

TERMS OF USE

THE 5, LLC

Introduction

Welcome! This website and, except as set forth herein, the services offered at The 5 location in Encino are owned and operated by The 5, LLC ("**The 5,**" "**us,**" "**our,**" or "**we**"). These Terms and Conditions of Use ("**Terms of Use**") set forth the terms and conditions under which you are authorized to use our websites at www.the5baseball.com, and any other domain name owned or controlled by us (including any subdomains and mobile versions, the "**Site**"), interact with our other on-site or web-enabled technologies, to register or become a member of The 5 and to and participate in or utilize The 5 facility located at 17301 Oxnard Blvd. Encino, CA 91316 ("The 5 Facility"). We may refer to the Site and related web-enabled technologies collectively as our "**Digital Services.**"

Through your use of our Digital Services, your registration with The 5, or your visiting or use of the The 5 Facility, you consent to and agree to be bound by these Terms of Use.

To the extent additional rules or guidelines affect your use of our Digital Services or your use of the The 5 Facility, those rules and guidelines (including our Privacy Policy and other rules displayed or verbally communicated by our staff at The 5 Facility) are hereby incorporated by reference into these Terms of Use. If you do not agree to these Terms of Use, you should immediately stop using our Digital Services and refrain from visiting or using The 5 Facility.

Registration and Membership

You may visit our Site or The 5 Facility and obtain information about The 5 without registering. However, in order to use all of our Digital Services and use The 5 Facility and any of our equipment you must register with The 5 and sign a waiver/release for yourself or behalf of your child if you are parent or legal guardian. We also offer various membership and membership benefits as set forth on our Site.

You will be provided with a username and password to register and/or become a member of The 5. The username and password are to be used by only one person. You shall not grant or provide access to The 5 Site or Facility to anyone else using your user name and password. You are responsible for the safe keeping of your username and password and if you become aware that anyone else is using your username and password you shall notify us immediately and/or change your username and password.

Third-party services

Our services, including our Digital Services, are intended primarily for informational purposes, to register or purchase memberships with The 5 and to book or reserve our batting cages, equipment, clinics or other training areas. We enable you to inquire about the various services offered by The 5 or others and we provide links for you to purchase memberships and other services. Your use of these features and other content or services provided by third parties—including third-party links to other websites on the Internet or third-party services offered at The 5 Facility—are not governed by these Terms of Use. You acknowledge and agree that we are not responsible for any services provided by a third party or the availability of, or any content located on or through, any third-party website or service, or any use of your information by those third parties. This includes third party coaches that you elect to consult with or bring to The 5 Facility. You further acknowledge that any reliance on instructions from,

representations and warranties provided by any party other than The 5 will be at your own risk. You expressly agree to hold us harmless for any claims of damage arising from any content, product or service provided by any third party or the use of your information by those third parties. Your use of those third-party websites and services is subject to the terms of use and privacy policies applicable to each, and we encourage you to review those terms of use and privacy policies with the third parties.

Use and Interruption to Digital Services

We reserve the right to modify or discontinue all or any portion of our Digital Services with or without notice to you. We will not be liable if we choose to exercise this right. You acknowledge and accept that we do not guarantee continuous, uninterrupted or secure access to our Digital Services, or that operation of our Digital Services will be uninterrupted or error free. You understand that usage of our Digital Services may be interfered with or adversely affected by numerous factors or circumstances outside of our control.

Attendance at the The 5 Facility

We reserve the right to refuse to provide services or permit you to visit the The 5 Facility for any reason in our sole discretion. In addition, we reserve the right to remove you from the The 5 Facility for any reason in our sole discretion. We also have the right to close all or part of the The 5 Facility at any time.

Parent/Legal Guardians and Minors

As a condition of your right to use our Digital Services, visit or use the The 5 Facility, you represent and affirm that you are of legal age to enter into a binding contract (i.e. 18 years of age or older), or you are the parent or legal guardian of a minor for whom you are entering into this Agreement on their behalf.

All individuals 17 years and younger must have a parent or legal guardian register with The 5 in order to use our services or The 5 Facility. All parents or legal guardians agree that they will ensure that their child and any other children under their care or control adhere to all rules of The 5 and that the parents or legal guardian take reasonable steps to ensure that their childrens' use of The 5, The 5 Facility or any equipment located at The 5 is reasonably supervised, conducted in conformance with the rules and reasonable use of that equipment, and is done so in a safe manor. Children will also register and/or become members of The 5. All such "child accounts" shall be linked to a parent/guardian and subject to control of that parent/guardian.

