

These Terms and Conditions of Use (the “**Terms of Use**”) and the Privacy Policy (“**Privacy Policy**”) set out the terms and conditions governing access to and use of the Total-Fitness website located at (www.total-fitness.org), and all associated Total-Fitness sites of our subsidiaries and affiliates (collectively, the “**Site**”), the Total-Fitness mobile Glofox application (“**Application**”), and the Total-Fitness Subscription, (the Site, the Application, and Total-Fitness Subscription, collectively, hereafter the Total-Fitness (“**Services**”). These Terms of Use are entered into between you (referred to as “**you**”, “**your**”, or as a “**user**”) and Total-Fitness Distribution LLC, an Ohio Limited Liability Company (“**Total-Fitness**”, “**us**”, “**we**”, or “**our**”). The Services are the property of Total-Fitness Health Club and are operated on its behalf by Total-Fitness Distribution, an Ohio Limited Liability Company. Please read these Terms of Use carefully.

BY ACCESSING OR USING ANY OR ALL OF THE SERVICES, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS OF USE AND THE PRIVACY POLICY, WHICH FORM A LEGALLY BINDING AGREEMENT. PLEASE NOTE THESE TERMS CONTAIN A **RELEASE**, DISCLAIMERS, AND LIMITATIONS OF LIABILITY, AS WELL AS A **BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER** FOR U.S. RESIDENTS. IF YOU PURCHASE A TOTAL-FITNESS SUBSCRIPTION, THESE TERMS CONTAIN IMPORTANT INFORMATION ABOUT **AUTOMATIC RENEWALS** AND **CANCELLATION** OF YOUR SUBSCRIPTION. IF YOU DO NOT AGREE WITH THESE TERMS OF USE, PLEASE DO NOT USE THE SERVICES.

To register with and use the Services, you must be **18 years** or older and/or be of legal age in your jurisdiction of residence or be between the age of **14 and 17** and obtain the express permission of your parent or legal guardian. If you are under the age of **14**, you are not permitted to use any of the Services or submit any personally identifiable information to Total-Fitness.

1. CHANGES TO THESE TERMS OF USE

We reserve the right to modify or amend these Terms of Use without notice at any time. The latest Terms of Use will be accessible through the Application and posted on the Site, and you should always review these Terms of Use prior to using the Services to ensure that you have a current understanding of the Terms of Use under which you are permitted to access the Services. If we make material modifications or amendments to these Terms of Use, we will notify you by reasonable means which could include notification through the Services or by direct communication to you via email or your account. Use by you of the Services following any modifications or amendments to these Terms of Use shall signify your acceptance of such modifications or amendments.

2. PRIVACY POLICY

By agreeing to these Terms of Use, you agree to the terms of our **Privacy Policy**, which is incorporated herein by reference. Before using the Services, please read through the Terms of Use and Privacy Policy carefully. All personal information provided to us as a result of your use

of the Services will be handled in accordance with our Privacy Policy.

3. USE OF THE SERVICES

3.1 ACCOUNT REGISTRATION

You may be required to create an account in order to use all or part of the Services. If you register an account, you agree: (a) to provide accurate, complete, and current information as prompted by the registration forms; (b) to keep such information up-to-date in your account page, including any credit card numbers and expiration dates; (c) to keep your account information, including your password, secure and confidential; (d) to notify Total-Fitness immediately at (www.total-fitness.org) if you learn of any unauthorized access or use of your account or password or any other known or suspected breach of security related to your account; (e) you will be responsible for all activity that occurs under your account, including from unauthorized access; (f) you may not share your account, username, or password with a third party or use the account, username, or password of another account holder;- (g) when logging on to the Services, to only use the Services as permitted under these Terms of Use.

