

SaaS License Agreement

This Software as a Service (SaaS) License Agreement (“**Agreement**”), has been made at Bhubaneswar, on this 1st day of April , 2017, by and between:

GD3 Technology, a company incorporated under the Partnership Act, 1932, having its registered office at Plot no 3107, Samantarapur, Lewis Road Bhubaneswar, hereinafter referred to as “**Licensor**”, which expression shall unless repugnant to the meaning and context include its successors and permitted assigns.

AND

You as a Service Provider , an individual being a citizen of India or an entity incorporated under the applicable laws of India, here in after referred to as “**Licensee**”, which expression shall unless repugnant to the meaning and context include its successors and permitted assigns..

Licensor and Licensee shall collectively be called as “**Parties**” and individually as “**Party**”.

BY EXECUTING THIS AGREEMENT, THE LICENSEE AGREES TO THE TERMS AND CONDITION MENTIONED HEREIN. IF THE LICENSEE IS ACCEPTING THIS AGREEMENT ON BEHALF OF AN EMPLOYER OR INSTITUTION, THE EMPLOYER OR INSTITUTION SHALL BE LIABLE FOR ALL ACTS OF THE LICENSEE AND SHALL BE A DEEMED LICENSEE ON BEHALF OF THE LICENSEE.

BY USING THIS SOFTWARE AS A SERVICE (“**SERVICE**”), YOU DE-FACTO ARE LEGALLY BOUND BY THE FOLLOWING AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SERVICE AND CONTACT THE LICENSOR. NOT WITHSTANDING ANYTHING TO THE CONTRARY IN THIS NOTICE, USING THE SERVICE INDICATES YOUR ACCEPTANCE OF THE TERMS OF THE AGREEMENT.

1. DEFINITIONS:

- “**Agreement**” means the terms and conditions of this SaaS License Agreement.
- “**Affiliates**” refers to any corporation, association, or other entity that directly or indirectly owns, is owned by, or is under common ownership with either Party, respectively, either currently or during the term of this Agreement. As used in this definition, the terms "owns", "owned", or "ownership" mean the direct or indirect possession of more than 50% of the voting securities, or equity in such business entity.

- “Claim” shall mean any liability, suits, claims, actions, proceedings, losses, damages, judgments and reasonable costs.
- “Documentation” shall mean the instructions and/or user manuals that describe installation, use, and/or operation of the Service.
- “Intellectual Property Rights” shall mean copyright, patents, designs, trademarks, trade names, goodwill rights and trade secrets.
- “SaaS” stands for Software As A Service.
- “License Term” shall be for a limited period specified in the Agreement, unless otherwise provided.
- “Software” means and includes the instructions, programs, Source Code, Concept and the software, called Gym Management Application, and other scripts including all extensions, additions, modifications, upgrades, updates and enhancements thereto.
- “Authorized User” shall mean any Licensee employee, contractor or supplier. Licensee shall ensure that any person having access to or use of the Service provided to Licensee under this Agreement is subject to an obligation of confidentiality with respect thereto at least as restrictive as the confidentiality obligations set forth in clause 6 of this Agreement.

2. **DELIVERY:**

- The Service (including any enhancements, upgrades or updates) shall be transmitted by the Licensor to the Licensee through a Website, Gym Management Application web app, and mobile application.

3. **TERM AND TERMINATION:**

- The term (“**Term**”) of this Agreement shall commence from the date of execution of this Agreement and shall continue till it is terminated by either Party.
- The Licensor may terminate the Agreement without cause with a written notice of thirty (30) days.
- The Licensee shall not be entitled to a refund of any payment made to the Licensor if this Agreement is terminated by the Licensee for any reason.
- Either Party may terminate this Agreement in the event that:
 - the other Party is in default of any of its material obligations hereunder and such default is not remedied within thirty (30) days of receipt of written notice thereof; or

- the other Party is adjudicated bankrupt or becomes insolvent, makes any assignment for the benefit of creditors, proceedings are instituted by the other party seeking relief, reorganization or rearrangement under any laws relating to insolvency, bankruptcy or similar laws of any jurisdiction, a receiver, liquidator or trustee is appointed in respect of any property or assets of the other party or an order is made for the liquidation, dissolution or winding up of the other party.
- The Licensor reserves its right to terminate this Agreement without notice, in the event that the Licensee makes illegal use of the Service.
- Upon termination or expiration of this Agreement, Licensee shall cease all use of the Service, and all related documentation including all confidential information in Licensee's possession, and shall so certify in writing to the Licensor.
- The provisions which, by their nature are meant to survive the termination of this Agreement, shall survive for a period of two (02) years from the expiry or termination of this Agreement.