Use and Restrictions

All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, artwork, including but not limited to design, structure, "look and feel" and arrangement of the content available on the Sites or in use at the The 5 Facility (collectively, "Content") is owned, controlled or licensed by or to us, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws. The Content and the Sites are owned by the Company and its affiliates, and/or their licensors and suppliers (which may include lessors, lessees, owners, sellers, buyers, agents, brokers, multiple listing services, builders, service providers, content providers, vendors and others) (collectively, "Licensors and Suppliers"). Except as expressly provided in these Terms of Use, no part of any Site or the Content may be copied, reproduced, republished, posted, publicly displayed, translated, or distributed in any way. Subject to the limited rights to use the Sites and

Services pursuant to these Terms of Use, we retain all right, title and interest in and to the Sites and Services, including all related intellectual property contained therein.

Assumption of Risk.

You acknowledge that visiting The 5 Facility and using the equipment located at The 5 Facility carries with it a certain level of risk as baseball and batting cages can be dangerous. By visiting a The 5 Facility, you acknowledge this danger and voluntarily assume the risk that you may be injured resulting in personal injury, permanent disability, or death. You understand that the risk of becoming injured at The 5 Facility may result from the actions, omissions, or negligence of yourself and others, including, but not limited to, The 5, its employees or any third party coaches. You voluntarily agree to assume all of the foregoing risks, accept sole responsibility and release all claims for any injury to yourself (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that you may experience or incur in connection with your visiting or use of The 5 Facility.

Photography and Video

Portions of the The 5 Facility may be photographed or videotaped and recorded, including audio. It is possible that images of you or your voice may be captured while you are at The 5 Facility, and you agree that we may use such images of you or your voice in any manner permitted by law, and you hereby grant us such rights.

Permitted Uses

Subject to the provisions in these Terms of Use, you may use the Site and visit the The 5 Facility to view and interact with the Content, the Site or any of the equipment or services offered at the The 5 Facility. Subject to these Terms of Use, upon your registration we hereby grant you a personal, nontransferable, nonexclusive, non-sublicensable license to use the user interface of the Site, the 5 Facility, and related Content in accordance with the Terms of Use, and for no other purpose. All rights, title and interest in and to the user interface, Content, or any aspect of The 5 or The 5 Facility, including any software, on or through any Site, or services shall belong to us or our Licensors and Suppliers, including all modifications thereof and enhancements thereto. The Content and user interface made available from, on or through any Site or any aspect of the The 5 Facility may not be copied, modified, republished, assigned, sold or distributed by you, nor may derivative works be prepared therefrom. The license granted to you pursuant to these Terms of Use is solely for your personal use (but not for resale or redistribution) of the Site or your personal attendance at the The 5 Facility and may not be used for any other purpose. No ownership rights are granted to you hereunder and no title is transferred hereby.

Prohibited Uses

Any use of Content, including without limitation reproduction for purposes other than those noted herein, modification, distribution, replication, any form of data extraction or data mining, or other commercial exploitation of any kind, without prior written permission of an authorized agent of The 5, is strictly prohibited. You agree that you will not use any robot, spider, or other automatic device, or manual process to monitor or copy our web pages or the content contained therein without prior written permission of an authorized agent of The 5. You may not copy any portion of the Content. You may not make any commercial use of Content owned by any third parties which is available on the Digital Services or at the The 5 Facility, without the express consent of those third parties.

Disclaimers and Limitations of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, THE 5, ITS RELATED ENTITIES, ITS SERVICE PROVIDERS, ITS LICENSORS, AND ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, RELATED TO OUR SERVICES OR YOUR ATTENDANCE AT THE THE 5 FACILITY.

YOU UNDERSTAND AND AGREE THAT YOUR USE OF OUR SERVICES AND YOUR ATTENDANCE AT THE THE 5 FACILITY IS AT YOUR SOLE RISK. OUR SERVICES AND ALL CONTENT, PRODUCTS AND SERVICES OFFERED THROUGH THE DIGITAL SERVICES OR AT THE THE 5 FACILITY ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE 5 IS NOT RESPONSIBLE FOR THE TIMELINESS OF DELIVERY OF CONTENT, ANY FAILURES OF DELIVERY, ERRONEOUS DELETION, OR ANY LOSS OR DAMAGE OF ANY KIND YOU CLAIM WAS INCURRED AS A RESULT OF THE USE OF ANY SERVICES OR YOUR VISITING OR USE OF THE 5 FACILITY. UNDER NO CIRCUMSTANCES, WILL THE 5 BE LIABLE TO YOU OR TO ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR ANY LOSS, INJURY, LIABILITY OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF, INABILITY TO USE, OR RELIANCE ON ANY OF OUR SERVICES OR ANY CONTENT, PRODUCT OR SERVICE PROVIDED TO YOU, INCLUDING YOUR ATTENDANCE AT THE THE 5 FACILITY. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, GOODWILL, REVENUE OR PROFITS. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER BASIS; EVEN IF THE 5 HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, ILLEGAL OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF THE 5 UNDER SUCH CIRCUMSTANCES TO YOU OR ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED WILL NOT EXCEED THE GREATER OF \$1,000 U.S. DOLLARS OR THE AMOUNT THAT YOU PAID TO THE 5 DURING THE PRECEDING SIX MONTHS. NOTHING IN THIS CLAUSE SHALL LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM OUR GROSS NEGLIGENCE.

