

## TERMS OF USE

### TOTAL COACH

#### ACCEPTANCE OF TERMS

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Total Coach (“Company”), makes this website, [www.totalcoach.com](http://www.totalcoach.com) (the “Site”), including all information, documents, communications, files, text, graphics, software, products and services available through this Site (collectively, the “Materials”) and all services operated by Company and third parties through this Site (collectively, the “Services”), available for your use subject to the terms and conditions set forth in this document and any changes to this document that Company may publish from time to time (collectively, the “Terms of Use”).

The Terms of Use shall apply to all users and visitors of this Site.

By accessing or using this Site in any way, including, without limitation, use of any of the Services, downloading of any Materials, or merely browsing this Site, you agree to and are bound by the Terms of Use.

Company reserves the right to change the Terms of Use and other guidelines or rules posted on this Site at its sole discretion. Your continued use of this Site, or any Materials or Services accessible through this Site, after any changes have been made to the Terms of Use constitutes your acceptance of such changes. You should periodically check these Terms of Use to view the then current terms. Your use of this Site will be subject to the most current version of the Terms of Use, rules and guidelines posted on this Site at the time of such use. In the event you breach any of the Terms of Use, your authorization to use this Site shall be automatically terminated, with notice.

#### DEFINED TERMS

“User Content” means all user-supplied information, materials, files, communications, and/or documents.

“Company Content” means all Materials provided by Company.

User Content and Company Content have different restrictions and conditions associated with them.

“Free Trial Period” means thirty (30) days from your initial registration with Company.

## SERVICES

Upon registering with Company, you will be provided with a user name and password to access the Services of Company trial for its services offered through this Site during the Free Trial Period. Upon the expiration of the Free Trial Period, the monthly fee for the Services offered through this Site until you cancel your subscription is \$97 per month (the “Monthly Fee”).

The Monthly Fee shall be charged to your credit card upon the expiration of the Free Trial Period and every thirty (30) days thereafter. Unless you cancel your subscription with Company, your card will be charged every thirty (30) days after the expiration of the Free Trial Period.

In the event that you cancel your account with Company, you will not be charged at the end of the particular thirty (30) day period for which payment has been already made.

## CANCELLATION

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> If the event you choose to cancel your subscription to Company, your subscription shall terminate on the date your cancellation request is submitted to the Company through selecting the “Cancellation” option in the “My Account” page of this Site.

In order to avoid being charged the Monthly Fee of \$97, you must simply cancel your subscription with Company before the expiration of the Free Trial Period (midnight Eastern Standard Time on the thirtieth (30<sup>th</sup>) day after registration).

**ALL CANCELLATION REQUESTS MUST BE SUBMITTED BY OPENING THE MY ACCOUNT WEB PAGE AND SELECTING THE CANCELLATION OPTION.**

**COMPANY WILL NOT ISSUE EITHER FULL OR PARTIAL REFUNDS FOR CANCELLATIONS.**

**ALL CANCELLATION REQUESTS MUST BE RECEIVED PRIOR TO THE END OF THE MONTH IN ORDER TO AVOID BEING BILLED FOR THE FOLLOWING MONTH’S SERVICES. (MIDNIGHT EASTERN STANDARD**

TIME ON THE LAST CALENDAR DAY OF THE MONTH).

#### BILLING CYCLE

A Billing Cycle is a thirty (30) day cycle commencing on the first day after the expiration of the Free Trial Period.

#### INTELLECTUAL PROPERTY; LIMITED LICENSE TO USERS

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In addition to the Materials and Services offered by Company, this Site may also make available materials, information, and services provided by third parties (collectively, the “Third Party Services”). The Third Party Services may be governed by separate license agreements that accompany such services. Company offers no guarantees and assumes no responsibility or liability of any type with respect to the Third Party Services. You agree that you will not hold Company responsible or liable with respect to the Third Party Services or seek to do so.

Except as expressly indicated to the contrary elsewhere on this Site, you may view, download, and print the Company Content and User Content available on this Site subject to the following conditions:

1. The Company Content and User Content may be used solely for personal, informational, and internal purposes;
2. The Company Content and User Content may not be modified or altered in any way, other than by Company and/or the originator of the User Content;
3. You may not remove any copyright or other proprietary notices contained in the Company Content and User Content.

4. Company reserves the right to revoke the authorization to view, download, and print the Company Content and User Content available on this Site at any time, and any such use shall be discontinued immediately upon notice from Company; and

5. The rights granted to you constitute a license and not a transfer of title of the Company Content and User Content.

The rights specified above to view, download, and print the Company Content and User Content available on this Site are not applicable to the design or layout of this Site. Elements of this Site are protected by, among other things, intellectual property and other laws and may not be copied or imitated in whole or in part.

#### DOMAIN NAME

While your internet domain will be maintained in Company's account, you will retain full intellectual property ownership over your domain name and any other proprietary information that is registered under your name. You understand, however, that you will be charged a \$50 administrative fee to have your domain transferred out of Company's system.

All active members' internet domain name will be automatically renewed after 1 year for \$15.95, which will be charged to your credit card.

#### TRADEMARK INFORMATION

The trademarks, logos, and service marks ("Marks") displayed on this Site are the property of Company or other third parties. You are not permitted to use the Marks without the prior written consent of Company or such third party that may own the Marks. Any and all requests to use the Marks shall be made in writing and addressed support@totalcoach.com.