4. **LICENSE:**

- **Grant of license:**

- Subject to the terms and conditions of this Agreement Licensor hereby grants Licensee a non-exclusive, non-transferable, revocable license to use the Service for the Term.
 - The Licensee shall be provided access to the Service, and the Licensee may authorize its employees to access it. Licensee shall be responsible for use or misuse of the Services by its Authorized Users.
 - The Licensee understands and acknowledges that the Licensee shall not have the right to sublicense or re-distribute the Service to third parties.
 - Nothing in this Agreement shall be considered as a grant of title or ownership in the Service to the Licensee.

4.2 **Scope of license:**

- In order to use the Service, you may be required to register and create a User Account with password ("**User Account**"). At the time of registration, you shall be required to share information which may include personal information ("**Personal Information**") including but not limited to information regarding Licensee's e-mail ID, name, institution details, location, and other relevant details. Licensee agrees that any registration information provided by the User shall always be accurate, correct and complete.

- The Licensee shall select the package the Licensee desires to license. The Licensee shall make payments through Cheque/ Card / Cash or through online modes.

4.3 **Maintenance & Support:**

You acknowledge that while the Licensor may, at its sole discretion, provide maintenance and support for the Service from time to time, the Licensor shall have no specific obligation whatsoever to furnish such services to you.

4.4 **Updates/ Upgrades:**

In the event that the Licensor launches new updates/upgrades of the Service, the Licensee may subscribe to such upgrades/updates. In case Licensee chooses not to update/upgrade, certain features or functionality shall not be accessible to such Licensee. In the event that the features made available through the Service require substantial modifications or additional services then the Licensee shall be required to pay charges as intimated by the Licensor from time to time.

4.5 **Obligations of Licensee:**

- Use of the Service is based on Licensee obtaining and maintaining access to the internet, and all equipment necessary for proper operation of the Services. Licensee is required to maintain and use secure user names and passwords issued by Licensor, if any, for the access and use of the Service. Licensee is responsible for all activities that occur under Licensee's user names and passwords. Licensee shall be responsible for ensuring the security and confidentiality of such user names and passwords, if any.
- Licensee undertakes to prevent unauthorized access to, or use of, the Service and shall notify Licensor immediately of any such unauthorized use or other known breach of security. Licensee shall report to Licensor immediately and stop immediately any copying or distribution of the Service that is known or suspected by Licensee.
- Licensee shall abide by the acceptable use policy set out in Annexure 1 and provisions including those related to data privacy, international communications and the transmission of technical or personal data and in accordance with Licensor's [Privacy Policy, provided here](#). And Licensor reserves the right to update such policy as set forth therein. Any use of the Service in violation of Licensor's Privacy Policy shall be a material breach of this Agreement.
- Licensee shall be solely responsible for providing all relevant data required for the proper operation of the Service. Licensee shall be solely responsible for the accuracy, quality, integrity, reliability, appropriateness, and intellectual property ownership or right to use such data.
- Licensor is under no obligation and shall not be liable to review such data for accuracy, acceptability or potential liability. Licensee grants to Licensor all necessary licenses in and to such data solely as necessary for Licensor to provide the Service to Licensee.

5. **PAYMENT:**

- The Licensor licenses the Service under this Agreement to the Licensee for an annual/monthly/quarterly subscription fee (“**Fee**”) as set out in the rate card in Annexure 3. Licensor reserves the right to revise the Fee at its sole discretion with or without notice to the Licensee.
- **Taxes:** Licensee shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement and the use of the Service.
- In the event that the Licensee fails to make payments towards the Fee or the renewal Fee thereof, as and when they become due, the Licensor shall terminate the access of the Service to the Licensee.

6. **CONFIDENTIALITY:**

- The Licensee shall keep all information including but not limited to Service, Documentation or any other documentation, methods, processes, data of the Users shared with respect to the Agreement as proprietary of the Licensor and treat the same as confidential and shall not disclose such information to any third party, except, disclose pertinent aspects of the Agreement to government and / or regulatory authorities, as required by law.
- Licensee shall not disclose, provide or otherwise make available the Service to any person other than the employees of Licensee whose use of or access to the Service is necessary in connection with Licensee’s exercise of its rights granted under this Agreement.
- Licensee shall not use the Service for any purpose not expressly permitted by this Agreement.
- Licensee shall use all commercially reasonable precautions to protect the confidentiality of the Service, and shall secure from all employees, agents or independent contractors having access to the Service, agreements, at least as protective of the Service as the provisions of this clause 6, to maintain the Service in confidence.