COVID-19

The novel Coronavirus, commonly known as COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people.

We have put in place preventative measures to reduce the spread of COVID-19; however, we cannot guaranty that you will not become infected with COVID-19 if you visit a The 5 Facility. Further, your attendance at The 5 Facility could increase your risk of contracting COVID-19.

By visiting a The 5 Facility, you acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that you may be exposed to or infected by COVID-19 by visiting the The 5 Facility, and that such

exposure or infection may result in personal injury, illness, permanent disability, and death. You understand that the risk of becoming exposed to or infected by COVID-19 at the The 5 Facility may result from the actions, omissions, or negligence of yourself and others, including, but not limited to, The 5 or its employees. You voluntarily agree to assume all of the foregoing risks, accept sole responsibility and release all claims for any injury to yourself (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that you may experience or incur in connection with your use of the The 5 Facility.

Indemnification

You agree to indemnify, defend and hold The 5 harmless from any claim or demand, including reasonable attorney's fees and costs, made by any third party due to or arising out of your use of the Site, your posting of any information to the Site, or your visiting or use of The 5 Facility, that is inconsistent with these Terms of Use, including without limitation your actual or alleged violation of these Terms of Use, or infringement of a third party's intellectual property or other rights by you or another user of our Digital Services using your computer, mobile device or account.

Dispute Resolution

Any dispute arising out of or relating in any way to your use of our Digital Services, your visiting or use of The 5 Facility, or information you receive through our Digital Services, shall be submitted to confidential, binding arbitration in Los Angeles, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. The arbitrator's award shall be final and binding and may be entered as a judgment in any court of competent jurisdiction. No arbitration under these Terms of Use may be joined with another arbitration related to the subject matter hereof. Notwithstanding the foregoing arbitration requirement, with regard to any actual or potential violation of our intellectual property rights, we may seek injunctive or other appropriate relief in the courts of Los Angeles, California, and you hereby consent to the exclusive jurisdiction of such courts and waive all objections thereto. We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial.

Governing Laws

The laws of the state of California and the United States govern these Terms of Use and any claims arising out of or relating to use of our Digital Services or your visiting and use of The 5 Facility, without giving effect to any choice of law rules. With the exception of any matters subject to arbitration as described above, the state and federal courts located in Los Angeles, California will serve as the venue for any actions brought, or claims made, arising out of your use of our services, including our Digital Services, or your visiting or use of the The 5 Facility.

Changes to These Terms

We reserve the right, at any time, to modify, alter, or update these Terms of Use without prior notice. You are encouraged to check this page regularly for changes to the Terms of Use. Modifications will become effective immediately upon being posted to our Digital Services, without further notice to you. Your continued use of any of our services or your attendance at The 5 after such modifications are

posted constitutes your acknowledgement and acceptance of such modifications. You may not amend these Terms of Use.

Other Terms

If any provision of these Terms of Use is determined by a court of law to be unlawful, void or unenforceable for any reason, the other provisions (and any partially-enforceable provision) shall not be affected thereby and shall remain valid and enforceable to the maximum possible extent, and the invalid provision will be modified as necessary to make it valid and enforceable while as closely as possible reflecting the original intentions of The 5. You agree that these Terms of Use and any other agreements referenced herein may be assigned by us, in our sole discretion, to a third party in the event of a merger or acquisition or otherwise. These Terms of Use shall apply in addition to, and shall not be superseded by, any other written agreement between us in relation to your use of our Digital Services or The 5 Facility. You agree and understand that these Terms of Use together with any other applicable click-through agreements you may have entered into regarding our Digital Services, constitutes the entire agreement between you and The 5 regarding your use of the Services and your attendance at The 5 Facility, and that any other prior agreements between you and The 5 are superseded by these Terms of Use. Any failure by The 5 to exercise its rights under these Terms of Use or to enforce the terms hereof will not constitute a waiver of those rights. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of our services or The 5 Facility, or relating to these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The Site, the Content, other technology we may make available, and derivatives thereof may be subject to laws and regulations of the United States and other jurisdictions. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise. Subject to the foregoing, these Terms of Use shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

Term and Termination

The term of these Terms of Use will continue for as long as we allow you access to and use of the Site and/or The 5 Facility.

Compliance With Law

You assume all knowledge of applicable law and you are responsible for compliance with any such laws. You may not use our services or take any action at The 5 Facility in any way that violates applicable state, federal, or international laws, regulations or other government requirements.

Contact Us

If you have any questions about these Terms of Use or the The 5 Facility please contact us at:

info@the5baseball.com