

**DISPUTE RESOLUTION RULES
AND PROCEDURES**

**FITNESS INTERNATIONAL, LLC
DISPUTE RESOLUTION RULES AND PROCEDURES**

Rule 1. PURPOSE

Fitness International, LLC (the “Company”) has established a dispute resolution procedure designed to provide employees and the Company with a fair, private, exclusive, expeditious, final and binding means for resolving all legal disputes between the Company and the employee without the need for litigation in federal, state or local courts. These Dispute Resolution Rules and Procedures govern the arbitration of claims in accordance the Fitness International, LLC Dispute Resolution Agreement.

Rule 2. CLAIMS SUBJECT TO ARBITRATION

Except as otherwise limited herein, any and all legal disputes, controversies or claims whether or not arising out of, or relating to, an employee’s application or candidacy for employment, employment or cessation of employment with the Company, shall be settled exclusively by final and binding arbitration before a neutral, third-party Arbitrator selected in accordance with these Dispute Resolution Rules and Procedures. Arbitration shall apply to any and all such disputes, controversies or claims whether asserted against the Company and/or against any employee, officer, alleged agent, director, manager or affiliate company.

All employee or Company claims that would otherwise be subject to resolution in a civil court proceeding shall instead be arbitrated. Merely by way of example, these claims include, but are not limited to, claims arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), 42 U.S.C. § 1981, as amended, including the amendments of the Civil Rights Act of 1991, the Uniformed Services Employment and Reemployment Rights Act, the Employee Polygraph Protection Act, the Employee Retirement Income Security Act (ERISA), state discrimination statutes, state statutes and/or common law regulating wage and hour law, trade secrets, employment termination, the law of contract or the law of tort; including, but not limited to, claims for malicious prosecution, wrongful discharge, wrongful arrest/wrongful imprisonment, intentional/negligent infliction of emotional distress or defamation.

The only exceptions to the mutual agreement to arbitrate are: (1) employee may still exercise his or her rights under the National Labor Relations Act and file charges with the National Labor Relations Board; (2) claims for workers’ compensation and unemployment compensation benefits; (3) claims by either party for injunctive relief pending arbitration are permitted as provided by applicable state law; (4) employee may still file administrative charges with the

Equal Employment Opportunity Commission or similar federal, state or local agency, but upon receipt of a right-to-sue letter or similar administrative determination, employee shall arbitrate any such claim against the Company; (5) claims that would not be actionable in a court of law, and (6) claims that could be brought in small claims court (or its equivalent) in the state in which the employee is employed.

Rule 3. DISMISSAL/STAY OF COURT PROCEEDINGS

By agreeing to the dispute resolution program, both parties agree to resolve through arbitration all claims described in or contemplated by Rule 2. If either party files a lawsuit in court to resolve claims subject to arbitration, the parties agree that the Court shall dismiss the lawsuit and require the parties to arbitrate the dispute.

If either party files a lawsuit in court involving claims which are, and other claims which are not, subject to arbitration, the parties agree that the court shall stay litigation of the non-arbitrable claims and require that arbitration take place with respect to those claims subject to arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* The parties further agree that the Arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual, legal or remedial issues, shall be entitled to full force and effect in any later court lawsuit on any non-arbitrable claims.

Rule 4. COMMENCEMENT OF ARBITRATION

a. PROCEDURE

Either party shall commence an arbitration by sending a completed "Fitness International, LLC Arbitration Request Form" (employee form found at the end of these Dispute Resolution Rules and Procedures), with the required filing fee as set forth in Rule 13 a. 2 to:

Arbitration Coordinator
Fitness International, LLC
3161 Michelson Drive, Suite 600
Irvine, CA 92612

If the arbitration is commenced by the Company against a current or former employee, a completed Arbitration Request Form shall also be sent to the current or former employee's address of record.

