

Terms of Service

NDF, LLC. (dba New Day Fitness by Gabi)

Terms of Service

Effective: 29 January 2024

These Terms of Service constitute a legally binding agreement between you and NDF, LLC. (dba New Day Fitness by Gabi or New Day) (together with its affiliates, “New Day”, “we,” “our” or “us”) governing your use of the New Day Platform (as defined below), our mobile application (the “App”) and our website (the “Site”). The related services provided by New Day to potential Clients (defined in Section 1), the Site, and the App are collectively referred to as the “Platform.” YOU ACKNOWLEDGE AND AGREE THAT, BY CLICKING ON THE “I AGREE” OR SIMILAR BUTTON, REGISTERING FOR AN ACCOUNT, DOWNLOADING THE APP OR ANY APP UPGRADES, USING THE APP ON YOUR MOBILE DEVICE, OR ACCESSING OR USING THE New Day PLATFORM, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, WHETHER OR NOT YOU HAVE REGISTERED WITH THE SITE OR THE APP. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE New Day PLATFORM.

These Terms are effective as of the date you first click “I agree” (or similar button or checkbox) or use or access the Platform, whichever is earlier. If you accept or agree to these Terms of Service on behalf of your employer or another legal entity, you represent and warrant that (i) you have full legal authority to bind your employer or such entity to these terms of services; (ii) you have read and understand these terms of service; and (iii) you agree to these terms of service on behalf of the party that you represent. In such an event, “you” and “your” will refer and apply to your employer or such other legal entity. Any personal data you submit to the New Day Platform or which we collect about you is governed by our Privacy Policy (“Privacy Policy”), available at <https://www.trainwithNewDay.com/privacy>. You acknowledge that by using the New Day Platform you have reviewed the Privacy Policy. The Privacy Policy is incorporated by reference into these Terms of Service and together form and are hereinafter referred to as this “Agreement.” PLEASE NOTE: THIS AGREEMENT GOVERNS HOW DISPUTES BETWEEN YOU AND New Day CAN BE RESOLVED. IT CONTAINS A BINDING AND FINAL ARBITRATION PROVISION AND CLASS ACTION WAIVER (SECTION 14). PLEASE READ CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING, IF APPLICABLE, YOUR RIGHT TO OPT OUT OF ARBITRATION.

The New Day Platform

The New Day Platform is a web and mobile application-based service which enables connections between Clients, Members to training tips and suggestions. New Day does NOT offer training or advice beyond its scope of certification. Any videos, tips, plans etc which are not specifically designed for the CLIENT are merely suggestions. Consult a trained professional for any and all personal needs and/or Physician directed workouts. NEW DAY does not offer Physical Therapy advice. “Clients” are individuals who subscribe to New Day’s fitness videos, and related services (the “Services”). Clients are hereinafter referred to as “Clients or Users.”

Account, Password, Security, and Mobile Phone Use

You must register with New Day and create an account to use the New Day Platform (an "Account") and as part of that process you will be requested to provide certain information, including without limitation your name, full address, phone number and email address. By using the New Day Platform, you agree to provide true, accurate, current and complete information as prompted by the registration process and to maintain and promptly update the Account information to keep it accurate, current and complete. You are the sole authorized user of your Account. You are responsible for maintaining the confidentiality of any log-in, password, and Account number provided by you or given to you by New Day for accessing the New Day Platform. You are solely and fully responsible for all activities that occur under your password or Account, even if not authorized by you. New Day has no control over the use of any User's Account and expressly disclaims any liability derived therefrom. Should you suspect that any unauthorized party may be using your password or Account or you suspect any other breach of security, you agree to contact New Day immediately.

The person signing up for the New Day Platform will be the contracting party ("Account Owner") for the purposes of these terms of service and will be the person who is authorized to use any corresponding Account we provide to the Account Owner in connection with the New Day Platform; provided, however, that if you are signing up for the New Day Platform on behalf of your employer, your employer shall be the Account Owner. As the Account Owner, you are solely responsible for complying with these terms of service and only you are entitled to all benefits accruing thereto. Your Account is not transferable to any other person or account. You must immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of our security or the security of your Account.