3.2 OWNERSHIP OF CONTENT

Unless otherwise indicated, the content of the Services, including, but not limited to, all information, the design, text, images, graphics, audio clips, video clips, metadata, data, selection and arrangement of elements, organization, and the design, compilation, and other matters related to the Services (collectively, "**Content**") and the source and object code, format, algorithm, and structure of the Application are protected under applicable intellectual property and other laws, including, without limitation, those of the United States and Canada. All Content and intellectual property rights herein are the property of Total-Fitness or used with the permission of the rights owner and are protected pursuant to applicable intellectual property laws. The posting of any Content on the Services does not constitute a waiver of any right in such Content. The reproduction, duplication, distribution (including by way of email or other electronic means), publication (including posting on another website) modification, copying or transmission of Content from the Application or the Site in any form or by any means is strictly prohibited without the express prior written consent of Total-Fitness. Requests for permission to reproduce or distribute materials found on the Application or the Site can be made by contacting Total-Fitness in writing at 6136 Commerce Drive, Mount Gilead, Ohio, 43338 or by email at (erica@total-fitness.org). The Content may only be used for personal, non-commercial purposes.

3.3 TOTAL-FITNESS MARKS

The Total-Fitness logo and all page headers, custom graphics, button icons, trademarks, service marks and logos appearing in the Application or the Site, unless otherwise noted, are service marks, trademarks (whether registered or not) and/or trade dress of Total-Fitness (the "**Marks**"). You are not authorized to display or use the Marks in any manner without the express prior written consent of Total-Fitness. The use or misuse of the Marks or other trademarks, names, logos, service marks and/or trade dress or any other materials contained herein, except as permitted herein, is expressly prohibited. All other product and company names and trademarks

mentioned, displayed, cited or otherwise indicated on the Site or in the Application are the property of their respective owners.

3.4 LICENSE GRANT

Subject to your compliance with the requirements and restrictions of these Terms of Use, and **STRICTLY FOR YOUR PERSONAL, NON-COMMERCIAL USE**, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable, non-assignable, license to (a) access and use the Services and to view the Content, and (b) to download and install the Application on a device you own or are authorized to use. You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under these Terms of Use, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions under these Terms of Use.

3.5 USAGE RESTRICTIONS

You shall not:

- Reproduce, download, archive, redistribute, broadcast, sell, resell, license, modify, create derivative works of, exploit, or make any commercial use of any of the Services or Content, except if you have executed a written agreement with an authorized representative of Total-Fitness allowing you to do so.
- Remove or alter any copyright, trademark, or other intellectual property notices contained in the Content or Services.
- Reverse engineer, disassemble, decompile, or otherwise attempt to gain access to the source code of the Application or any portion of the Site.
- Remove, disable, circumvent, or disrupt any copy protection, rights management, or security features of the Services, or scan, probe, or test the vulnerability of any Total-Fitness system or network or the systems and networks connected to the Services.
- Use any software robots, spiders, web crawler, bots, or other similar means whether automated or manual to access, acquire, index, or aggregate information from the Services.
- Upload to the Services any virus, malware, trojan horse, or any other malicious software.
- Attempt to gain unauthorized access to, interfere with, damage, disrupt, or otherwise create an undue burden on the server on which the Site is hosted or any server, computer, or database connected to the Services.
- Share your account, password, or other login information with another person or use another person's account, password or other login information to access the Services.
- Bypass any geographic restrictions that may be placed on the Services, including any IP address-based restrictions.
- Use the Services for any purpose that is prohibited by these Terms of Use.
- Violate any applicable law, statute, ordinance, or regulation governing your use of the Services.

You acknowledge and agree that we may immediately and without notice suspend or terminate your account if you engage in conduct that violates these usage restrictions or any other term of these Terms of Use. If we terminate your account because of your violation of these usage

restrictions or your violation of any other term of these Terms of Use, you may not re-register for or otherwise use the Services under any other username.

3.6 USER SUBMISSIONS; RIGHTS YOU GRANT TOTAL-FITNESS

User submissions. You may choose to submit information to us through the Services for various reasons, such as to become a Total-Fitness member, make a purchase, apply to become a franchisee or apply for Total-Fitness employment opportunities. By submitting information to Total-Fitness, you authorize us to utilize this information for the purpose for which it was submitted and for such other purposes as set out in our Privacy Policy. Nothing in these Terms of Use or the Site shall constitute an offer or promise of employment or franchising relationship. We may or may not review all or any information submitted to us.

