

EVOLVE FITNESS TERMS OF SERVICE USER AGREEMENT

PLEASE CAREFULLY READ THIS USER AGREEMENT (THE “AGREEMENT” OR “TERMS AND CONDITIONS”) BEFORE PROCEEDING. THIS AGREEMENT IS BETWEEN YOU AND WHITTEMORE ENTERPRISES LLC D/B/A EVOLVE FITNESS FOR SERVICES SELECTED BY YOU AS PART OF THE ENROLLMENT PROCESS (THE “SERVICES”)

BY CLICKING THE “I ACCEPT” OR “I AGREE” BUTTON ON THE EVOLVE FITNESS ONLINE PORTAL OR CLICKING OR FOLLOWING ANY LINKS TO VIMEO OR OTHER RECORDED OR LIVESTREAMED WORKOUTS OR OTHER CONTENT PROVIDED TO YOU, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS, PLEASE DO NOT USE THE SITE OR SERVICES.

For purposes of this Agreement, the words “we”, “us”, “our” “Evolve,” “Evolve Fitness,” and “Whittemore Enterprises LLC” mean and refer to Whittemore Enterprises LLC, a Texas Limited Liability Company, its affiliates and any agent, including sales agents, independent contractors or assignees that Whittemore Enterprises LLC may, in its sole discretion, involve in the sale or provision of the Services. The words “You”, “Your”, or “User” refer to the person or entity identified as the user during the enrollment process or person accessing any of the Services.

We may update or amend these Terms and Conditions from time to time to comply with law or to meet our changing business requirements without notice to you. Your continued use of the Sites and/or other products or services of Evolve Fitness after any such changes constitutes your acceptance of the new Terms and Conditions. Any updates or amendments will be posted on the Sites. The Terms and Conditions displayed on the Sites at the time the order is accepted will apply to the order.

Accuracy of Information

You must be at least 18 years of age to use Services. You hereby represent and warrant that all enrollment information, entries, posts and responses, including without limitation, your name and contact information is yours, is truthful and accurate.

This Agreement governs the use of our online portal, website, and related sites for products and/or other services other than personal or group training sessions at Evolve Fitness’s physical location (collectively, “Sites”). These Terms and Conditions govern and apply to your (“you” or “your”) access to and use of the Sites and their related domains on which these Terms and Conditions appear, any order you place through any of the Sites, and to all products and services we supply, produce, distribute, or market.

To the extent of any express inconsistency with any other agreement you may have with Evolve Fitness for products, services, or otherwise, that other agreement shall prevail unless otherwise explicitly stated therein. If these Terms and Conditions refer or relate to a clause that is not part of that other agreement, then these terms shall apply therein as well, if you are a user of the Sites.

Please be aware that when you access and/or use certain features of the Sites, your access to or use of such features will also be subject to all guidelines, terms, agreements, and conditions applicable to such features, including third party policies (the “Policies”). All such Policies are incorporated into these Terms and Conditions by reference, and if the applicability of these Terms and Conditions is incompatible with your access to or use of the Services, the relevant terms of such third party Policies will control.

User Conduct

You must only use the Sites for lawful purposes, and you must not use them in a way that infringes the rights of anyone else or that restricts or inhibits anyone else’s enjoyment of the Sites. **You may not without our prior written consent:**

- **copy, reproduce, use, or otherwise deal with any content on the Sites;**
- **modify, distribute, or re-post any content on the Sites for any purpose; or**
- **use the content of the Sites for any commercial exploitation whatsoever.**

In using the Sites, you further agree:

- not to disrupt or interfere with the security of, or otherwise abuse, the Sites, or any services, system resources, accounts, servers, or networks connected to or accessible through the Sites or affiliated or linked sites;
- not to disrupt or interfere with any other user’s enjoyment of the Sites or affiliated or linked websites;
- not to upload, post, or otherwise transmit through or on the Sites any viruses or other harmful, disruptive, or destructive files;
- not to use, frame, or utilize framing techniques to enclose any Evolve Fitness trademark, logo, or other proprietary information (including the images found at the Sites, the content of any text, or the layout/design of any page or form contained on a page) without Evolve Fitness’s express written consent;
- not to use meta tags or any other “hidden text” utilizing Evolve Fitness’s name, trademarks, or product names without Evolve Fitness’s express written consent;
- not to deeplink to the Sites without Evolve Fitness’s express written consent;

