ("Agreement") is effective as of the date of last signature ("Effective Date"), and is made between Acktive Fitness Rental, a Fitness Equipment Rental Service, organized under the laws of Massachusetts, USA, with offices at 9 Evergreen Way, Nantucket, MA, 02554 ("Acktive"), and \_\_\_\_\_ ("Renter"). Acktive and Renter are hereinafter collectively referred to as "Parties".

Acktive rents to Renter and Renter rents from Acktive, subject to the terms and conditions of this Agreement the following Equipment:

\_\_\_\_\_  
\_\_\_\_\_  
("Equipment").

1. Term. This Agreement shall commence on the Effective Date and remain in full force and effect until Equipment is picked up and returned to the Acktive. Renter shall have Equipment ready for pick-up on \_\_\_\_\_, \_\_\_\_\_, unless terminated earlier consistent with the terms herein.

2. Payment. Renter shall pay the following:

\$ \_\_\_\_\_ per minute/hour/day/week/month for \_\_\_\_\_  
\$ \_\_\_\_\_ per minute/hour/day/week/month for \_\_\_\_\_  
\$ \_\_\_\_\_ per minute/hour/day/week/month for \_\_\_\_\_  
\$ \_\_\_\_\_ per minute/hour/day/week/month for \_\_\_\_\_

and authorize Acktive to charge the debit card or credit card on file with Acktive an amount equal to all payments and fees due under this Agreement. Full payment is due at the time of reservation.

Renter shall also pay other charges in accordance with this Agreement due upon return of Equipment, to the fullest extent allowed by law, including but not limited to:

- a) charges for optional services, if any;
- b) applicable taxes;
- c) for loss or damage or repair to, diminution of value of the Equipment caused by the Renter or while in the renter's possession, reasonable wear and tear excepted;
- d) lost rentals or late return, including not making equipment ready for pick-up, of or damage to the Equipment;
- e) unless due to the fault of Acktive, all fines, penalties, court costs and other expenses relating to the Equipment assessed against Acktive or the Equipment during the rental Term;
- f) all expenses Acktive incurs due to Renter's late, or failure to return the Equipment including costs in locating and recovering the Equipment;
- g) all costs incurred to collect unpaid monies due;
- h) Attorneys Fees: If Acktive brings an action to enforce the terms of this agreement or declares rights under this Agreement, Acktive shall be entitled to reasonable attorney's fees, court costs and expenses to be paid by the Renter as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment. The Attorneys fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully

reimburse all attorney's fees, expenses and court costs reasonably incurred by Acktive in good faith; and

i) twenty-five dollars (\$25.00) or the maximum amount allowed by law, whichever is greater, for making payment with insufficient funds.

3. Payment. In addition to the fees listed in Section 2, Renter shall pay in full at the time this Agreement is signed.

4. Equipment Drop-Off and Install, and Pick-up. Equipment will be delivered and installed to the address, at time and date stated upon reservation. Equipment will be picked up for return on the time and date stated upon reservation. Renter must be present.

5. Location of Equipment. During the Term, Equipment shall be located at \_\_\_\_\_, unless expressly agreed otherwise in writing by Acktive.

6. Renter Inspection. Renter acknowledges that he/she has inspected all rental equipment for cleanliness, damages, and ensured that the equipment is safe and in good working order. The Customer also acknowledges that all damages and/or discrepancies are listed on the Rental Equipment Damage Forms.

7. Care of Equipment. Equipment can only be used in a careful and proper manner and shall not be used in any way that is inconsistent with Acktive's instructions or Equipment manuals.