Rights you grant us. Except for (i) personally identifiable information such as names, addresses, and financial information and (ii) information you submit in relation to an employment or franchise application, by submitting unsolicited information and content through the Services, you grant Total-Fitness and each of its respective licensees, successors, and assigns a non-exclusive, worldwide, perpetual, fully-paid and royalty free license (with the right to sublicense) to store, use, copy, reproduce, modify, publicly perform, display, distribute, adapt, and create derivative works of, and to promote, market, and exploit such submission. By sending any unsolicited submission to us, you waive the right to make any claim against Total-Fitness, its parents or affiliates related to use of the submission, including any claim of “moral rights” or attribution.

User submission restrictions. By uploading or submitting any content you represent and warrant that you own or have the necessary rights or licenses to submit such content. You also represent and warrant that any uploaded material does not:

- infringe any copyright or other intellectual property or other rights of any other person or entity.
- contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable; promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use or our Privacy Policy.
- promote any illegal activity, or advocate, promote, or assist any unlawful act.
- involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter, or advertising,
- give the impression that the content emanates from or is endorsed by Total-Fitness or any other person or entity, if this is not the case.

Our right to take corrective action. We, in our sole discretion, reserve the right to monitor, remove, or edit any user content for any or no reason at any time. We may disclose your identity or other information about you to any third party who claims that user content submitted by you

violates their legal rights, including intellectual property or privacy rights. We may take appropriate legal action, including referral to law enforcement authorities, for any illegal or unauthorized use of the Services. We have the right to cooperate with any law enforcement authorities or court orders requesting or directing us to disclose the identity or any other information of anyone posting materials on or through the Services.

YOU WAIVE AND HOLD HARMLESS TOTAL-FITNESS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY TOTAL-FITNESS IN RESPONSE TO AN INVESTIGATION BY LAW ENFORCEMENT AUTHORITIES OR AS A CONSEQUENCE OF TOTAL-FITNESS' ACTIVITIES INTENDED TO COMPLY WITH LAW OR REGULATIONS.

3.7 THIRD PARTY CONTENT

You understand that when using the Services, you may be exposed to third party content. We are not responsible for the accuracy, usefulness, or intellectual property rights relating to third party content. Accordingly, you waive any and all claims, rights, or remedies against Total-Fitness with respect to such third-party content, except as provided herein for copyright infringement notices. We do not proactively screen, monitor, or control user uploaded content and thus do not endorse any content or opinion expressed in any such content. We expressly disclaim any and all liability in connection with any such third-party content. As set forth in other provisions of these Terms of Use, we may investigate any reported user content in violation of these Terms of Use or any laws or regulations, and may determine in our sole discretion whether to remove such content.

3.8 ADDITIONAL TERMS, CONDITIONS, AND AGREEMENTS

We may require you to comply with additional rules, guidelines or other terms and conditions in order to use various features of our Services, to participate in certain promotions or activities available through our Services, or for other reasons. In such cases, you may be asked to expressly consent to these additional terms and conditions, for example, by checking a box or clicking on a button marked "I agree." This type of agreement is known as a "click-through" agreement. For example, you will be required to enter into a separate agreement if you use this Site (or any other site associated with Total-Fitness) or the Application to join our club, enter a sweepstakes, or make a purchase. If any of the terms or conditions of a click-through agreement are different than the terms of these Terms of Use, then the terms of the click-through agreement will supplement or amend these Terms of Use, but only with respect to the matters governed by such click-through agreement. In addition, certain areas of our Site (such as our online store) may be operated by third party service providers. Such areas may be governed by certain additional terms, conditions, or policies of those third-party providers.

3.10 MOBILE NETWORKS; TEXTS

If you access the Services through a mobile network, or signup to receive text messages, your mobile network provider's messaging, data, and other rates and fees may apply. We shall have no responsibility or liability for any data fees you incur through your use of the Services. Some features of the Services may be restricted by or may be incompatible with your mobile network or device.