By providing your mobile phone number and using the New Day Platform, you hereby affirmatively consent to New Day's use of your mobile phone number for calls and recurring texts, (including with an autodialer and/or prerecorded voice) in order to (i) perform and improve upon the New Day Platform, (ii) facilitate the carrying out our services, (iii) provide you with information and reminders regarding your registration, changes and updates, service outages or alterations, (iv) connect you to a Trainer, and (v) share with Trainers in private when Users accept a Trainer's Services. These calls and texts may include, among other things, reminders about upcoming services on the New Day Platform and/or push notifications and other reminders delivered through our App. New Day will not assess any charges for calls or texts, but standard message, data or other charges from your wireless carrier may apply. You may opt-out of receiving text messages from us by modifying your Account settings on the Site or the App, texting "STOP" in response to any texts, or by emailing newdayfitnessbygabi@gmail.com and specifying you want to opt-out of texts. You may opt-out of receiving calls from us by stating that you no longer wish to receive calls during any call with us, or by emailing newdayfitnessbygabi@gmail.com and specifying you want to opt-out of calls. You understand that we may send you a text confirming any opt-out by you. By visiting the New Day website,

you hereby affirmatively consent to New Day's use of Amplitude events for activity on New Day's website. You may enable a "do not track" request, however New Day reserves the right to fire Amplitude events despite such requests.

Billing and Payment

The Client shall pay New Day directly for the Services as outlined in the Client's respective subscription/membership plan.

All prices and fees displayed on the New Day Platform are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services or other taxes, fees or charges now in force or enacted in the future ("Taxes"). Any applicable Taxes are based on the rates applicable to the billing address you provide to us, and will be calculated at the time a transaction is charged to your Account. Unless otherwise indicated, all prices, fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

New Day personal training operates on a scheduled hourly appointment basis for private training sessions. Therefore, when canceling an appointment, Client is required to provide MORE than 24-hour notice, for which no additional levy shall be incurred. However, if Client cancels a session LESS than 24 hours to the scheduled time, Client shall be charged in full for that training session. Client is entitled to a one-time cancellation fee waiver, whereby Client may cancel a session in less than 24-hours, at no additional charge.

NO REFUND POLICY No Refunds. All sales are final, and the Company does not offer any money-back guarantees. Client recognizes and agrees that Client shall not be entitled to a refund for any purchase under any circumstances. No Warranties:

THE COMPANY MAKES NO WARRANTIES REGARDING THE PERFORMANCE OR OPERATION OF THIS WEBSITE. THE COMPANY FURTHER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE INFORMATION, CONTENTS, MATERIALS, DOCUMENTS, PROGRAMS, PRODUCTS, BOOKS, OR SERVICES INCLUDED ON OR THROUGH THIS WEBSITE. TO THE FULLEST EXTENT PERMISSIBLE UNDER THE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability CLIENT AGREES TO ABSOLVE THE COMPANY OF ANY AND ALL LIABILITY OR LOSS THAT YOU OR ANY PERSON OR ENTITY ASSOCIATED WITH YOU MAY SUFFER OR INCUR AS A RESULT OF USE OF THE INFORMATION CONTAINED ON THIS WEBSITE AND/OR THE RESOURCES YOU MAY DOWNLOAD FROM THIS WEBSITE. YOU AGREE THAT THE COMPANY SHALL NOT BE LIABLE TO YOU FOR ANY TYPE OF DAMAGES, INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EQUITABLE, OR CONSEQUENTIAL LOSS OR DAMAGES FOR USE OF THIS WEBSITE. THE INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE WEBSITE MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS. CHANGES ARE PERIODICALLY ADDED TO THE INFORMATION HEREIN. THE COMPANY AND/OR ITS

SUPPLIERS MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE WEBSITE AT ANY TIME. THE COMPANY AND/OR ITS SUPPLIERS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS CONTAINED ON THE WEBSITE FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. THE COMPANY AND/OR ITS SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS...

Should a New Day personal trainer cancel a session with less than 24-hour prior notice, Client shall be entitled to one free session upon rescheduling and that the free session must be redeemed within 7 days of canceling the previous one or shall be forfeited.

However, should my personal trainer cancel a session with MORE than 24-hour notice, Client shall be entitled to no free session, but the training session shall be rescheduled within 7 days to ensure consistency and progress in my fitness program.

User Generated Content

"User Generated Content" is defined as any content, information, and materials that may be textual, audio, or visual that you provide, submit, upload, publish, or make otherwise available to the New Day Platform and its Users, including without limitation to images and information of Services. You are solely responsible for User Generated Content, and we act merely as a passive conduit for your online distribution and publication of your User Generated Content. You acknowledge and agree that New Day:

Is not involved in the creation or development of User Generated Content.