#### LICENSE TO COMPANY FOR USER CONTENT

Certain Services offered through this Site accommodate User Content. Depending upon the nature of the Service, by submitting User Content to this Site you grant Company the following type of license: For User Content that is the result of your creative efforts and which is intended to be displayed on this Site, you grant Company a worldwide, royalty-free, non-exclusive license to modify (for purposes

of formatting, maintenance, or Site administration only) and reproduce such User Content. You also grant Company the right to distribute and publicly display and perform such User Content for the purpose for which such User Content was submitted to this Site. This license will be in effect until such User Content is removed from this Site.

## PROHIBITED COMMUNICATIONS

You may submit only User Content to this Site that is: (i) owned by you; (ii) submitted with the express permission of the owner or within the scope of the license to such content; or (iii) in the public domain. You are prohibited from posting or transmitting to or from this Site any unlawful, threatening, harassing, libelous, offensive, defamatory, obscene, or pornographic materials, or other materials that would violate any law or the rights of others, including, without limitation, laws against copyright infringement, and rights of privacy and publicity. Violation of these restrictions may result in denial of or limitations on access by you to this Site.

## USER CONDUCT

In using this Site, including all Services and Materials available through it, you agree: not to disrupt or interfere with any other user's enjoyment of this Site or affiliated or linked sites; not to upload, post, or otherwise transmit through this Site any viruses or other harmful, disruptive, or destructive files; not to create a false identity; not to use or attempt to use another's account, password, service, or system without authorization from Company; not to disrupt or interfere with the security of, or otherwise cause harm to, this Site, or any Services, Materials, system resources, accounts, passwords, servers, or networks connected to or accessible through this Site or any linked sites.

## MANAGING CONTENT AND COMMUNICATIONS

Company reserves the right, in its sole discretion, to delete or remove User Content from this Site and to restrict, suspend, or terminate your access to all or part of this Site, at any time without prior notice or liability if you have violated any of the terms and conditions outlined in this Agreement or elsewhere on this Site. Company may, but is not obligated to, monitor or review any areas on this Site where users transmit or post User Content, including but not limited to areas where Services are available, and the substance of any User Content. To the maximum extent permitted by law, Company will have no liability related to User

Content. Company disclaims all liability with respect to the misuse, loss, modification, or unavailability of any User Content.

## WARRANTIES AND DISCLAIMERS

Except as expressly provided otherwise in a written agreement between you and Company or you and a third party with respect to such party's materials or services, this Site, and all Materials and Services accessible through this Site are provided "as is" without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, or the warranty of non-infringement. Without limiting the foregoing, Company makes no warranty that:

(i) the Services and Materials, including any educational information, will meet your requirements; (ii) the Services and Materials will be uninterrupted, timely, secure, or error-free; (iii) the results that may be obtained from the use of the Services or Materials will be effective, productive, accurate, or reliable; and (iv) the quality of any Services or Materials obtained or accessible by you through this Site will meet your expectations. Company will use its best efforts to keep this Site and your information on it safe. Nevertheless, you should backup your information regularly, as Company cannot guarantee that such information will not be lost. You are therefore responsible for your information stored on Company's system.

Company may link helpful products and services offered by third parties. You understand and acknowledge that: (i) Company does not control, endorse, or accept responsibility for any content, products, or services offered by third parties through this Site; (ii) Company makes no representation or warranties whatsoever about any such third parties, their content, products, or services; (iii) any dealings you may have with such third parties or are at your own risk; and (iv) Company shall not be liable or responsible for any content, products, or services offered by third parties.

## PERSONAL INFORMATION AND PRIVACY

You understand and agree that we may disclose information about you if we have a good faith belief that we are required to do so by law or legal process, to respond to claims, or to protect the rights, property, or safety of Company or others. Please refer to our Privacy Policy for more information about the manner in which we protect and use your information.

## LIMITATION OF LIABILITY

In no event, including, without limitation, negligence, shall Company, its subsidiaries, affiliates, agents, officers, directors, employees, or partners be liable to you or any third party for any special, punitive, incidental, indirect, or consequential damages of any kind, or any damages whatsoever, including, without limitation, those resulting from loss of use of this Site, data, or profits, whether or not Company has been advised of the possibility of such damages, and on any theory of liability, arising out of or in connection with the use of or the inability to use this Site, its Services, or Materials, the statements or actions of any third party on or through this Site, any dealings third parties, any unauthorized access to or alteration of your transmissions or data, any information that is sent or received or not sent or received, any failure to store or loss of data, files, or other content, any Services available through this Site that are delayed or interrupted, or any website referenced or linked to or from this Site.

## INDEMNITY AND LIABILITY

You agree to indemnify and hold Company, and its subsidiaries, affiliates, officers, directors, agents, partners and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of content you or any third party submits, posts to, or transmits through this Site, your use of this Site, your connection to this Site, your violation of these Terms of Use or your violation of any rights of another person or entity.

## GOVERNING LAW AND JURISDICTION

This Site (excluding linked sites) is controlled by Company from its offices within the State of New York, United States of America. By accessing this Site, you and Company agree that all matters relating to your access to, or use of, this Site shall be governed by the laws of the State of New York, without regard to the conflicts of laws principles thereof. You agree and hereby submit to the exclusive personal jurisdiction and venue of the Courts within the State of New York with respect any dispute arising against Company. Any action brought under against Company shall be in the Supreme Court of the State of New York, County of Nassau.

## GENERAL

The Terms of Use and the other rules, guidelines, licenses and disclaimers posted on this Site constitute the entire agreement between Company and you with

respect to your use of this Site. If for any reason a court of competent jurisdiction finds any provision of these Terms of Use, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties as reflected by that provision, and the remainder of the Terms of Use shall continue in full force and effect. Any failure by Company to enforce or exercise any provision of these Terms of Use or related right shall not constitute a waiver of such right or provision.

<http://totalcoach.com>