- not to create or use a false identity on the Sites, share your account information, or allow any person besides yourself to use your account to access the Sites;
- not to collect or store personal data about others;
- not to attempt to obtain unauthorized access to the Sites or portions of the Sites that are restricted from general access;
- not to post any material that is knowingly false and/or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or otherwise in violation of any law. You also agree not to post any copyrighted material unless the copyright is owned by you or by Evolve Fitness; and
- to be bound by the Product Submission Policies of Evolve Fitness, including that any product submission you may make to Evolve Fitness will not be held in confidence by Evolve Fitness, and is not proprietary, that Evolve Fitness may use the product submission and any aspect thereof for any purposes in Evolve Fitness's sole discretion, and that Evolve Fitness owes no duties or obligations with respect to you or the product submission made.

In addition, you agree that you will comply with all applicable local, national, and international laws and regulations that relate to your use of or activities on the Sites.

We will not be responsible, or liable to any third party, for the content or accuracy of any materials posted by you or any other user of the Sites. We have the right to remove any material or posting you make on the Sites if, in our opinion, such material does not comply with the content standards set out in these Terms and Conditions.

The views and opinions of authors, trainers, experts and any other contributors expressed herein do not necessarily state or reflect the attitudes and opinions of Evolve Fitness. These views and opinions shall not be attributed to or otherwise endorsed by Evolve Fitness, and may not be used for advertising or product endorsement purposes without the express, written consent of Evolve Fitness.

Privacy Policy

Users of the Sites and/or other products or services of Evolve Fitness should refer to the Evolve Fitness Privacy Policy for information about how Evolve Fitness uses and collects information, which may be accessed by clicking on the appropriate link on the particular Site that you visited. You agree that Evolve Fitness may disclose your personal information to a third party if Evolve Fitness believes in good faith that the law or legal process requires it, to protect the rights or property of Evolve Fitness or others, or as otherwise described in the Privacy Policy.

Content Uploaded to the Sites

In the event that you upload any photographs, comments, video clips, or other media to the Sites (the “Uploaded Content”), Evolve Fitness has the exclusive right to use any and all such elements of the Uploaded Content in connection with and/or as part of its business, including in connection with and/or in any advertising in any and all media, including, without limitation, product packaging, printed publications, presentations, promotional materials, events and associated marketing materials, television and cinema commercials, videos, or websites, in perpetuity throughout the world as Evolve Fitness in its sole discretion sees fit without further consent or payment. The Evolve Fitness has all right, title, and interest in any and all results and proceeds from such use of the Uploaded Content. Evolve Fitness has the right to transfer the aforementioned rights to use the Uploaded Content to any third party, including, but not limited to, any of its subsidiaries or affiliated companies. Evolve Fitness may alter, adapt, or edit the Uploaded Content and any further material created under these Terms and Conditions, and market and exploit it entirely at Evolve Fitness’s sole discretion. Evolve Fitness is not obliged to make any use of the Uploaded Content or exercise any of the rights granted by these Terms and Conditions. Users of the Sites must only post Uploaded Content that is owned by, and features, themselves, and no other third parties. Users posting Uploaded Content via a user profile must treat their login credentials and password as confidential and ensure that they are not shared with any third that might jeopardize the security of their account.

Changes to the Sites

Evolve Fitness may, in its sole discretion, terminate, change, modify, suspend, make improvements to, or discontinue any aspect of the Sites or any products available through or outside of the Sites, temporarily or permanently, including the availability of any features of the Sites or access to any parts of the Sites, at any time without notice to you, and you agree that Evolve Fitness shall not be liable therefore.