Disclaims any responsibility for User Generated Content.

Cannot be liable for claims arising out of or relating to User Generated Content.

Is not obligated to monitor, review, or remove User Generated Content, but reserves the right to limit or remove User Generated Content on the New Day Platform at its sole discretion.

You hereby represent and warrant to New Day that your User Generated Content (i) will not be false, inaccurate, incomplete or misleading; (ii) will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary right or rights of publicity, personality or privacy; (iii) will not violate any law, statute, ordinance, or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination,

false advertising, anti-spam or privacy); (iv) will not be defamatory, libelous, unlawfully threatening, or unlawfully harassing; (v) will not be obscene or contain pornography (including but not limited to child pornography) or be harmful to minors; (vi) will not contain any viruses, Trojan Horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (vii) will not represent you being employed or directly engaged by or affiliated with New Day or purport you to act as a representative or agent of New Day; and (viii) will not create liability for New Day or cause New Day to lose (in whole or in part) the services of its ISPs or other suppliers.

By making available any User Generated Content through the New Day Platform, you hereby grant to New Day a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, access, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Generated Content on, through or by means of the New Day Platform. We do not claim any ownership rights in any such User Generated Content and nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit any such User Generated Content.

Representations and Warranties

You represent and warrant that: (i) you are 18 years of age or older or are at least of the legally required age in the jurisdiction in which you reside, and are otherwise capable of entering into binding contracts, (provided, however, to the extent that you are under the age of 18 years old, parental or guardian consent must be provided to accept these terms of service) and (ii) you have the right, authority and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement, and that you will so abide. When you enter into this Agreement on behalf of a company or other organization, you represent and warrant that you have authority to act on behalf of that entity and to bind that entity to this Agreement.

You further represent and warrant that (i) you have read, understand, and agree to be bound by these Terms of Service and the Privacy Policy in order to access and use the New Day Platform, (ii) you will fulfill the commitments, including paying and receiving payment through the New Day Platform, and fulfilling Services agreed upon on the New Day Platform, (iii) you will act professionally and responsibly in your interactions with other Users and (iv) when using or accessing the New Day Platform, you will act in accordance with any applicable local, state, or federal law or custom and in good faith.

You agree not to engage in any of the following prohibited activities, among others: (i) copying, distributing, or disclosing any part of the New Day Platform in any medium other than as allowed by the New Day Platform and these terms of service; (ii) using any automated system (other than any functionalities of the New Day Platform), including without limitation “robots,” “spiders,” “offline readers,” etc., to access the New Day Platform; (iii) transmitting spam, chain letters, or other unsolicited email or attempting to phish, pharm, pretext, spider, crawl, or scrape; (iv)

attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the New Day Platform; (v) violating any international, federal, provincial or state regulations, rules, laws, or local ordinances; (vi) conducting any unlawful purposes or soliciting others to perform or participate in any unlawful acts; (vii) uploading invalid data, viruses, worms, or other software agents through the New Day Platform; (viii) infringing upon or violate our intellectual property rights or the intellectual property rights of others; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) harassing, insulting, harming, abusing, defaming, stalking, threatening, intimidating or otherwise violating the legal rights (such as of privacy and publicity) of any other Users, Trainers, or visitors of the New Day Platform or staff member of New Day; (xi) interfering with or any activity that threatens the performance, security or proper functioning of the New Day Platform; (xii) uploading or transmitting viruses or any other type of malicious code; (xiii) attempting to decipher, decompile, disassemble or reverse engineer any of the software or algorithms used to provide the New Day Platform; (xiv) bypassing the security features or measures we may use to prevent or restrict access to the New Day Platform, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the New Day Platform or the content therein; (xv) attempting to access unauthorized Accounts or to collect or track the personal information of others; (xvi) using the New Day Platform for any purpose or in any manner that infringes the rights of any third party; or (xvii) encouraging or enabling any other individual to do any of the foregoing.

You hereby warrant and represent that, other than as fully and promptly disclosed to New Day as set forth below, you do not have any motivation, status, or interest which New Day may reasonably wish to know about in connection with the New Day Platform, including without limitation, if you are using or will or intend to use the New Day Platform for any journalistic, investigative, or unlawful purpose. You hereby warrant and represent that you will promptly disclose to New Day in writing any such motivation, status or interest, whether existing prior to registration or as arises during your use of the New Day Platform.