3.11 ADVERTISING AND LINKS

With our prior written consent, you may create hyperlinks directly to the home page of the Site, or the home page of our club within the Site, provided that: (i) the hyperlink accurately describes the content as it appears on the Site; (ii) each page within our Site is displayed in full, without any accompanying frame, border, margin, design, branding, trademark, advertising or promotional materials not originally displayed on the applicable page within our Site; and (iii) you do not represent in any way, expressly or by implication, that you have received the endorsement, sponsorship or support of the Site, Total-Fitness, or its agents. You may not copy any portion of the Site or Content to a server, except as part of an incidental caching of pages. If you wish to link to or obtain a license with regard to the Site or the Content other than as described herein, you must contact us by email at (**ken@total-fitness.org**) and receive our express written consent before doing so. If we have provided links or pointers to other websites, then no inference or assumption should be made and no representation should be implied that we are connected with, operate or controls those websites. We are not responsible for the content or practices of third-party websites that may be linked to the Site. The Site may also be linked to other web sites operated by companies affiliated or connected with Total-Fitness. When visiting other websites, however, you are subject to and should review each website's individual terms of use and privacy policy. We take no responsibility for third party advertisements which are posted on the Site, nor do we take any responsibility for the goods or services provided by such advertisers.

4. TOTAL-FITNESS SUBSCRIPTION, BILLING, AUTOMATIC RENEWALS, AND CANCELLATION

4.1 BILLING AND FEES

Payment authorization. If you make an in-app purchase of the Glofox Total-Fitness Subscription via an App Store, you authorize the App Store to charge your credit card or other payment method for the Total-Fitness Subscription at the rate applicable at the time of your initial agreement to subscribe (unless changed by us as described below), plus any applicable local, state, or federal taxes. You may be responsible for other charges imposed by your credit card provider or financial service provider in connection with your subscription. Billing for in-app purchases via an App Store will be processed by the App Store provider according to their terms and may be subject to other third-party terms. The timing of your billing cycle may be subject to change (for example, due to a failure of your payment method caused by inadequate funds or an expired credit card).

Payment failures; chargebacks. If charges for which you are responsible for fail at the time payment is due, the App Store may continue to attempt to charge your payment method until such time as your payment method can successfully be charged and you will remain responsible for the payment of any such charges. You may be responsible for the costs associated with our efforts to collect amounts due to the extent permitted by applicable laws. If you contact your credit card or financial services provider to request a chargeback of any subscription fees due to us, we reserve the right to automatically terminate your account. If our investigation of the chargeback determines that there was a valid basis for the fees charged to you, we reserve the right, upon written notice to you, to charge you the reasonable costs associated with responding to your chargeback.

Subscription price changes. We reserve the right to make changes to your Total-Fitness Subscription price, frequency, or date of charge. If the cost of your subscription increases, you will be provided with written notice prior to the billing period in which the change will become effective and you must opt into the price increase in order to continue to have access to your Total-Fitness Subscription following the end of your current billing period.

4.2 AUTOMATIC RENEWING SUBSCRIPTION

By purchasing a Total-Fitness subscription, you agree that your subscription will automatically renew on a monthly basis for the renewal period disclosed to you at the time of your purchase and will continue to renew on that basis until you cancel in accordance with the cancellation terms below. You authorize the App Store to continue to charge your payment method for the price of your subscription, plus any applicable taxes, unless and until you cancel. To avoid the automatic renewal of your subscription, you must cancel your subscription within 30 days) prior to the end of your current App Store billing cycle. If you cancel less than 30 days before the end of your current billing cycle, your subscription will continue as scheduled and your cancellation will take effect at the end of the next billing cycle.

4.3 CANCELLATION

You may cancel your Total-Fitness Subscription at any time by submitting in writing a cancellation letter via email to erica@total-fitness.org or by visiting Total-Fitness Health Center at 6136 Commerce Drive, Mount Gilead, Ohio, 43338 within 30 days of cancellation. If you cancel your subscription prior to the end of your subscription period, you will be entitled to continue to access your Total-Fitness Subscription through to the end of your current subscription period. At the end of your subscription period, you will immediately lose all access to any premium Content or features provided through your Total-Fitness Subscription. Please see our “No Refunds” policy below in Section 4.5.