8. Repair and Alterations. The costs for all repairs made during the Term, for damages caused by the Renter or while in the Renter's possession shall be paid by Renter, including but not limited to labor, material, parts, shipping and other items. Equipment shall not be serviced or repaired and parts and accessories shall not be replaced without Acktive's prior written consent, which can be withheld at Acktive's sole discretion

9. Restrictions of Use. The Renter acknowledges that there are hazards associated with using fitness equipment, including, but not limited to physical or permanent bodily injury, death, or damage to property accidental or otherwise. Renter shall not:

- a) use the equipment in a manner that it was not intended for
- b) permit the Equipment to be used by any person who is not authorized to use such Equipment, including but not limited to minors and anyone unfit to exercise;
- c) allow minors or animals to be near or have access to the equipment unsupervised;
- d) operate or use the Equipment or permit it to be operated or used in violation of law;
- e) operate or use the Equipment or permit it to be operated or used to commit a violation of law; and/or
- f) operate, use, maintain or store the Equipment in a manner likely to cause damage to the Equipment or cause damage to property or injury to persons

10. Loss or Damage. Renter shall alert Acktive to any damage to the Equipment. Renter shall be responsible for any loss or damage to Equipment and loss of use, diminution of the Equipment's value caused by damage to it or repair to it and missing equipment.

11. Condition of Equipment. The Condition of Equipment Checklist ("Checklist") attached is hereby incorporated by reference. Renter acknowledges that Renter has examined the Equipment and that it is safe and in good working order except as otherwise specified in the Checklist. **ACTIVE MAKES NO WARRANTY, EXPRESS OR IMPLIED, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, AND**

EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

12. Return of Equipment. Renter shall have Equipment ready for pick-up on the date specified in this agreement in the same condition as Renter received it, except for normal wear and tear. If Equipment is not ready for pick-up on said date, Renter is responsible to pay Acktive for any extra days at 2x the daily rate or for lost rentals, whichever is greater. Furthermore, Renter shall pay full replacement costs, including labor and shipping for any lost, stolen or damaged Equipment property. Acktive reserves the right to take any action necessary to regain possession of the Equipment.

13. Indemnification. Renter covenants and agrees that Renter shall indemnify Acktive and save Acktive harmless from any and all costs, claims, expenses, including attorney's fees, and damages to property or injury to persons, or both, arising out of or caused by any act or omission, negligent or otherwise, of Renter or Renter' agents, servants or invitees, and also from any such claims, demands or liability however arising or caused, resulting from the use of the Equipment by Renter unless such costs, claims, expenses and damages are caused by the gross negligence of Acktive. In the event formal action is instituted against Acktive on any claim so arising, Renter shall defend the same at Renter's own expense (including attorney's fees and all expenses of litigation) and pay any judgment rendered therein against Acktive, or, at the election of Acktive, Acktive may defend the same. If Renter refuse or neglects to so defend any and all such actions upon the request of Acktive, or if Acktive elects to defend such action, Renter shall pay all costs, expenses and reasonable attorneys fees Acktive incurs in the defense of such action.

14. Ownership. Acktive shall at all times retain ownership and title to the Equipment. Renter shall immediately notify Acktive in the event Equipment is levied, has a lien attached or is threatened with seizure. Renter shall indemnify and hold Acktive harmless against all loss and damages caused by such action. Equipment shall be deemed at all times to be personal property, whether or not it may be attached to any other property.

15. Waiver. No failure of Acktive to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches. Acktive's acceptance of payment with knowledge of a default by Renter shall not constitute a waiver of any breach.

16. Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

17. Entire Agreement. This Agreement represents the entire understanding relating to the subject matter hereof and prevails over any prior or contemporaneous, conflicting or additional communications. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

18. Assignment. Renter may not, without the prior written consent of Acktive, which consent may be withheld at Acktive's sole discretion, transfer or assign this Agreement or any part thereof. Any attempt to do so shall be a material default of this Agreement and shall be void.

19. Headings. Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

20. Electronic Copy or Transmission and Multiple Counterparts. An electronic copy or transmission of this Lease Agreement shall be deemed and have the full effect of an original. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all constituting together one and the same instrument, this being one of the counterparts.

INSERT ACKTIVE NAME

INSERT RENTER NAME

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date