You hereby warrant and represent that, other than as fully and promptly disclosed to New Day as set forth below, you do not have any motivation, status, or interest which New Day may reasonably wish to know about in connection with the New Day Platform, including without limitation, if you are using or will or intend to use the New Day Platform for any journalistic, investigative, or unlawful purpose. You hereby warrant and represent that you will promptly disclose to New Day in writing any such motivation, status or interest, whether existing prior to registration or as arises during your use of the New Day Platform.

Mobile App Updates and Upgrades By installing the App, you consent to the installation of the App and any updates or upgrades that are released through the New Day Platform. The App (including any updates or upgrades) may (i) cause your device to automatically communicate with New Day's servers to deliver the App functionality and to record usage metrics, (ii) affect App-related preferences or data stored your device, and (iii) collect personal information as set out in our Privacy Policy, including location information. You can uninstall the App at any time.

Termination and Suspension of New Day Personal Training Account

Unless otherwise agreed to in writing between you and New Day Personal Training, either party may terminate these terms of service for any or no cause, at any time. You may cancel and delete your Personal Training Account at any time by either using the features on the New Day Personal Training Platform to do so or by written or email notice to newdayfitnessbygabi@gmail.com - After cancellation, you will no longer have access to your Account, your profile or any other information through the New Day Platform. The provisions of these terms of service which by their intent or meaning intended to survive such termination, including without limitation the provisions relating to disclaimer of warranties, limitations of liability, and indemnification, shall survive the any termination of these terms of service and any termination of your use of or subscription to the New Day Platform and shall continue to apply indefinitely.

We reserve the right to refuse the New Day Platform to anyone for any reason at any time. New Day may terminate or limit your right to use the New Day Platform in the event that we are investigating or believe that you have breached any provision of this Agreement, by providing you with written or email notice. Such termination or limitation will be effective immediately upon delivery of such notice. If New Day terminates or limits your right to use the New Day Platform pursuant to this section, you are prohibited from registering and creating a new Account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party.

Even after your right to use the New Day Platform is terminated or limited, this Agreement will remain enforceable against you. New Day reserves the right to take appropriate legal action, including but not limited to pursuing arbitration in accordance with Section 14 of these Terms of Service.

New Day reserves the right to modify or discontinue, temporarily or permanently, all or any portion of the New Day Platform at its sole discretion. New Day is not liable to you for any modification or discontinuance of all or any portion of the New Day Platform. New Day has the right to restrict anyone from completing registration as a User if New Day believes such person may threaten the safety and integrity of the New Day Platform, or if, in New Day's discretion, such restriction is necessary to address any other reasonable business concern.

Following the termination or cancellation of your Account, we reserve the right to delete all your data, including any User Generated Content, in the normal course of operation. Your data cannot be recovered once your Account is terminated or canceled.

Links to Third-Party Websites

The New Day Platform may contain links (such as hyperlinks) to third-party websites. Such links do not constitute endorsement by New Day or association with those websites, their content or their operators. Such links (including without limitation external websites that are framed by the

New Day Platform as well as any advertisements displayed in connection therewith) are provided as an information service, for reference and convenience only. New Day does not control any such websites, and is not responsible for their (i) availability or accuracy, or (ii) content, advertising, products, or services. It is your responsibility to evaluate the content and usefulness of the information obtained from other websites. You acknowledge and agree that New Day is not involved in the creation or development of third-party websites and disclaims any responsibility for third-party websites, and cannot be liable for claims arising out of or relating to third-party websites. Further, you acknowledge and agree that New Day has no obligation to monitor, review, or remove links to third-party websites, but reserves the right to limit or remove links to third-party websites on the New Day Platform at its sole discretion.

The use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use and privacy policies for those websites. You access such third-party websites at your own risk. New Day expressly disclaims any liability arising in connection with your use and/or viewing of any websites or other material associated with links that may appear on the New Day Platform. You hereby agree to hold New Day harmless from any liability that may result from the use of links that may appear on the New Day Platform.

Intellectual Property Rights

All text, graphics, editorial content, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, trademarks, logos, typefaces and other content (collectively "Proprietary Material") that Users see or read through the New Day Platform is owned by New Day, excluding User Generated Content, which Users hereby grant New Day a license to use. Proprietary Material is protected in all forms, media and technologies now known or hereinafter developed. New Day owns all Proprietary Material, as well as the coordination, selection, arrangement and enhancement of such Proprietary Materials as a Collective Work under the United States Copyright Act, as amended. The Proprietary Material is protected by the domestic and international laws governing copyright, patents, and other proprietary rights. Users may not copy, download, use, redesign, reconfigure, or retransmit anything from the New Day Platform without New Day's express prior written consent and, if applicable, the holder of the rights to the User Generated Content.