Linked Sites

Evolve Fitness makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from the Sites, or sites linking to these Sites. The linked sites are not under the control of Evolve Fitness, and Evolve Fitness is not responsible for the content of any linked site or any link contained in a linked site, or any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation, endorsement, or adoption by Evolve Fitness of the site or any information contained therein. When leaving the Sites, you should be aware that Evolve Fitness’s Terms and

Conditions and policies no longer govern, and therefore you should review the applicable terms and policies, including privacy and data-gathering practices, of that site.

Copyright and Trademarks

All the Sites' materials, including, without limitation, the Product Partners, Evolve Fitness and all Evolve Fitness product logos, design, text, graphics, software, other files, and the selection and arrangement thereof (the "Content") are Copyright © _____ **[NEED DATE YOU STARTED MET45]** Evolve Fitness. ALL RIGHTS RESERVED. Unless expressly stated otherwise, Evolve Fitness or its suppliers or licensors own and retain other proprietary rights in all products available through the Sites. Except as stated herein, none of the Content may be copied, modified, reproduced, distributed, republished, downloaded, performed, displayed, posted, transmitted, sold, or made into derivative works in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Evolve Fitness or the respective copyright owner. You may not, without the express written permission of Evolve Fitness or the respective copyright owner, (a) copy, publish, or post any materials on any computer network or broadcast or publications media; (b) modify the materials; or (c) remove or alter any copyright or other proprietary notices contained in the materials. You also may not (a) sell, resell, or make commercial use of the Sites, its content, or services or products obtained through the Sites; (b) collect and use of any product listings or descriptions; (c) make derivative uses of the Sites or its Content; or (d) use of any data mining, robots, or similar data gathering and extraction methods. You are not conveyed any right or license by implication, estoppels, or otherwise in or under any patent, trademark, copyright, or other proprietary right of Evolve Fitness or any third party.

Copyright Policy and Copyright Agent

It is Evolve Fitness's policy to respect the copyright and intellectual property rights of others. Evolve Fitness may remove content that appears to infringe the copyright or other intellectual property rights, including moral rights, of others. In addition, Evolve Fitness may terminate access by users who appear to infringe the copyright or other intellectual property rights of others. Further, Evolve Fitness complies with the Digital Millennium Copyright Act.

If you believe that Evolve Fitness or any user of our Sites has infringed your copyright in any material way, please notify Evolve Fitness, and provide the following:

- an identification of the intellectual property right claimed to have been infringed;
- an identification of the material that you claim is infringing so that we may locate it on the Sites;

- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the owner, their licensee, and agent of either of the foregoing, or the law; and
- a statement by you that the above information in your notice is accurate, made under penalty of perjury, and
- that you are authorized to act on behalf of the owner of the intellectual property interest involved.
- Please direct inquiries regarding intellectual property infringement issues by email to:[INSERT INFO OR ADMIN EMAIL ADDRESS FOR EVOLVE], or by mail to:

Evolve Fitness

[address]

Attn.: Chief Legal Officer

Indemnification

You agree to indemnify and hold harmless Evolve Fitness, its parents, subsidiaries, shareholders, officers, directors, employees, agents, and suppliers from any claim, action, demand, loss, or damages (including attorneys' fees) made or incurred by any third party arising out of or relating to your use of the Site, your violation of these Terms and Conditions, or your violation of any rights of a third party.

Warranties

CERTAIN WARRANTIES WITH RESPECT TO PARTICULAR PRODUCTS FOR SALE ON OR OUTSIDE THE SITES MAY BE APPLICABLE THROUGH MANUFACTURERS' WARRANTIES, THOUGH NOT THROUGH EVOLVE FITNESS. SEE THE WARRANTIES INCLUDED IN THE DOCUMENTATION ALONG WITH THE PRODUCTS FOR FURTHER DETAILS REGARDING WARRANTIES PROVIDED BY MANUFACTURERS OF PRODUCTS AVAILABLE THROUGH OR OUTSIDE THE SITES.