4.4 PROMOTIONS AND TRIALS

We may offer special promotional pricing and trials for Total-Fitness Subscriptions (each, a “**Promotional Subscription**”) which may be subject to additional terms from these Terms of Use. Any additional terms will be disclosed to you at or prior to your Promotional Subscription sign-up. At the end of your Promotional Subscription term, your subscription will automatically renew at the price and for the duration disclosed to you at the signup of your Promotional Subscription. If your Promotional Subscription includes a free trial, you will be required to provide the App Store with a valid payment method at signup, and the App Store may attempt to validate your payment method prior to the start of your free trial.

YOU AUTHORIZE THE APP STORE TO CHARGE YOUR PAYMENT METHOD AT THE END OF YOUR FREE TRIAL. TO AVOID BEING CHARGED, YOU MUST CANCEL YOUR SUBSCRIPTION AT LEAST 24 HOURS BEFORE THE END OF YOUR FREE TRIAL PERIOD.

4.5 NO REFUNDS

While you may cancel your Total-Fitness Subscription at any time, we do not offer refunds or credits, except in our sole discretion, or as required by applicable laws. If we do issue a refund or credit, we are under no obligation to offer similar refunds or credits in the future.

5. TERM, TERMINATION

5.1 TERM

These Terms of Use will be effective on the date you first use the Services and will remain in effect as long as you still have an account and/or continue to use the Services, or until they are terminated by us as set forth in this Section 5.

5.2 TERMINATION

We may in our sole discretion, and for any reason, immediately and without notice to you, disable, suspend, or terminate your account, in whole or in part, or your right to access the Services, including in the event of your actual or suspected unauthorized use or misuse of the Services or violation of these Terms of Use. In addition, we reserve the right to modify or discontinue the Services or any portion thereof at any time upon reasonable notice to you.

5.3 EFFECT OF TERMINATION

Upon termination of your account, the following sections shall survive termination: Section 2 (Privacy Policy); Section 3.2 (Ownership of Content); Section 3.3 (Total-Fitness Marks); Section 3.6 (User Submissions; Rights You Grant Total-Fitness); Section 7 (Disclaimer of Warranties); Section 8 (Limitation of Liability); Section 9.2 (Assumption of Risk); Section 10 (Release; Indemnification); Section 12 (Miscellaneous); Section 13 (Dispute Resolution).

Upon termination of your account all rights granted to you under these Terms of Use will also terminate, and you must cease all use of the Application and uninstall all copies of the Application from your mobile device.

We will not be liable to you or any third party for compensation or damages of any sort as a result of the termination of your account and the termination of your account will not preclude us from seeking any other right or remedy we may have under law or equity, now or in the future.

6. NOTICE OF COPYRIGHT INFRINGEMENT

If you believe that any material contained in the Services infringes your copyright, you should notify us of your copyright infringement claim in accordance with the following procedure. We will process notices of alleged infringement which we receive and will take appropriate action pursuant to the U.S. Digital Millennium Copyright Act ("**DMCA**") and other applicable intellectual property laws. The DMCA requires that notifications of claimed copyright infringement should be sent to Total-Fitness by mail at 6136 Commerce Drive, Mount Gilead, Ohio 43338 by e-mail to (**ken@total-fitness.org**). To be effective, the notification must be in writing and contain the following information (DMCA, 17 U.S.C. 512(c)(3)): (i) physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrighted work(s) claimed to have been infringed; (iii) identification of the material that is claimed to be infringing and the location of such material on our Site or the Application; (iv) information to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address; (v) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you are a user outside the United

Sates and are not subject to the DMCA, you should notify us of your copyright infringement claim in writing and in accordance with the above procedure and other applicable intellectual property laws including, but not limited to, the Canadian Copyright Act.

7. DISCLAIMER OF WARRANTIES

To the fullest extent permitted by law, we make no representations or warranties with respect to the services, including the application, the total-fitness subscription, the site or its contents, or any site with which it is linked, which are each provided for use "as is" and on an "as available" basis. We disclaim all warranties, express or implied, including without limitation the implied warranties of title, non-infringement, merchantability, quality and fitness for a particular purpose, with respect to the services, the application, the site, their contents, and any site with which the site may be linked. We do not warrant that the application, the site, its servers or e-mail sent from us will be free of any harmful components (including viruses). We also make no representations or warranties as to whether the application or the total-fitness subscription will meet your requirements, achieve any intended results, be compatible with any software, applications, hardware, or whether information accessible via the application, the site, or any site with which it is linked, is accurate, complete, or current. We do not provide any representations or warranties against the possibility of deletion, mis-delivery or failure to store communications, personalized settings, or other data. We do not make any representations or warranties that the services will be uninterrupted or error free or that we will continue to support any feature of the services. You accept that our parent, affiliates, subsidiaries, officers, directors, employees, franchisees, and suppliers shall have the benefit of this clause.