Any Arbitration Request Form which is not accompanied by the required filing fee will not be accepted and will be returned to the employee.

b. TIME LIMITS

i. FILING OF REQUEST FOR ARBITRATION

The Arbitration Request Form shall be submitted not later than (i) one year after the date on which the employee or the Company knew, or through reasonable diligence should have known, of the facts giving rise to the claim(s) or (ii) the expiration of the appropriate limitations period, whichever occurs later. The failure of either party to initiate an arbitration within the appropriate time limit means that party forever gives up the right to have that dispute considered by an arbitrator or the courts.

ii. RESPONSE

Within 30 calendar days of receipt of an Arbitration Request Form and the accompanying filing fee, the defending party shall send their response to the claimant via first-class mail, postage prepaid, or hand delivery.

The response, which also shall be mailed to the claimant's attorney if one has been retained and identified to the other party, shall describe the defending party's position in response to the allegations in the Arbitration Request Form.

c. NOTICE/OTHER FILINGS

All other communications, notices or filings, including discovery requests and responses, shall be in writing, and shall be deemed to have been given if (i) delivered by hand to a person of suitable age and discretion; or (ii) mailed first class mail, postage prepaid, as follows:

If to the Company: (i) Arbitration Coordinator
Fitness International, LLC
3161 Michelson Drive, Suite 600
Irvine, CA 92612; or
(ii) to the Company's attorney as designated in writing by the Company.

If to the Employee: (i) to the employee's address of record; or
(ii) to the employee's attorney or other representative as designated in the Arbitration Request Form or later designated in writing by the employee.

Rule 5. SELECTION OF AN ARBITRATOR

The Company and the employee shall participate equally in the selection of an Arbitrator to decide the arbitration. Within 21 calendar days after the Arbitration

Coordinator receives the Arbitration Request Form and the accompanying filing fee, the American Arbitration Association (“AAA”) shall be asked to provide a panel of seven (7) neutral arbitrators with experience deciding employment disputes, unless the parties agree to another Arbitrator and/ or Arbitration Service. The Company and the employee then shall have the opportunity to review the background of the arbitrators by examining the materials provided by the Arbitration Service. Within fourteen (14) calendar days after the panel composition is received, the employee and the Company each shall inform the Arbitration Service which arbitrators the parties find unacceptable for deciding the dispute. The Arbitration Service then will appoint an Arbitrator from among the named individuals the parties found mutually acceptable. If none of the neutral arbitrators are mutually acceptable, the Arbitration Service will provide a panel of seven (7) additional neutral arbitrators with experience deciding employment disputes and the above-described process will begin again.

Rule 6. TIME AND PLACE OF ARBITRATION

The arbitration hearing shall be held at the offices of, or a location selected by, the Arbitration Service in the city nearest the location of the employee’s last employment with the Company, unless the parties agree otherwise. If the Arbitration Service does not select an arbitration location within fifty (50) miles of the city of the employee’s last employment with the Company, the employee and the Company shall designate a mutually amenable location at which to hold the arbitration.

The parties and the Arbitrator shall make every effort to see that the arbitration is completed, and an award rendered, as soon as possible. There shall be no extensions of time or delays of an arbitration hearing except in cases where both parties consent to the extension or delay, or where the Arbitrator finds such a delay or extension necessary to resolve a discovery dispute or other matter relevant to the arbitration.

Rule 7. REPRESENTATION

Both the employee and the Company shall have the right to be represented by counsel, themselves, or a non-lawyer. An employee’s claims shall be brought only in her/her individual capacity and may not be brought as a plaintiff or class member in any purported class or representative proceeding.

Rule 8. DISCOVERY

a. INITIAL DISCLOSURE

Within fourteen (14) calendar days following the appointment of an Arbitrator, the parties shall provide each other with copies of all documents (except for privileged documents that are protected from disclosure because they involve attorney-client or other legally privileged or protected communications and materials) upon which they rely in support of their claims or defenses.

