

## FACILITY PARTICIPATION AGREEMENT

This Facility Participation Agreement (this “*Agreement*”) is entered into this 1<sup>st</sup> day of December, 2011 (the “*Effective Date*”) by and between FitTwin LLC, a North Carolina limited liability company with a mailing address at P.O. Box 642, Morrisville, NC 27560 (“*FitTwin*”), and the participating facility named below (“*Facility*”).

FACILITY INFORMATION	
Facility Name	<b>Fitness 19</b>
Address	920 High house rd # 100
City/State/Zip	Cary, nc 27513
Authorized Location(s) (if different than above)	Good for any location in US
Contact Name	Kevin Matzke
Title	Manager
Phone	469-1333
Email	<a href="mailto:174carync@fitness19.com">174carync@fitness19.com</a>

Standard Membership Fee(s): 99 Enrolment		FitTwin Discount: 19 Enrolment
19/month		10/month
Day Passes Available:    Yes  No		DayPass Pricing: 10\$ a day 5\$ a day with a member DayPass Restrictions: Must be used within 45 days

**THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES OF THIS AGREEMENT FORM AN INTEGRAL PART OF THIS AGREEMENT. EACH PARTY HAS READ AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS, AND IS AUTHORIZED TO EXECUTE THIS AGREEMENT.**

FITTWIN, LLC

[FACILITY]

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name

Print Name

Title

Title

Date

Date

**TERMS AND CONDITIONS OF  
FACILITY PARTICIPATION AGREEMENT**

FitTwin has developed an online resource for fitness, including researching and locating a health and fitness club and purchasing a membership and finding a workout buddy, which is or shall be available for use at [www.fitTwin.com](http://www.fitTwin.com), or such other site or sites determined by FitTwin (the “Service”). Facility is a full-service fitness club and would like to become a participating facility on the Service in order to list Facility’s profile and offer memberships to end-users through the Service. In connection with the foregoing, FitTwin and Facility have agreed to the terms and conditions set forth on this cover page and as set forth below.

1. **Facility Participation.**

1. Facility hereby agrees to be a participating facility on the Service and to permit FitTwin to list Facility on the Service. Facility agrees to provide to FitTwin with all reasonably necessary facility information for creating a Facility Profile on the Service, including all contact and location information, photographs, fees, schedules and other relevant content for the Facility (“Facility Content”) as may be requested by FitTwin. Facility will be solely responsible for uploading the Facility Content to the Service utilizing the tools provided by FitTwin through the Service. Facility shall update all such Facility Content so that it is accurate, complete and up-to-date for end-users of the Service. Facility agrees that FitTwin shall have the right to use, reproduce, edit (for presentation purposes), display and distribute the Facility Content as necessary for provision of the Service.
2. Facility agrees that FitTwin may offer memberships to the Facility for purchase through the Service. The memberships will be available for purchase at the discounted rate as set forth on the cover page. All such memberships will constitute a separate agreement between Facility and the end-user. Facility will provide to FitTwin Facility’s terms or contract for Facility membership (“Membership Terms”) for acceptance by end-user purchasers. Facility agrees that such contract acceptance may be effected online through the Service and that upon acceptance by the end-user, such Membership Terms will constitute a binding obligation of Facility. With respect to such end-user purchase of a membership, Facility agrees to honor FitTwin’s seven-day cancellation policy for its end-users which permits an end-user of the Service to cancel any membership purchase for a full refund within seven days if such end-user has not used the Facility.
3. Facility hereby grants FitTwin the right and license to list Facility on the Service and to promote, market and sell memberships to the Facility through the Service, including the right to use Facility’s trademarks, service marks and logos and all Facility Content. Facility understands and agrees that this is a nonexclusive Service and that FitTwin will have other facilities on the Service, including facilities that may be near Facility’s site(s).