8. LIMITATION OF LIABILITY

To the fullest extent permitted by applicable law, we, on behalf of our parent, affiliates, subsidiaries, officers, directors, employees, and suppliers, exclude and disclaim liability for any indirect, special, punitive or consequential damages, loss of use, loss of data, loss caused by a virus, loss of income or profit, loss of or damage to property, claims of third parties, or other losses of any kind or character, even if we have been advised of the possibility of such damages or losses, arising out of or in connection with the use of the services or any content provided on the application or the site. This limitation of liability applies whether the alleged liability is based on contract, equity, negligence, tort, strict liability or any other basis. To the fullest extent permitted by applicable law, our maximum liability for all claims arising from or associated with your use of the services shall be limited to proven direct damages not exceeding the greater of: (i) the amount paid, if any, by you for your use of the services in the last 12 months preceding the event that gave rise to such claim(s) or (ii) ten (\$10) dollars. The foregoing shall not preclude recovery of damages for personal injury, loss or damage to personal property, or unauthorized use or disclosure of personally identifiable information caused by total-fitness': gross negligence, recklessness, fraud or other willful, unconscionable or intentional misconduct. Nothing herein shall be construed to limit the clearly established legal right of a consumer to recover attorneys' fees or other remedies afforded by statute or other law.

9. NOTICE ABOUT FITNESS CONTENT

9.1 HEALTH WARNING

The health and fitness content provided through the Services is designed for educational and informational purposes only and is not intended to be, nor does it constitute, medical or other

professional healthcare advice. We strongly recommend that you consult with your physician before beginning any exercise program. It is your responsibility to evaluate your own medical and physical condition to determine whether to participate in an exercise program. Always check your surroundings before exercising. If you experience faintness, dizziness, pain or shortness of breath at any time while exercising you should stop immediately. You represent and warrant that you are in good physical condition and have no medical reason or impairment that might prevent you from your intended use of the Services.

9.2 ASSUMPTION OF RISK

You understand and expressly agree that there are risks inherent in physical activity and your use of the Services may involve potentially dangerous physical activities that may lead to minor injuries or major injuries, up to and including death. In consideration for your use of the Services, you understand and voluntarily accept full responsibility for the risk of injury or loss arising out of or related to your use of the Services. You further agree that Total-Fitness, and its respective affiliated companies, parents, subsidiaries, together with officers, directors, shareholders, employees, agents, and independent contractors of all such entities (collectively, the “**Total-Fitness Group**”) will not be liable for any injury including, without limitation, personal, bodily, or mental injury, disability, death, economic loss or any damage to you, your spouse or domestic partner, unborn child, heirs, or relatives resulting from the negligent conduct or omission of any member of the Total-Fitness Group or anyone acting on their behalf, whether related to exercise or not.

10. RELEASE; INDEMNIFICATION

To the fullest extent permitted by law, you hereby forever release, waive and discharge each member of the Total-Fitness Group from any and all claims, demands, injuries, damages, actions or cause of action related to your use of the Services, any content you submit, post to, or transmit through the Services, or your breach or alleged breach of these Terms of Use (collectively, “**Claims**”) against any member of the Total-Fitness Group, or anyone acting on their behalf. Further, you hereby agree to defend, indemnify and hold harmless each member of the Total-Fitness Group from and against all liabilities, claims, damages and expenses (including reasonable attorney’s fees and costs) arising from or related to any such Claims. If you live in a jurisdiction that does not allow for the waiver of liability, the above waiver of liability does not apply to you.