Throughout the discovery phase, each party shall provide the opposing party with any and all documents relevant to any claim or defense. Upon request, the employee shall be entitled to a copy of all documents (except privileged documents as described above) in the employee's "PERSONNEL RECORDS FILE."

b. OTHER DISCOVERY

i. INTERROGATORIES/DOCUMENT REQUESTS

Each party may propound one set of 30 interrogatories (including subparts) to the opposing party. Interrogatories are written questions asked by one party to the other, who must answer under oath. Such interrogatories may include a request for all documents upon which the responding party relies in support of its answers to the interrogatories. Answers to interrogatories must be served within 30 calendar days of receipt of the interrogatories.

ii. DEPOSITIONS

A deposition is a statement under oath that is given by one party in response to specific questions from the other party, and usually is recorded or transcribed by a court reporter. Each party shall be entitled to take the deposition of up to five (5) individuals of the party's choosing. The party taking the deposition shall be responsible for all costs associated therewith, such as the cost of a court reporter and the cost of a transcript.

iii. ADDITIONAL DISCOVERY

Upon the request of any party and a showing of **substantial need**, the Arbitrator may permit additional discovery, but only if the Arbitrator finds that such additional discovery is not overly burdensome, and will not unduly delay conclusion of the arbitration.

c. DISCOVERY DISPUTES

The Arbitrator shall decide all disputes related to discovery. Such decisions shall be final and binding on the parties. In ruling on discovery disputes, the Arbitrator shall be guided by the discovery rules contained in the Federal Rules of Civil Procedure.

d. TIME FOR COMPLETION OF DISCOVERY

All discovery must be completed within the ninety (90) calendar days after the selection of the Arbitrator, except for good cause shown. In order to expedite the arbitration, the parties may initiate discovery prior to the appointment of the Arbitrator.

Rule 9. HEARING PROCEDURE

a. WITNESSES

Witnesses shall testify under oath, and the Arbitrator shall afford each party a sufficient opportunity to examine its own witnesses and cross-examine witnesses of the other party. Either party may issue subpoenas compelling the attendance of any other person necessary for the issuing party to prove its case.

i. SUBPOENAS

A subpoena is a command to an individual to appear at a certain place and time and give testimony. A subpoena also may require that the individual bring documents when he or she gives testimony. The Arbitrator shall have the authority to enforce and/or cancel such subpoenas provided that such subpoenas are issued no less than 10 calendar days prior to the commencement of an arbitration hearing or deposition. The Party issuing the subpoena shall be responsible for the fees and expenses associated with the issuance and enforcement of the subpoena, and with the attendance of the subpoenaed witness at the arbitration hearing.

ii. SEQUESTRATION

The Arbitrator shall ensure that all witnesses who will testify at the arbitration are not influenced by the testimony of other witnesses. Accordingly, the Arbitrator may sequester all witnesses who will testify at the arbitration, provided that the Arbitrator shall permit the employee bringing the arbitration and the Company's designated representative to remain throughout the arbitration, even though they may or may not testify at the hearing.

b. EVIDENCE

The parties may offer evidence that is relevant and material to the dispute. The Arbitrator need not specifically follow the Federal Rules of Evidence, although they may be consulted to resolve questions regarding the admissibility of particular matters.

c. BURDEN OF PROOF

The party who initiated the claim has the burden of proving a claim or claims by a preponderance of the evidence, except where the law applicable to the claim places a different burden.

d. BRIEFING

Each party shall have the opportunity to submit one pre-hearing and one post-hearing brief, which is a written statement of facts and law, in support of its

position. Briefs shall be typed and shall be limited in length to 20 double-spaced pages.

Pre-hearing briefs may be submitted no later than ten (10) calendar days prior to a scheduled arbitration hearing. Post-hearing briefs may be submitted no later than twenty (20) calendar days after the parties receive the transcript of the arbitration from the reporting service.

e. CONSOLIDATION OF CLAIMS

The Arbitrator shall have the power to hear as many claims as one party may have against the other consistent with Rule 2 of these Dispute Resolution Rules and Procedures. The Arbitrator may hear claims that were not mentioned in the Arbitration Request Form, provided the party adding claims notifies the other party at least 30 calendar days prior to a scheduled arbitration, the additional claims are timely as of the date on which they are added and the other party is not prejudiced in its defense by such addition.

f. CONFIDENTIALITY

All aspects of an arbitration pursuant to these Dispute Resolution Rules and Procedures, including the hearing and record of the proceeding, shall be confidential and shall not be open to the public, except (i) to the extent both parties agree otherwise in writing; (ii) as may be appropriate in any subsequent proceeding between the parties; or (iii) as may otherwise be appropriate in response to a governmental agency or legal process.