7. **INTELLECTUAL PROPERTY RIGHTS:**

- Any and all rights to the Service, its contents and any Documentation provided therewith, including title, ownership rights and Intellectual Property Rights therein shall remain the sole and exclusive property of the Licensor and/or its suppliers or its licensors. Licensee shall not own any Intellectual Property Rights with respect to the Service, customization, training material and accompanying Documentation, including Licensor’s confidential information under this Agreement. Licensee shall own all Intellectual Property Rights with respect to data and other relevant information provided by Licensee.
- Notwithstanding anything contained in this Agreement or otherwise, nothing in this Agreement shall be construed as a transfer in the Intellectual Property Rights of the Licensor to the Licensee.
- The Licensee shall not use the Intellectual Property Rights of the Licensor without the prior written consent of the Licensor. Contravention of this provision shall be construed as a material breach of this Agreement.

8. **DISCLAIMER OF WARRANTIES:**

- Licensee hereby expressly agrees and acknowledges that, except as provided in this Agreement, the Service is provided "as is" and "as available" without any representations, conditions, warranties or covenants whatsoever with respect to the Service, including without limitation, any express, statutory or implied representations, warranties or conditions of merchantability, merchantable quality, satisfactory quality or fitness for a particular purpose, or arising otherwise in law or from a course of dealing or usage of trade, all of which are expressly disclaimed and excluded. The Licensor does not warrant that the Service shall be error free or will perform in an uninterrupted manner.

9. **INDEMNITY:**

- Licensee shall, defend, indemnify and hold harmless Licensor from any third party claims arising out of:
 - Misuse of the Service;
 - Breach of terms of this Agreement;
 - Breach of applicable laws;
 - Breach of Licensor's Privacy Policy.

This indemnity shall survive the termination of this Agreement.

10. **LIMITATION OF LIABILITY:**

- IN NO EVENT SHALL THE LICENSOR BE LIABLE TO THE LICENSEE OR A THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, BUSINESS INTERRUPTION) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE LICENSEE OR THE THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- IN ANY EVENT, LICENSOR'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR UNDER ANY OTHER FORM OR LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM LICENSOR'S NEGLIGENCE, SHALL NOT BE IN EXCESS OF THE PRORATED AMOUNT OF FEES PAID TO LICENSOR HEREUNDER IN PRECEDING THREE (03) MONTHS OF THE EVENT WHICH IS GIVING RIGHT TO SUCH CLAIM. THE FOREGOING LIABILITY CAP SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY OR REMEDY HEREIN.

11. **INDEPENDENT CONTRACTOR:**

- The Licensee acknowledges that this Agreement is not intended to nor does it create any employment agreement, agency, partnership or joint venture between the Parties. The Licensee shall be an independent contractor under this Agreement.

12. **ARBITRATION:**

- In the event of any dispute arising out of or in relation to this Agreement, the Parties shall try and resolve the dispute amicably in good faith through negotiations. In case the dispute is not resolved within a reasonable time, the Parties agree to submit the same for arbitration to a sole arbitrator, mutually appointed by the Parties. In the event that the Parties cannot agree upon a sole arbitrator, each Party shall appoint an arbitrator and the two arbitrators shall mutually appoint the third presiding arbitrator. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. Arbitration proceedings shall be conducted in the English language and the venue shall be Pune. The award of the arbitration proceedings shall be final and binding on the Parties.

13. **GOVERNING LAW AND JURISDICTION:**

- This Agreement shall be governed by and construed under the laws of India. Subject to arbitration clause above, any dispute arising out of or in relation to this Agreement shall be submitted to the sole jurisdiction of the courts of law at Bhubaneswar.

14. **FORCE MAJEURE:**

- Without limiting the foregoing, under no circumstances shall Licensor be held liable for any damage or loss due to deficiency in performance of the Service resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, internet failures, computer equipment failures, telecommunication equipment failures, power failures, internet outage, or any other government regulations, floods, storms, electrical failure, civil disturbances, riots.