11. CONTACTING TOTAL-FITNESS

If you have a question, comment, issue, or wish to resolve a complaint regarding your use of the Services, you can contact us via the following methods:

- Questions, comments, or issues with this Site should be addressed to the Site Administrator at (erica@total-fitness.org).
- Questions, comments, or issues with the Application or your Total-Fitness Subscription should be addressed to ([erica@total fitness.org](mailto:erica@total-fitness.org))

12. MISCELLANEOUS

12.1 GENERAL PROVISIONS

These Terms of Use operate to the fullest extent permissible by law. If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction unlawful, void or unenforceable, that provision is deemed severable from these Terms of Use, will be substituted with a valid and enforceable provision reflecting the intent of the invalid provision, and does not affect the validity and enforceability of any remaining provisions. No provision of these Terms of Use shall be waived except with our prior written consent. The failure to exercise, or delay in exercising, any right or remedy under these Terms of Use will not operate as a waiver. These Terms of Use may be assigned by us in our sole discretion. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Failure to act with respect to a breach of these Terms of Use does not waive our right to act with respect to subsequent or similar breaches. These Terms of Use set forth the entire understanding and agreement between us with respect to the subject matter hereof.

12.2 GOVERNING LAW, VENUE

These Terms of Use shall be governed by and construed in accordance with U.S. Federal laws and the laws of the State of Ohio, without giving effect to any principles of conflicts of law. For any claims not subject to mandatory arbitration pursuant to these Terms of Use (except for claims that may properly be brought in a small claims court of competent jurisdiction in the county or other jurisdiction where you reside), you agree to submit to the exclusive jurisdiction of the courts of the State of Ohio or, if appropriate, the United States District Court for the State of Ohio for resolution of any dispute, action or proceeding arising in connection with these Terms of Use or your use of the Services, and you further irrevocably waive any right you may have to trial by jury in any such dispute, action or proceeding.

12.3 NOTICES

Except as explicitly stated otherwise, any notices shall be given by postal mail to Total-Fitness (in the case of notice to Total-Fitness) or to the email address you provide to Total-Fitness (in the case of notice to you). Notice delivered to Total-Fitness via postal mail shall be deemed given upon our receipt of such notice and notice sent via email shall be deemed given 24 hours after such email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address you have provided to Total-Fitness. In such a case, notice shall be deemed given 3 days after the date of mailing.

13. DISPUTE RESOLUTION

13.1 MANDATORY ARBITRATION AND CLASS ACTION WAIVER

General. If you are a user based in the United States, in the unlikely event that we are unable to resolve a complaint you may have to your satisfaction (or we are unable to resolve a dispute with you after attempting to do so informally), subject to your right to opt-out below, **You and Total-Fitness agree to resolve such dispute through binding arbitration or small claims court on an individual basis rather than to litigate the dispute before a judge or jury in a court of general jurisdiction.** Arbitration utilizes a neutral arbitrator instead of a judge or jury and the procedures are generally simpler and more limited than those applicable to a lawsuit in court. Arbitration is subject to limited review by courts, but an arbitrator can award the same damages

and remedies that a court can award. For the purposes of this arbitration provision, a “dispute” between us shall be broadly construed to mean any dispute, claim, or controversy between you and Total-Fitness arising from or relating to these Terms of Use or your access to or use of the Services, whether based in contract, tort, warranty, regulation, statute, or any other legal or equitable

Class Action Waiver. **To the fullest extent permitted by law, you and Total-Fitness acknowledge and agree that we each are waiving the right to a trial by jury and the right to participate in a class action, either in court or in arbitration.** This means that neither you or Total-Fitness may join claims in arbitration with or against other users, or litigate in court or arbitrate any claims as a representative or member of a class and that the arbitrator may not consolidate any claims into a class proceeding. However, if this class action waiver is held unenforceable as to all or some parts of a dispute, to the extent that any claims must proceed on a class, consolidated, or representative basis, such claims must be litigated in the courts of the State of Ohio or, if appropriate, the United States District Court for the State of Ohio and not in arbitration, with any remaining parts proceeding in individual arbitration.

