**RELEASE AND WAIVER OF LIABILITY AGREEMENT**

**PLEASE READ CAREFULLY** - **THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS**

THIS RELEASE AND WAIVER OF LIABILITY AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_\_ (“Effective Date”), by and between Magnumtotus Solutions, LLC (“Magnum”), Alexander Gordy (Gordy), Marlin Montenegro (Marlin) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Participant”). Magnum, Gordy, Marlin and Participant are each a “Party” and are referred to, collectively, as the “Parties.”

WHEREAS, the Parties desire to enter into this Agreement pursuant to which Participant fully understands and acknowledges Magnum, Gordy, Marlin operate fitness training and instruction (“Facilities”) that include, but are not limited to, providing instruction in, “weight training, cardio training and related equipment, yoga, self-defense and related equipment, and any other disciplines and/or training (collectively known as the “Training”) practiced at Magnum. As such, Participant further understands and acknowledges the possible serious risks and dangers involved with the Training including, but not limited to, any Injury defined below herein this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Agreement, each of the Parties hereto hereby agrees as follows:

1. Representations of Participant and Magnum.

Magnum, Gordy, and Marlin shall use commercially reasonable efforts to provide Facilities for the Training. Participant represents that Participant is in good physical condition and has no medical reason or impairment that may prevent or inhibit Participant’s use of the Facilities. Participant acknowledges Magnum, Gordy or Marlin do not provide medical advice and cannot give any medical advice relating to Participant’s physical condition and/or ability to participate in the Training and/or use of the Facilities. Additionally, Participant acknowledges Participant should obtain a physical examination and approval from a licensed physician before participating in any Training and/or use of the Facilities.

2. Waiver and Release of Liability, Assumption of Risk.

PARTICIPANT VOLUNTARILY ASSUMES AND ACCEPTS THE RISKS RELATED TO ANY AND ALL TRAINING AND HEREBY RELEASES, WAIVES AND DISCHARGES MAGNUM, GORDY, AND MARLIN AND ITS RESPECTIVE OWNERS, ADMINISTRATORS, DIRECTORS, AGENTS, REPRESENTATIVES, INSTRUCTORS, OTHER PARTICIPANTS, OTHER EMPLOYEES OF MAGNUM, ALEXANDER GORDY, MARLIN MONTENEGRO, THE OWNERS AND LESSORS OF THE PREMISES IN WHICH THE FACILITIES ARE LOCATED (all of whom are collectively known as “Releasees”), FROM ANY AND ALL PAST, PRESENT AND/OR FUTURE LIABILITY TO PARTICIPANT, AND ITS RESPECTIVE HEIRS, SUCCESSORS, ASSIGNS, AND NEXT OF KIN, FOR ANY INJURY INCLUDING, BUT NOT LIMITED TO, PERSONAL, BODILY OR MENTAL INJURY (INCLUDING, BUT NOT LIMITED TO ANY AND ALL INFECTIOUS VIRUSES AND BACTERIA), DISABILITY, PARALYSIS, DEATH, ECONOMIC LOSS, OR ANY OTHER PHYSICAL OR MENTAL DAMAGE TO PARTICIPANT AND/OR PARTICIPANT’S UNBORN CHILD (all of which are collectively known as “Injury”), ARISING FROM PARTICIPANT’S PARTICIPATION IN THE TRAINING AND/OR USE OF THE FACILITIES, AND WHETHER OR NOT SUCH INJURY IS RELATED TO ANY OMMISSION, NEGLIGENCE, GROSS NEGLIGENCE, OR ANY OTHER ACT, OR LACK THEREOF, OF RELEASEES.

3. Indemnification.

Participant hereby agrees to defend, indemnify and hold harmless Releasees from any and all claims and/or causes in law or equity, including, but not limited to, suites, demands, liabilities, proceedings, damages, judgments, settlements, fines, penalties, attorney’s fees and/or any other losses and/or costs on account of any Injury arising from Participants participation in the Training and/or use of the Facilities.

4. No Liability for Personal Property.

MAGNUM, Alexander Gordy, Marlin Montenegro are not liable for any personal property that is damaged, lost or stolen while in or around the Facilities, including, but not limited to, vehicles and its contents and any property brought into the Facilities.

5. Limitation of Liability.

Unless controlling legal authority requires otherwise, any award by an arbitrator or a court is limited to actual compensatory damages. Neither an arbitrator nor a court can award either Party any punitive or exemplary damages of any kind, or any special, indirect, consequential, or incidental damages of any kind, even if Participant has been advised of the possibility of such damages.

6. Amendments.

No provision of this Agreement may be amended, modified or waived except by a written agreement signed by both Parties.

7. Notices.

 Any notice, demand, request, or written communication, which may be required to be given by either Party to or upon the other Party under this Agreement shall be given by hand delivery, certified mail with return receipt requested or by nationally reputable overnight courier service, in any case addressed as follows:

 If to Magnum: Magnumtotus Solutions, LLC If to Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 1401 Swallow Cir. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Lewisville, TX 75077 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or such other address as either Party may provide in writing to the other Party. Notices shall be effective on the date hand delivered, three (3) days after the date deposited with the U.S. Postal Service for certified mail, or one (1) day after the date deposited with a nationally reputable overnight courier, as the case may be.