Any use of such Proprietary Material, other than as permitted therein, is expressly prohibited without the prior permission of New Day and, if applicable, the holder of the rights to the User Generated Content.

The service marks and trademarks of New Day, including without limitation New Day and New Day logos, are service marks owned by New Day. Any other trademarks, service marks, logos and/or trade names appearing via the New Day Platform are the property of their respective owners. You may not copy or use any of these marks, logos or trade names without the express prior written consent of the owner.

Additionally, you may choose to, or we may invite you to submit comments, ideas, or feedback about the New Day Platform, including without limitation about how to improve our services or our products ("Feedback"). By submitting any Feedback, you agree that your disclosure is gratuitous, unsolicited, and without restriction and will not place New Day under any fiduciary or other obligation, and that we are free to use the Feedback without any additional compensation to you, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, New Day does not waive any rights to use similar or related Feedback previously known to New Day, developed by its employees, or obtained from sources other than you. You acknowledge that all email and other correspondence that you submit to us shall become our sole and exclusive property.

Subject to the terms and conditions hereof, you are hereby granted a limited, nonexclusive, non transferable, freely revocable, license to access and use the New Day Platform. We may terminate this license at any time for any reason or no reason. The New Day Platform and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, reports generated by the New Day Platform, and copyrights (the "New Day Content"), and all Intellectual Property Rights (as defined below) related thereto, are the exclusive property of New Day or, as applicable, its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, publicly distribute, publicly transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the New Day Platform. Use of the New Day Content or materials on the New Day Platform for any purpose not expressly permitted by this Agreement is strictly prohibited. For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

Your use of the New Day Platform and the related licenses granted hereunder are also conditioned upon your strict adherence to the letter and spirit of the various applicable guidelines and any end user licenses associated with your use of the App. New Day may modify such guidelines in its sole discretion at any time. New Day reserves the right to terminate your Account and access to the New Day Platform if it determines that you have violated any such applicable guidelines.

Copyright Complaints and Copyright Agent

New Day respects the intellectual property of others, and expects Users to do the same. If you believe, in good faith, that any materials provided on or in connection with the New Day Platform infringe upon your copyright or other intellectual property right, please send the following information to New Day's Copyright Agent at newdayfitnessbygabi@gmail.com:

A description of the copyrighted work that you claim has been infringed, including the URL (Internet address) or other specific location on the New Day Platform where the material you claim is infringed is located. Include enough information to allow New Day to locate the material, and explain why you think an infringement has taken place;

A description of the location where the original or an authorized copy of the copyrighted work exists -- for example, the URL (Internet address) where it is posted or the name of the book in which it has been published;

Your address, telephone number, and e-mail address;

A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;

A statement by you, made under penalty of perjury, that the information in your notice is accurate, and that you are the copyright owner or authorized to act on the copyright owner's behalf; and

An electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.

Confidential Information

You acknowledge that Confidential Information (as defined below) is a valuable, special and unique asset of New Day and agree that you will not disclose, transfer, use (or seek to induce others to disclose, transfer or use) any Confidential Information for any purpose other than using the New Day Platform in accordance with these Terms of Service. If relevant, you may disclose the Confidential Information to your authorized employees and agents provided that they are also bound to maintain the confidentiality of Confidential Information. You shall promptly notify New Day in writing of any circumstances that may constitute unauthorized disclosure, transfer, or use of Confidential Information. You shall use best efforts to protect Confidential Information from unauthorized disclosure, transfer or use. You shall return all originals and any copies of any and all materials containing Confidential Information to New Day upon termination of this Agreement for any reason whatsoever.

The term "Confidential Information" shall mean any and all of New Day's trade secrets, confidential and proprietary information, and all other information and data of New Day that is not generally known to the public or other third parties who could derive value, economic or otherwise, from its use or disclosure. Confidential Information shall be deemed to include technical data, know-how, research, product plans, products, services, customers, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, strategic and other proprietary and confidential information relating to New Day or New Day's business, operations or properties, including information about New Day's staff, Users or partners, or other business information disclosed directly or indirectly in writing, orally or by drawings or observation.