All settlement negotiations, mediations, and the results thereof shall be confidential.

Rule 10. SUBSTANTIVE CHOICE OF LAW

The Arbitrator shall apply the substantive law of the State in which the employee is or was predominantly employed. For claims arising under federal law, the Arbitrator shall follow the substantive law applicable to the United States District Court for the District in which the employee is or was predominantly employed.

Rule 11. ARBITRATOR AUTHORITY

The Arbitrator shall conduct the arbitration and shall have the authority to render a decision in accordance with these Dispute Resolution Rules and Procedures, and in a manner designed to promote rapid and fair resolution of disputes.

a. JURISDICTION

The Arbitrator's authority shall be limited to deciding the case submitted by the parties. Unless the employee is subject to a written contract providing for the employment of the employee under specified terms or for a given duration, the

employee's employment remains alterable at the discretion of the Company and/or terminable at any time, at the will of either the employee or the Company, with or without just cause. Accordingly, the Arbitrator shall have no authority to require that the Company have "just cause" to discipline or discharge an employee or to change the terms and conditions of employment of an employee unless specifically required by federal, state or local law.

b. SANCTIONS

The Arbitrator shall have the power to award sanctions against a party for the party's failure to comply with these Dispute Resolution Rules and Procedures or with an order of the Arbitrator. These sanctions may include assessment of costs, prohibitions of evidence, or, if justified by a party's wanton or willful disregard of these Dispute Resolution Rules and Procedures, an adverse ruling in the arbitration against the party who has failed to comply.

Rule 12. AWARD

Within 30 calendar days after receipt of post-hearing briefs, if any, the Arbitrator shall mail to the parties a written award explaining his or her decision.

Rule 13. FEES AND EXPENSES

a. COSTS OTHER THAN ATTORNEY FEES

i. Definitions

Costs of an arbitration include the daily or hourly fees and expenses (including travel) of the Arbitrator who decides the case, filing or administrative fees charged by the Arbitration Service, the cost of a reporter who transcribes the proceeding, and expenses of renting a room in which the arbitration is held. Incidental costs include such items as attorneys' fees, photocopying, depositions, the costs of producing witnesses or proof.

ii. Filing Fee/Costs of Arbitration

An employee initiating an arbitration shall pay a filing fee equivalent to the amount required for the employee to file a complaint in court. Such fee shall be to Fitness International, LLC and the Company will pay any remaining filing fee required by the arbitration service or agreed arbitrator. The Company shall advance the remainder of the costs of the arbitration. Each party shall advance its own incidental costs. If either party requests a court reporter for the arbitration hearing, the cost initially shall be paid by the parties in accordance with state court practice in the county where the claim would have been filed if it had been filed in court.

iii. Shifting of Costs

If the employee prevails in arbitration, the Arbitrator may require that the Company pay some or all of the employee's share of the costs of arbitration and incidental costs. If the Company prevails in arbitration, the Arbitrator may require the employee to pay some or all of the Company's share of the costs of arbitration and incidental costs to the extent permitted by law.

iv. Payment of Costs

The parties shall pay all previously unpaid arbitration costs within ninety (90) calendar days of the issuance of the arbitration award. If the employee fails to pay, or fails to make arrangements to pay, the employee's share of fees and costs as ordered by the arbitrator within ninety (90) calendar days, the employee authorizes the Company to deduct the amount owed from the employee's paycheck. Such deduction may not exceed a rate of five percent (5%) of the employee's compensation per pay period.

b. ATTORNEY FEES

Each Party generally shall be liable for its own attorney fees. If the employee prevails in arbitration, the Arbitrator shall have discretion to award the employee reasonable attorney fees. If the Company prevails in the arbitration, the Arbitrator shall have discretion to require the employee to pay the Company's reasonable attorney fees to the extent a court would be permitted to do so. An award of attorney fees to either party shall be reasonable in light of the amount and complexity of work involved in the arbitration, and in accordance with customary billing rates of attorneys in the geographic area in which the arbitration is held.