15. **MISCELLANEOUS:**

- **Notices**

Any and all notices that either Party is required or may desire to give to the other Party hereunder, shall be given by addressing the communication to the address set forth at the start of this Agreement, and shall be served by certified or registered post. Any change to the abovementioned address shall be informed to other Party in writing, within thirty (30) days of such change.

- **No Assignment**

Neither Party may assign its rights under this Agreement without the prior written consent of the other Party. The Licensee shall not sub-contract any of its obligations (or part thereof) under this Agreement to any third party without the prior written consent of the Licensor.

- **Severability**

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provision (or remaining part thereof).

- **Waiver**

No delay or failure of either Party in exercising any right and no partial or single exercise of any right shall be deemed to constitute a waiver of that right or any other rights under this Agreement.

- **Amendment**

This Agreement may not be altered, or modified except by a written agreement or addendum Signed by authorized representatives of the Parties.

- **Entire Agreement**

This Agreement contains the entire agreement and understandings by and between the Parties with respect to the covenants herein described, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect.

The Parties have read this Agreement and agree to be bound by all its terms.

Agreed to:

Agreed to:

GD3 Technology

Licensee

By:

By:

Authorized Signature

Authorized Signature

Name:

Name:

Title:

Title:

Date:

Date:

ANNEXURE 1

SERVICE DESCRIPTION

Through the Service and the package selected, Licensor shall be able to upload pictures, members details, attendance, manage its gym/health club and website on the Licensor's platform ("**Platform**"). The Licensee shall also be able to gather information about the Licensor's users including but not limited to search details for new enquiries, repeat enquiries, visitor information etc. Licensee shall be provided with features of payment analysis, real time updates, tracking of users' activities other than being able to send automatic emails for confirmation/ payment confirmation / receipt generation /Payment reminder to the users.

ANNEXURE 2

Acceptable Use Policy ("Policy")

1. RESTRICTIONS

Licensee agrees to use the Service in accordance with all applicable local, state and federal laws, and shall not:

- Conduct any business or activity or solicit the performance of any activity that is prohibited by law, tortuous, or interferes upon the use of Service by other licensees and customers;
- Disseminate, display, send, transmit or receive any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, malicious, or violent, regardless of whether the material or its dissemination is unlawful;
- Disseminate or transmit unsolicited messages, chain letters or unsolicited commercial email including unintended sending of unsolicited commercial email due to unauthorized access to Licensee's use of the Service, whether or not the recipient wishes to receive such mailings;
- Access, send, receive, display, disclose, or store any content in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right or in violation of any applicable agreement, or without authorization;
- Create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
- Export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of India and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
- Interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which Licensee does not have authorization to access or at a level exceeding Licensee's authorization;
- Disseminate or transmit any virus, worms, trojan horse or other malicious, harmful or disabling data, work, code or program;

- Engage in any other activity deemed by Licensor to be in conflict with the spirit or intent of the Agreement or any Licensor policy as examples listed in this Policy are not exhaustive.

2. FAILURE TO COMPLY

Failure to comply with this Policy in Licensor's reasonable judgment may result in the immediate termination of Service, responding to law enforcement requests, or any other action deemed necessary by Licensor in order to protect its network, customer relationships, and commitment to the highest possible quality of Service. Licensor will cooperate with law enforcement in cases where the Service is being used by the Licensee for any suspected illegal activity.

3. REPORTING VIOLATIONS

Violations of this Policy are unethical and may be deemed criminal offenses. Licensee shall report to Licensor any information Licensee may have concerning instances in which this Policy has been or is being violated. Licensor may at any time initiate an investigation of any use of the Service for compliance with this Policy and Licensee agrees to cooperate.

4. MALICIOUS ACTIVITY

- **Intended:** Attempts to exploit other devices or services on and off of Licensor's Service without the permission or implied permission of that party are not permitted. Violations of system or network security may result in criminal and civil liability. Licensor will cooperate with law enforcement if a criminal violation is suspected. Licensor will limit any traffic from the offending device or network immediately.
- **Unintended:** Licensor will notify customers of an exploited Software being used for potential malicious activity. If the activity is causing severe damage or strain to other Software or networks, Licensor will limit traffic to and from that Software immediately. Otherwise Licensor will notify the customer and give a reasonable amount of time to secure the Software before limiting traffic to and from that Software.

ANNEXURE 3

RATE CARD

Monthly Package – Rs.500/Month