Disclaimer of Warranties

YOU EXPRESSLY AGREE THAT USE OF THE SITES AND OTHER PRODUCTS AND SERVICES OF EVOLVE FITNESS IS AT YOUR SOLE RISK. YOU UNDERSTAND AND AGREE THAT THE SITES AND THE INFORMATION, SERVICES, PRODUCTS, AND

MATERIALS AVAILABLE THROUGH IT AND OTHERWISE ARE PROVIDED ON AN “AS-IS” AND “AS-AVAILABLE” BASIS.

YOU ACKNOWLEDGE THAT EVOLVE FITNESS DOES NOT CONTROL IN ANY RESPECT ANY ADVERTISEMENTS, PRODUCT DESCRIPTIONS, PRODUCTS, OR CONTENT OFFERED BY THIRD PARTIES ON OR THROUGH THE SITES, INCLUDING, BUT NOT LIMITED TO, INFORMATION OR PRODUCTS PROVIDED BY LICENSE TO EVOLVE FITNESS FROM THIRD PARTIES. EXCEPT AS OTHERWISE AGREED IN WRITING, EVOLVE FITNESS AND ITS AFFILIATES ASSUME NO RESPONSIBILITY FOR AND MAKE NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY, CURRENCY, COMPLETENESS, RELIABILITY, OR USEFULNESS OF CONTENT OR PRODUCTS (INCLUDING PRODUCT DESCRIPTIONS) DISTRIBUTED OR MADE AVAILABLE BY THIRD PARTIES THROUGH OR OUTSIDE OF THE SITES. NOR DOES EVOLVE FITNESS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITES, ANY PRODUCTS OR SERVICES OFFERED OR SOLD THROUGH THE SITES, OR ITS CONTENT.

ALTHOUGH EVOLVE FITNESS STRIVES TO PREVENT THE INTRODUCTION OF VIRUSES OR OTHER DESTRUCTIVE MATERIALS TO THE SITES, EVOLVE FITNESS DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SITES ARE FREE OF DESTRUCTIVE MATERIALS. IN ADDITION, EVOLVE FITNESS DOES NOT WARRANT THAT ACCESS TO THE SITES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED.

EVOLVE FITNESS DISCLAIMS ANY WARRANTY OR REPRESENTATION THAT CONFIDENTIALITY OF INFORMATION TRANSMITTED THROUGH THE SITES WILL BE MAINTAINED. TO THE EXTENT ALLOWED BY LAW, EVOLVE FITNESS DISCLAIMS ALL WARRANTIES AND CONDITIONS NOT EXPLICITLY STATED HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

The terms of this section apply to the extent permitted by law and survive any termination of the Terms and Conditions.

Limitations on Liability

WE EXCLUDE ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND TERMS (WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE) TO THE FULLEST EXTENT PERMITTED BY LAW.

IN NO EVENT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, SHALL EVOLVE FITNESS OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES, CLAIMS, OR LOSSES INCURRED (INCLUDING WITHOUT LIMITATION COMPENSATORY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES), HOWEVER CAUSED, AND UNDER ANY THEORY OF LIABILITY ARISING IN CONNECTION WITH: (I) THE SITES; (II) THE USE OR INABILITY TO USE THE SITES; (III) THE USE OF OR RELIANCE ON ANY CONTENT OR INFORMATION DISPLAYED IN OR ON THE SITES; (IV) THE PURCHASE OR USE OF ANY PRODUCTS THROUGH THE SITES OR OTHERWISE; (V) UNAUTHORIZED ACCESS TO OR ALTERATION OR LOSS OF YOUR TRANSMISSIONS OR DATA OR OTHER INFORMATION THAT IS SENT OR RECEIVED; (VI) ERRORS, SYSTEM DOWN TIME, NETWORK OR SYSTEM OUTAGES, OR FILE CORRUPTION OR SERVICE INTERRUPTIONS; OR (VII) OTHERWISE UNDER THIS AGREEMENT/TERMS AND CONDITIONS, WHETHER OR NOT REASONABLY FORESEEABLE, EVEN IF EVOLVE FITNESS OR ITS REPRESENTATIVES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CLAIMS, OR LOSSES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EVOLVE FITNESS'S LIABILITY TO YOU FOR ANY CAUSE OF ACTION OR CLAIM WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU IN THE LAST 90 DAYS TO EVOLVE FITNESS FOR ANY PRODUCTS SUPPLIED BY EVOLVE FITNESS THROUGH YOUR USE OF THE SITES OR OTHERWISE.