Rule 14. REMEDIES AND DAMAGES

The Arbitrator, in his or her discretion, may award relief to either party in accordance with applicable law.

Rule 15. SETTLEMENT

The parties may settle their dispute at any time. The parties may, by agreement, refer their dispute to mediation before a mutually agreeable mediator.

Rule 16. ENFORCEABILITY

The Dispute Resolution Agreement and any award rendered pursuant to it shall be enforceable and subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and applicable law of the state in which the arbitration is held or the substantive law applied in the arbitration.

Rule 17. APPEAL RIGHTS

The award rendered by the Arbitrator shall be final and binding as to both the employee and the Company. Either party may appeal the Arbitrator's decision to a court in accordance with the appeal procedures of the Federal Arbitration Act, 9 U.S.C. § 1 et seq., or applicable state statutory law.

Rule 18. SEVERABILITY/CONFLICT WITH LAW

In the event that any of these Dispute Resolution Rules and Procedures agreed upon by the parties is held to be in conflict with a mandatory provision of applicable law, the conflicting Rule or Procedure shall be modified automatically to comply with the mandatory provision of applicable law until such point as these Dispute Resolution Rules and Procedures may be modified in accordance with Rule 19 below. In the event of an automatic modification with respect to a particular Rule or Procedure, the remainder of these Rules and Procedures shall not be affected. An automatic modification of one of these Rules or Procedures shall be applicable only in the jurisdiction in which it is in conflict with a mandatory provision of law. In all other jurisdictions, these Dispute Resolution Rules and Procedures shall apply in full force and effect.

Rule 19. TERMINATION OR MODIFICATION OF DISPUTE RESOLUTION AGREEMENT OR DISPUTE RESOLUTION RULES AND PROCEDURES

The Company may alter or terminate the Agreement and these Dispute Resolution Rules and Procedures upon written notice to the employee, provided, however, that all claims already filed under Rule 4 herein shall be subject to the Agreement and corresponding Dispute Resolution Rules and Procedures in effect at the time the Arbitration Request form and accompanying filing fee is received by the Company unless the parties agree to utilize the revised procedure. Notice may be given by posting a written notice at the Company's locations. A copy of the text of any such modification to the Agreement or Rules and Procedures will also be published on the Company Intranet.

**FITNESS INTERNATIONAL, LLC
ARBITRATION REQUEST FORM
(This is the Employee Form—Please Print or Type)**

Name: _____ Social Security No.: _____

Telephone: _____

Address of Record: _____
Street City

_____ State Zip

Position: _____ Status (full or part time): _____

Date of Hire: _____ Date of Incident: _____

Please state the dispute(s) that you wish to have decided by an Arbitrator. Please explain why you believe the Company's actions were unlawful and state the basis for your claim. (Attach additional sheets if necessary.)

Please include the names of any witnesses to the Company's alleged unlawful action(s).

Please state how you would like your dispute with the Company resolved.

If you will be represented, by an attorney or otherwise, please identify that person below:

Name of Representative

Address

Telephone

I hereby submit the above-described dispute for arbitration. I agree to accept the decision and award of the Arbitrator as final and binding as to all of the claims which have been or could have been raised under my Arbitration Agreement with the Company. I understand that to initiate this arbitration, I must submit with this Request Form a filing fee in accordance with Rule 13 a. 2 of the Dispute Resolution Rules and Procedures. I understand that unless the Arbitrator rules otherwise, I will be responsible for the fees and expenses of my own attorney should I retain one and for the filing fee as set forth in Rule 13 a. 2 of the Dispute Resolution Rules and Procedures.

SIGNED:

Employee

Date

Employee's Representative

Date