Arbitration Exceptions. Nothing in this arbitration provision shall prevent you or Total-Fitness from: (i) bringing an individual action if the dispute is within the jurisdiction of a small claims court, (ii) seeking to enjoin infringement or other misuse of intellectual property rights, in which case either you or we may bring suit in court to seek injunctive or other equitable relief to enjoin infringement or other misuse of intellectual property rights, (iii) seeking public injunctive relief from any court of competent jurisdiction, or (iv) pursuing an available enforcement action through any local, state, or federal governmental agency. Other than for small claims court actions, for any disputes not subject to mandatory arbitration pursuant to this arbitration provision, you agree to submit the dispute to the exclusive jurisdiction of the courts of the State of Ohio or, if appropriate, the United States District Court for the State of Ohio for resolution, and you further irrevocably waive any right you may have to trial by jury in any such, action or proceeding.

Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. § 1 et seq. shall govern the interpretation and enforcement of this arbitration provision. For simplicity and fairness, arbitration will be conducted on an individual basis before a single arbitrator in accordance with the then current American Arbitration Association’s Consumer Arbitration Rules (“**AAA Rules**”), available at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitrator, and not any local, state, or federal court, shall have the exclusive authority to determine all issues regarding the interpretation, applicability, and enforcement of these Terms of Use and all issues regarding the arbitrability of the dispute, including but not limited to any claim that all or part of this arbitration provision is void or voidable. The arbitrator is authorized only to award relief on behalf of the individual parties and only to the extent of their individual claims. The decision of the arbitrator shall be final and the arbitration award enforceable by any court with jurisdiction over the parties. In the event of a conflict between the terms of this arbitration provision and the AAA Rules, the terms of this arbitration provision shall control unless the arbitrator determines that the application of any inconsistent arbitration provision terms would result in a fundamentally unfair arbitration. You and Total-Fitness agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony

or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration, compelled by a court of competent jurisdiction following service of a subpoena and prior notice to you or Total-Fitness, or as mandated by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies. This arbitration provision shall survive termination of these Terms of Use or your relationship with Total-Fitness for any reason.

Arbitration Procedures. You and Total-Fitness agree to attempt initially to solve all disputes subject to arbitration by conducting good-faith, informal negotiations. Before commencing arbitration, the party seeking arbitration must provide the other party with written notice of the dispute that includes: (i) the name, mailing address, and email and/or phone number of the party giving notice; (ii) a detailed description of the dispute; and (iii) the relief sought. Your written notice must be sent via certified mail or by any nationally recognized delivery service (e.g. UPS, Federal Express, etc.), or by hand delivery to: Total-Fitness, 6136 Commerce Drive, Mount Gilead, Ohio, 43338 and Total-Fitness's written notice will be sent to you via the contact information we have in our records for you. You and Total-Fitness agree to use good-faith efforts to attempt to resolve the dispute within thirty (30) days from the date the notice of the dispute is sent. If you and Total-Fitness do not reach agreement on resolving the dispute within those thirty (30) days, the party seeking arbitration may commence arbitration in accordance with the AAA Rules.

Disputes over \$25,000 will be decided through an in-person or telephonic hearing. Any in-person arbitration hearings will take place in the county (or other municipality) where you live, unless you and we both agree to a different location.

Arbitration Fees. Total-Fitness will pay, or if applicable, reimburse you for all AAA filing, administration, and arbitrator fees and expenses for any arbitration commenced by you or us. Notwithstanding the forgoing, nothing herein shall limit the arbitrator's discretion to allocate compensation, expenses, and fees in accordance with Rule R-44(c) of the AAA Rules.

Opt-Out. You may reject this arbitration provision by sending written opt-out notice to us. The opt-out notice must be sent no later than thirty (30) days after your initial assent to these Terms of Use. You must send written notice via email to (ken@total-fitness.org) via postal mail to: Total-Fitness, 6136 Commerce Drive, Mount Gilead, Ohio, 43338. The opt-out notice must include: (i) your name, (ii) your mailing and email address, and (iii) your request to be excluded from this mandatory arbitration provision. Your rejection of this arbitration provision shall have no effect on the remaining provisions of these Terms of Use.

Total Fitness Distribution LLC
6136 Commerce Drive, Mt Gilead, OH 43338