Disclaimer of Warranties

THE New Day PLATFORM IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT

LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. New Day MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED THROUGH THE New Day PLATFORM OR THE CONTENT OF ANY SITES LINKED TO THE New Day PLATFORM AND ASSUMES NO LIABILITY OR RESPONSIBILITY IN CONTRACT, WARRANTY OR IN TORT FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE New Day PLATFORM, (III) ANY ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; AND (IV) EVENTS BEYOND OUR REASONABLE CONTROL.

New Day DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED ON THE New Day PLATFORM.

UNDER NO CIRCUMSTANCES WILL New Day AND AFFILIATES OR THEIR CORPORATE PARTNERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, ACTUAL, CONSEQUENTIAL, ECONOMIC, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY New Day, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES) ARISING IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE New Day PLATFORM, EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU IN THEIR ENTIRETY.

IF, NOTWITHSTANDING THE FOREGOING EXCLUSIONS, IT IS DETERMINED THAT NEW DAY AND AFFILIATES OR THEIR CORPORATE PARTNERS ARE LIABLE FOR DAMAGES, IN NO EVENT WILL THE AGGREGATE LIABILITY, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE LOWER OF (I) THE TOTAL FEES PAID BY YOU TO NEW DAY DURING THE SIX MONTHS PRIOR TO THE TIME SUCH CLAIM AROSE OR (II) ONE HUNDRED DOLLARS (\$100), TO THE EXTENT PERMITTED BY APPLICABLE LAW.

Indemnification

You hereby agree to indemnify, defend, and hold harmless New Day and its officers, directors, employees, agents, attorneys, insurers, successors and assigns (the "Indemnified Parties") from and against any and all Liabilities incurred in connection with (i) your use or inability to use the New Day Platform or perform Services, or (ii) your breach or violation of this Agreement; (iii) your violation of any law, or the rights of any User or third party and (iv) any content submitted by you or using your Account to the New Day Platform, including, but not limited to the extent

such content may infringe on the intellectual rights of a third party or otherwise be illegal or unlawful. You also agree to indemnify the Indemnified Parties for any Liabilities resulting from your use of software robots, spiders, crawlers, or similar data gathering and extraction tools, or any other action you take that imposes an unreasonable burden or loan on our infrastructure. New Day reserves the right, in its own sole discretion, to assume the exclusive defense and control at its own expense of any matter otherwise subject to your indemnification. You will not, in any event, settle any claim or matter without the prior written consent of New Day.

Dispute Resolution – Arbitration & Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY — IT AFFECTS YOUR LEGAL RIGHTS AND GOVERNS HOW YOU AND New Day CAN BRING CLAIMS AGAINST EACH OTHER. THIS SECTION WILL, WITH LIMITED EXCEPTION, REQUIRE YOU AND New Day TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS.

You agree that, in the event any dispute or claim arises out of or relating to your use of the New Day Platform, you will contact us at newdayfitnessbygabi@gmail.com and you and New Day will attempt in good faith to negotiate a written resolution of the matter directly. You agree that if the matter remains unresolved for 30 days after notification (via certified mail or personal delivery), such matter will be deemed a “Dispute” as defined below. Except for the right to seek injunctive or other equitable relief described under the “Binding Arbitration” section below, should you file any arbitration claims, or any administrative or legal actions without first having attempted to resolve the matter by mediation, then you agree that you will not be entitled to recover attorneys’ fees, even if you may have been entitled to them otherwise.

Binding Arbitration. You and New Day agree that any dispute, claim or controversy arising out of or relating to this Agreement or to your use of the New Day Platform (collectively “Disputes”) will be settled by binding arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property rights. This means that you and New Day both agree to waive the right to a trial by jury. Notwithstanding the foregoing, you may bring a claim against New Day in “small claims” court, instead of by arbitration, but only if the claim is eligible under the rules of the small claims court and is brought in an individual, non-class, and non-representative basis, and only for so long as it remains in the small claims court and in an individual, non-class, and non-representative basis.

Class Action Waiver. You and New Day agree that any proceedings to resolve Disputes will be conducted on an individual basis and not in a class, consolidated, or representative action. This means that you and New Day both agree to waive the right to participate as a plaintiff as a class member in any class action proceeding. Further, unless you and New Day agree otherwise in

writing, the arbitrator in any Dispute may not consolidate more than one person's claims and may not preside over any form of class action proceeding.