EVOLVE FITNESS WILL NOT BE LIABLE IN ANY AMOUNT FOR FAILURE TO PERFORM ANY OBLIGATION UNDER THESE TERMS AND CONDITIONS IF SUCH FAILURE IS CAUSED BY THE OCCURRENCE OF ANY UNFORESEEN CONTINGENCY BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET OUTAGES, COMMUNICATIONS OUTAGES, FIRE, FLOOD, OR WAR.

THESE EXCLUSIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE UNITED STATES OF AMERICA. IF ANY PROVISION OR PART-PROVISION OF THESE TERMS AND CONDITIONS SHALL BE INVALID, UNLAWFUL, VOID, OR FOR ANY REASON UNENFORCEABLE IT SHALL BE DEEMED SEVERABLE AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS OF THESE TERMS AND CONDITIONS.

The terms of this section survive any termination of the Terms and Conditions.

Termination

Notwithstanding any of these Terms and Conditions, Evolve Fitness reserves the right, without notice and in its sole discretion, for any reason or no reason, to terminate your ability to use the Sites and to block or prevent future access to and use of the Sites. You agree that Evolve Fitness shall not be liable for any termination of your use of or access to the Sites.

Third-party rights

Only you and Evolve Fitness shall be entitled to enforce these Terms and Conditions. No third party shall be entitled to enforce any of these Terms and Conditions.

Severability

If any provision of these Terms and Conditions, or part thereof, shall be deemed invalid, unlawful, void, or for any reason unenforceable by a court of competent jurisdiction, then that provision, or part thereof, shall be deemed severable from the rest of these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions or part thereof. The terms of this section survive any termination of the Terms and Conditions.

Language

It is the express intent of the parties that the Terms and Conditions and all related documents have been drawn up in English.

DISPUTES, BINDING INDIVIDUAL ARBITRATION, AND WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS

Disputes. The terms of this Section shall apply to all Disputes between you and Evolve Fitness. For the purposes of this Section, "Dispute" shall mean any dispute, claim, or action between you and Evolve Fitness arising under or relating to the Products, the Sites, this Agreement, or any other transaction involving you and Evolve Fitness, whether in contract, warranty, misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis, and shall be interpreted to be given the broadest meaning allowable under law. YOU AND EVOLVE FITNESS AGREE THAT "DISPUTE" AS DEFINED IN THIS AGREEMENT SHALL NOT INCLUDE ANY CLAIM OR CAUSE OF ACTION BY YOU OR EVOLVE FITNESS FOR (A) TRADE SECRET MISAPPROPRIATION, (B) PATENT

INFRINGEMENT, (C) COPYRIGHT INFRINGEMENT OR MISUSE, AND (D) TRADEMARK INFRINGEMENT OR DILUTION. Moreover, notwithstanding anything else in this Agreement, you agree that a court, not the arbitrator, may decide if a claim falls within one of these four exceptions.

Binding Arbitration. You and Evolve Fitness further agree: (a) to arbitrate all Disputes between the parties pursuant to the provisions in this Agreement; (b) this Agreement memorializes a transaction in interstate commerce; (c) the Federal Arbitration Act (9 U.S.C. §1, et seq.) governs the interpretation and enforcement of this Section; and (d) this Section shall survive termination of this Agreement. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED. The arbitrator may award you the same damages as a court sitting in proper jurisdiction could, and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. In addition, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. The decision of the arbitrator shall be final and enforceable by any court with jurisdiction over the parties.