8. Binding Arbitration.

 ANY DISPUTE OR CLAIM BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE FULLY AND FINALLY RESOLVED BY BINDING ARBITRATION IN THE COUNTY OF DENTON, TEXAS, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES AND PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) FROM TIME TO TIME IN FORCE AND EFFECT. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE AND IS THE EXCLUSIVE REMEDY FOR THE RESOLUTION OF SUCH DISPUTES UNDER THIS AGREEMENT. FOLLOWING NOTICE OF A PARTY’S ELECTION TO REQUIRE ARBITRATION, EACH PARTY WILL, WITHIN THIRTY (30) DAYS, SELECT ONE (1) ARBITRATOR AND THOSE TWO (2) ARBITRATORS WILL, WITHIN THIRTY (30) DAYS THEREAFTER, SELECT A THIRD (3RD) ARBITRATOR. IF THE TWO (2) ARBITRATORS ARE UNABLE TO AGREE ON A THIRD (3RD) ARBITRATOR WITHIN THIRTY (30) DAYS, THE AAA WILL SELECT THE THIRD (3RD) ARBITRATOR. ALL ARBITRATORS MUST BE (I) A LAWYER ENGAGED FULL-TIME IN THE PRACTICE OF LAW AND A MEMBER IN GOOD STANDING OF THE STATE BAR OF TEXAS AND (II) ON THE AAA REGISTER OF ARBITRATORS. WITHIN THIRTY (30) DAYS OF THE CONCLUSION OF THE ARBITRATION HEARING, THE ARBITRATORS SHALL PREPARE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. JUDGMENT ON THE WRITTEN AWARD MAY BE ENTERED AND ENFORCED IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF DENTON, TEXAS. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS SO SELECTED, TO THE EXCLUSION OF ANY OTHER COURT WHICH MIGHT HAVE HAD JURISDICTION, WAIVE ANY DEFENSE OF LACK OF IN PERSONAM JURISDICTION OF SUCH COURTS AND AGREE THAT SERVICE OF PROCESS IN ANY ACTION BEFORE SUCH COURTS MAY BE MADE BY MAILING IT TO THE PARTY TO BE SERVED AT THE ADDRESS PROVIDED FOR IN SECTION 7 HEREIN THIS AGREEMENT. IT IS MUTUALLY AGREED THAT THE WRITTEN DECISION OF THE ARBITRATORS SHALL BE VALID, BINDING, FINAL, AND NON-APPEALABLE; PROVIDED HOWEVER, THAT THE PARTIES HERETO AGREE THAT THE ARBITRATORS SHALL NOT HAVE THE AUTHORITY TO AWARD PUNITIVE DAMAGES AGAINST ANY PARTY TO SUCH ARBITRATION. THE ARBITRATORS SHALL REQUIRE THE NON-PREVAILING PARTY TO PAY THE ARBITRATORS’ FULL FEES AND EXPENSES OR, IF IN THE ARBITRATORS’ OPINION THERE IS NO PREVAILING PARTY, THE ARBITRATORS’ FEES AND EXPENSES WILL BE BORNE EQUALLY BY THE PARTIES THERETO.

9. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without regard to any other jurisdiction’s principles of conflict of laws.

1. Construction and Interpretation.

 This Agreement has been negotiated by the Parties hereto, and legal or equitable principles that might require the construction of this Agreement, or any provision of this Agreement, against the Party drafting this Agreement will not apply in any construction or interpretation of this Agreement.

1. Headings.

 The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

1. 12. Waiver and Severability.

 The waiver by either Party of a breach or a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party. No waiver of any provision of this Agreement shall be effective unless in writing and executed by both Parties. If any provision of this Agreement, or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

1. Entire Agreement.

 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein this Agreement, and supersedes and replaces all prior agreements, communications and understandings (both written and oral) regarding such subject matter. The terms and conditions of this Agreement will prevail over any contrary or inconsistent terms in any other writing.

14. Authority to Sign.

 All Parties represent and warrant to the other that the individual executing this Agreement on such Party’s behalf is fully authorized to do so, is executing the Agreement willingly and knowingly, is fully authorized to bind such Party to the undertakings and obligations of this Agreement, and are not violating any other binding agreements by their execution of this Agreement.

15. Counterparts.

 This Agreement may be executed electronically as well in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. The signatures to this Agreement may be evidenced by facsimile, electronic or PDF copies reflecting one or more Parties’ signatures hereto, and any such facsimile, electronic or PDF copy shall be sufficient to evidence the signature of such Party or Parties as if it were an original signature.

16. Survival.

 All Sections contained herein this Agreement shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written and fully understand and agree to the provisions contained herein.

 **Magnum**

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 Authorized Representative

 **Participant**

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

 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_