Arbitration Administration and Rules. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at <http://www.adr.org> or by calling the AAA at 1-800-778-7879).

Arbitration Process. A party who desires to initiate the arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of Illinois and will be selected by the parties from the AAA's roster of arbitrators with relevant experience. If the parties are unable to agree upon an arbitrator within seven days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with AAA Rules.

Arbitration Location and Procedure. Unless you and New Day agree otherwise, the seat of the arbitration shall be in Chicago, Illinois. If your claim does not exceed USD\$10,000, then the arbitration will be conducted solely on the basis of documents you and New Day submit to the arbitrator, unless you request a hearing and the arbitrator then determines that a hearing is necessary. If your claim exceeds USD\$10,000, your right to a hearing will be determined by AAA Rules. Subject to AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration. Hearings may be conducted by telephone or video conference, if requested and agreed to by the parties.

Arbitrator's Decision and Governing Law. The arbitrator shall apply Illinois law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized by law. The arbitrator will render an award within the timeframe specified in the AAA Rules. Judgment on the arbitration may be entered in any court having jurisdiction thereof. Any award of damages by an arbitrator must be consistent with the "Disclaimers and Limitations of Liability" section above. The arbitrator may award declaratory or injunctive relief in favor of the claimant only to the extent necessary to provide relief warranted by the claimant's individual claim. **Fees.** Each party's responsibility to pay the arbitration filing, administrative and arbitrator fees will depend on the circumstances of the arbitration and are set forth in the AAA Rules.

Governing Law

Except as provided in Section 14 or expressly provided in writing otherwise, this Agreement and your use of the New Day Platform will be governed by, and will be construed under, the laws of the State of Illinois, without regard to choice of law principles. This choice of law provision is only intended to specify the use of Illinois law to interpret this Agreement.

No Agency; No Employment

No agency, partnership, joint venture, employer-employee or franchisor-franchisee relationship is intended or created by this Agreement.

General Provisions

Failure by New Day to enforce any provision(s) of this Agreement will not be construed as a waiver of any provision or right. This Agreement constitutes the complete and exclusive agreement between you and New Day with respect to its subject matter, and supersedes and governs any and all prior agreements or communications. The provisions of this Agreement are intended to be interpreted in a manner which makes them valid, legal, and enforceable. Except for the "Class Action Waiver" in Section 14, in the event any provision is found to be partially or wholly invalid, illegal or unenforceable, (i) such provision shall be modified or restructured to the extent and in the manner necessary to render it valid, legal, and enforceable or, (ii) if such provision cannot be so modified or restructured, it shall be excised from the Agreement without affecting the validity, legality or enforceability of any of the remaining provisions. This Agreement may not be assigned or transferred by you without our prior written approval. We may assign or transfer this Agreement without your consent, including but not limited to assignments: (1) to a parent or subsidiary, (2) to an acquirer of assets, or (3) to any other successor or acquirer. Any assignment in violation of this section shall be null and void. This Agreement will inure to the benefit of New Day, its successors and assigns.

Changes to this Agreement and the New Day Platform

New Day reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement, suspend, discontinue, or delete any of the terms and conditions of this Agreement (including these terms of service and Privacy Policy) and review, improve, modify or discontinue, temporarily or permanently, the New Day Platform or any content or information through the New Day Platform at any time, effective with or without prior notice and without any liability to New Day. New Day will endeavor to notify you of material changes by email, but will not be liable for any failure to do so. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must terminate, and immediately stop using, the New Day Platform. Your continued use of the New Day Platform following any revision to this Agreement constitutes your complete and irrevocable acceptance of any and all such changes. New Day may also impose limits on certain features or restrict your access to part or all of the New Day Platform without notice or liability.

No Rights of Third Parties

None of the terms of this Agreement are enforceable by any persons who are not a party to this Agreement.

Notices and Consent to Receive Notices Electronically

You consent to receive any agreements, notices, disclosures and other communications (collectively, "Notices") to which this Agreement refers electronically including without limitation by e-mail or by posting Notices on this Site. You agree that all Notices that we provide to you electronically satisfy any legal requirement that such communications be in writing. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or email; or the day after it is sent, if sent for next day delivery by a recognized overnight delivery service.

Contacting Us

If you have any questions about these Terms of Service or about the New Day Platform, please contact us by email at newdayfitnessbygabi@gmail.com or by mail to NDF, LLC. (dba New Day), 2306 Foxmoor Ln., Aurora, IL 60502