Dispute Notice. In the event of a Dispute, you or Evolve Fitness must first send to the other party a notice of the Dispute that shall include a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested (the "Dispute Notice"). The Dispute Notice to Evolve Fitness must be addressed to: Whittemore Enterprises LLC d/b/a Evolve Fitness, [ADDRESS NEEDED] , U.S.A., Attn.: Chief Legal Officer (the "Evolve Fitness Notice Address"). The Dispute Notice to you will be sent by certified mail to the most recent address we have on file or otherwise in our records for you. If Evolve Fitness and you do not reach an agreement to resolve the Dispute within sixty (60) days after the Dispute Notice is received, you or Evolve Fitness may commence an arbitration proceeding pursuant to this Section. Following submission and receipt of the Dispute Notice, each of us agrees to act in good faith to seek to resolve the Dispute before commencing arbitration.

WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS. YOU AND EVOLVE FITNESS AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER PARTY ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, INCLUDING WITHOUT LIMITATION FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. ACCORDINGLY, UNDER THE ARBITRATION PROCEDURES

OUTLINED IN THIS SECTION, AN ARBITRATOR SHALL NOT COMBINE OR CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES TO AN ARBITRATION PROCEEDING.

Arbitration Procedure. If a party elects to commence arbitration, the arbitration shall be governed by the rules of JAMS that are in effect at the time the arbitration is initiated (the "JAMS Rules"), available at <http://www.jamsadr.com> or by calling 1-800-352-5267, and under the rules set forth in this Agreement, except that JAMS may not administer any multiple claimant or class arbitration, as the parties agree that the arbitration shall be limited to the resolution only of individual claims. If there is a conflict between the JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement shall govern. You may, in arbitration, seek any and all remedies otherwise available to you pursuant to federal, state, or local laws. All Disputes shall be resolved by a single neutral arbitrator, and both parties shall have a reasonable opportunity to participate in the selection of the arbitrator. The arbitrator is bound by the terms of this Agreement. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement, including, but not limited to, any claim that all or any part of this Agreement is void or voidable. Notwithstanding this broad delegation of authority to the arbitrator, a court may determine the limited question of whether a claim or cause of action is for (a) trade secret misappropriation, (b) patent infringement, (c) copyright infringement or misuse, or (d) trademark infringement or dilution, which are excluded from the definition of "Disputes" as stated above. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. You may choose to engage in arbitration hearings by telephone. Arbitration hearings not conducted by telephone shall take place in a location reasonably accessible from your primary residence, or in Dallas County, Texas, at your option.

- (a) Initiation of Arbitration Proceeding. If either you or Evolve Fitness decide to arbitrate a Dispute, we agree to the following procedure:
 - (i) Write a Demand for Arbitration. The demand must include a description of the Dispute and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at <http://www.jamsadr.com> ("Demand for Arbitration").
 - (ii) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to: JAMS, 401 N Central Expy # 610, Dallas, TX 75225, U.S.A.
 - (iii) Send one copy of the Demand for Arbitration to the other party at the same address as the Dispute Notice, or as otherwise agreed to by the parties.

- (b) Hearing Format. In all hearing formats, the arbitrator shall issue a written decision that explains the essential findings and conclusions on which an award, if any, is based. During the arbitration, the amount of any settlement offer made by Evolve Fitness or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Evolve Fitness is entitled. The discovery or exchange of non-privileged information relevant to the Dispute may be allowed during the arbitration.
- (c) Arbitration Fees. Evolve Fitness shall pay, or (if applicable) reimburse you for, all JAMS filing, administration, and arbitrator fees for any arbitration commenced (by you or Evolve Fitness) pursuant to provisions of this Agreement.
- (d) Opt-out. You may elect to opt-out (exclude yourself) from the final, binding individual arbitration procedure and waiver of class and representative proceedings specified in this Agreement by sending a written letter to Evolve Fitness's Notice Address within thirty (30) days of your assent to this Agreement (including the purchase of any Product or the use of the Sites) that specifies
 - (i) your name,
 - (ii) your mailing address, and
 - (iii) your request to be excluded from the final, binding individual arbitration procedure and waiver of class and representative proceedings specified in this Section. In the event that you opt-out consistent with the procedure set forth above, all other terms shall continue to apply, including the requirement to provide notice prior to arbitration.