2. **FitTwin Service.**

4. FitTwin agrees to provide the Service to its end-users as set forth in its Terms of Service as such Terms may be amended or updated by FitTwin from time to time during the Term in FitTwin’s sole discretion.
5. During the Term of this Agreement and subject to the terms herein, FitTwin agrees to list Facility on the Service. FitTwin will use commercially reasonable efforts to promote and market Facility as listed on the Service on a regular basis through FitTwin’s social media channels, which may include use of FitTwin’s Facebook® page, Twitter® presence or FitTwin’s own blog or by highlighting Facility as a participating facility on the Service (“Promos”). FitTwin may utilize or create derivative works of the Facility Content or create new content for such Promos. FitTwin will not have any liability to Facility for the success or lack of success of any Promo or for any content in such Promo if in accordance with the Facility Content. FitTwin will use commercially reasonable efforts to update any Facility information provided to it by Facility in a timely manner; provided, however, that Facility shall give FitTwin any updated schedule or facility information, such as changes in hours or availability, at least 48 hours prior to the effectiveness of such change. Facility will also provide FitTwin notice of any special promotions or offerings that it wishes FitTwin to highlight or promote through its social media channels and FitTwin will use its commercially reasonable efforts to incorporate such special promotions in the Promos in a timely manner.
3. **Fees.** Facility agrees that Facility shall not be obligated to pay any upfront listing fee for participation in the Service. However, Facility understands and agrees that in consideration for participation in the Service, Facility shall pay to FitTwin the initial month’s membership fee for each end-user purchasing a membership through the Service. Such payment shall be made as follows: FitTwin shall have the right to obtain from each purchasing end-user such end-user’s bank account or other payment account information and to collect

such first month's membership fees directly from such end-user. Subsequent to such initial month's payment, Facility shall be solely responsible for collecting membership fees from the end-user member in accordance with the Membership Terms provided to and accepted by such end-user member.

4. DayPasses. If Facility has agreed to provide daypasses to FitTwin for sale and distribution to end-users of the Service, Facility shall sell to FitTwin the daypasses at the rate(s) set forth on the cover page. FitTwin may sell and distribute such daypasses to its end-users at prices to be determined by FitTwin in its sole discretion. Any limitations or restrictions on such daypasses shall be set forth on the cover page. Facility shall notify FitTwin at least 30 days in advance of any changes in the costs or terms of such daypasses.
5. Member Information. Facility acknowledges and agrees that in providing the Service and selling memberships for Facility to end-users through the Service, FitTwin will collect from such end-users certain personally identifiable information, such as name, address, payment account and billing information, and provide such personal information to Facility in connection with such end-user's membership. Facility agrees that it will use such information only as consented to by the end-user and as set forth in the Membership Terms. Facility will not distribute end-user information to any third party without the consent of the end-user and will use such information only in accordance with applicable laws, rules and regulations.
6. Intellectual Property.
  6. Facility acknowledges and agrees that all rights in and to the Service, including without limitation, the website content (excluding facility content), look and feel, software underlying the Service and FitTwin's trademarks, service marks and logo, shall remain the exclusive property of FitTwin. Facility shall obtain no rights or license in or to the Service other than as set forth herein.
  7. Facility shall retain all right, title and interest in and to the Facility Content; provided, however, that FitTwin shall have the right and license to use the Facility Content for the provision of the Service as set forth herein.
7. Term. The Term of this Agreement shall be one month, automatically renewing for subsequent one month periods until terminated as set forth herein. Either party may terminate this Agreement upon thirty (30) days prior written notice with such termination taking effect at the end of the then current month or, if such thirty day period extends beyond the current month, the end of the following month. Upon any termination, Facility shall be obligated to pay, and FitTwin shall have the right to collect as set forth in Section 3 above, the initial month's membership fee for all end-users purchasing memberships from Facility through the date of termination. Upon any termination, FitTwin shall have the right to immediately remove or disable access to all Facility Content.
8. Warranties, Disclaimers and Limitations of Liability.
  8. Facility represents and warrants that the Facility Content is, and shall remain, complete, accurate and up-to-date and fairly represents the Facility, including its location, physical spaces, features, competencies, capacity, equipment, instructors, classes, offerings and services. Facility shall update all such Facility Content promptly and use any tools, processes or procedures provided by FitTwin for making such updates. Facility shall provide all Facility services in accordance with all applicable laws, rules and regulations. Facility further represents and warrants that (i) it owns or has sufficient rights in the Facility Content to provide such Facility Content for use on the Service and to grant the rights to FitTwin as set forth herein and (ii) no Facility Content shall contain any unlawful, abusive, offensive, obscene, defamatory, libelous or otherwise objectionable content or violate the privacy, publicity or other rights of any third party. Facility agrees that FitTwin shall have the right, but not obligation, to review and monitor any Facility Content and to remove or disable access to any Facility Content if it believes such Facility Content to be in violation of this Agreement or otherwise.
  9. Facility understands and agrees that Facility is solely responsible for its interaction with any end-user members and that all contracts for membership are solely between Facility and such end-user. Facility specifically acknowledges that FitTwin is a resource and listing Service and that that FitTwin does not prescreen, qualify or warrant any other facility or any end-user who may purchase a membership from Facility through the Service. FitTwin shall in no way be liable or responsible for payment (or failure to pay) by any end-user for membership or for such end-user's use of the Facility's facility or equipment or such end-user's other conduct. Facility further acknowledge and agrees that the Service may include certain interactive features for its end-users, including forums and the like, and that FitTwin is not and shall not be responsible for the content of any end-user posting, comment or materials provided through the Service.
10. THE SERVICE AND ALL CONTENT AND INFORMATION INCLUDED IN OR AVAILABLE THROUGH THE FITTWIN WEBSITE OR SERVICE ARE PROVIDED "AS IS" WITHOUT

WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY LAW, FITTWIN DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. FITTWIN CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM FACILITY'S PARTICIPATION IN THE SERVICE. FITTWIN DOES NOT WARRANT THAT THE SERVICE WILL BE ACCESSIBLE AT ALL TIMES OR IN ALL GEOGRAPHIC AREAS. THE SERVICE MAY BE TEMPORARILY UNAVAILABLE FROM TIME TO TIME FOR MAINTENANCE OR OTHER REASONS.

11. EXCEPT IN JURISDICTIONS WHERE SUCH PROVISIONS ARE RESTRICTED, UNDER NO CIRCUMSTANCES SHALL FITTWIN BE LIABLE FOR ANY DIRECT, INDIRECT, ACTUAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES ATTRIBUTABLE TO ANY PERSONAL INJURY OR DEATH, LOSS OF DATA OR LOSS OF BUSINESS OR PROFITS, ARISING OUT OF FACILITY'S PARTICIPATION IN THE SERVICE OR THE USE OF, OR INABILITY TO USE, THE SERVICE, EVEN IF FITTWIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, FITTWIN'S LIABILITY TO FACILITY FOR ANY CAUSE WHATSOEVER ARISING OUT OF THIS AGREEMENT OR FACILITY'S PARTICIPATION IN THE SERVICE, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY FACILITY TO FITTWIN FOR PARTICIPATION IN THE SERVICE DURING THE MOST RECENT SIX MONTH TERM OF THIS AGREEMENT.
9. Indemnification. Facility agrees to indemnify, defend and hold FitTwin harmless against and from any and all losses, claims, damages or liabilities, joint or several, including reimbursement for legal expenses, to which FitTwin may become subject as the result of Facility's breach of any of the obligations, covenants, warranties or representations under this Agreement or for any action by an end-user relating to such end-user's membership with Facility, including without limitation, any claims for personal injury or death or breach of the Membership Terms by Facility.
10. Miscellaneous.
  12. This Agreement does not constitute either party as a partner, joint venturer, employee, agent, or legal representative of the other for any purpose whatsoever. Except as expressly set forth herein with respect to FitTwin's sale of memberships for Facility, neither party is granted, nor shall it represent that it has been granted, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other party, to incur debts for the other party or to bind the other party in any manner whatsoever; it being the intent of the parties hereto to create the relationship on the part of the other party of an independent contractor, for whose actions or failure to act, a party shall not be responsible.
  13. The parties agree to try to resolve any dispute relating to this Agreement through informal negotiations in good faith with escalation as necessary to the chief executive officers or other decision-makers of each company. This Agreement shall be governed by and construed according to the laws of the State of North Carolina, U.S.A., excluding its conflict of laws rules or principles. All disputes arising under or in connection with this Agreement shall be adjudicated in the federal courts of the Middle District of North Carolina or in the State courts located in Wake County, North Carolina. Each of the parties acknowledges that venue shall be proper in such courts and expressly consents to the personal jurisdiction of such courts.
  14. All notices and other communications required hereunder shall be in writing and deemed to have been duly given if delivered personally, sent by facsimile (with confirmation of receipt) or sent by nationally recognized overnight carrier, or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address for a party as set forth on the cover page.
  15. This Agreement constitutes the entire Agreement between Facility and FitTwin with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements between Facility and FitTwin, whether written or oral, with respect to the subject matter hereof. No agreement modifying the terms of this Agreement shall be binding on either party unless in a writing signed by an authorized representative of each party.
  16. The provisions of Sections 5, 6, 8, 9 and 10 shall survive any expiration or termination of this Agreement.

17. This Agreement shall not be assignable or transferable by either party in whole or in part without the written consent of the other party, except that either party may assign and transfer this Agreement in connection with the sale, assignment or other transfer of all or substantially all of its assets, or in connection with the merger of or other acquisition of such party.
18. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which constitute the same Agreement.

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