Amendments to this Section. Notwithstanding any provision in this Agreement to the contrary, you and Evolve Fitness agree that if Evolve Fitness makes any future amendments to the dispute resolution procedure and class action waiver provisions (other than a change to Evolve Fitness's address) in this Agreement, Evolve Fitness will notify you and you will have thirty (30) days from the date of notice to affirmatively opt-out of any such amendments. If you affirmatively opt-out of any future amendments, you are agreeing that you will arbitrate any Dispute between us in accordance with the language of this Section as stated in this current Agreement, without any of the proposed amendments governing. If you do not affirmatively opt-out of any future amendments, you will be deemed to have consented to any such future amendments.

Severability. If any provision in this Section is found to be unenforceable, that provision shall be severed with the remainder of this Agreement remaining in full force and effect. The foregoing shall not apply to the prohibition against class or representative actions; if the prohibition against

class or representative actions is found to be unenforceable, this entire Section shall be null and void. The terms of this Section shall otherwise survive any termination of the Terms and Conditions.

Exclusive Venue for Other Controversies

Evolve Fitness and you agree that any controversy excluded from the dispute resolution procedure and class action waiver provisions in this Agreement (other than an individual action filed in small claims court) shall be filed only in state or federal courts in Dallas County, Texas, and each party hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts for any such controversy.

Disclaimer

Testimonials found at **[EVOLVE WEBSITE URL]** are the results that have been forwarded to us by users of Evolve Fitness program, and may not reflect the typical client's experience and are not intended to represent or guarantee that anyone will achieve the same or similar results. Our website's information is not a substitute for professional medical advice or a medical exam. Prior to participating in any exercise program or activity, you should seek the advice of your physician or other qualified health professional. You agree that no health information provided by our website will be used to diagnose, treat, cure or prevent any medical condition without consulting a licensed physician. Application or reliance on any of the techniques, ideas, and suggestions accessed through our website is at your sole discretion and risk.

General

The Terms and Conditions constitute the entire agreement between Evolve Fitness and you with respect to your use of the Sites, your purchase of products and services through the Sites, and as applicable any products or services of Evolve Fitness. Any cause of action you may have with respect to the Sites or Evolve Fitness's products or services must be commenced within one (1) year after the claim or cause of action arises, notwithstanding any statutes of limitation to the contrary. The section titles used in the Terms and Conditions are purely for convenience and carry with them no legal or contractual effect. Nothing in these Terms and Conditions will be construed as creating a joint venture, partnership, employment, or agency relationship between you and Evolve Fitness, and you do not have any authority to create any obligation or make any representation on Evolve Fitness behalf. You may not assign or transfer any rights or obligations of these Terms and Conditions, by operation of law or otherwise, without Evolve Fitness's written consent. Subject to the foregoing, these Terms and Conditions will be binding on, inure

to the benefit of, and be enforceable against you and Evolve Fitness and their respective successors and assigns.

The terms of this section survive any termination of the Terms and Conditions.

Other important terms

These Terms and Conditions supersede any other terms and conditions previously published by us and any other representations or statements made by us to you, whether oral, written, or otherwise. We may assign, transfer, or sub-contract any of our rights or obligations under these Terms and Conditions to any third party at our discretion. No delay by us in exercising any right or remedy under these Terms and Conditions shall operate as waiver of that right or remedy or shall affect our ability to subsequently exercise that right or remedy. Any waiver must be agreed by us in writing.

Last updated and effective: April 28, 2020