

eCoach, LLC

Terms of Use

Effective date: December 31, 2021

Welcome to www.ecoachsports.com and our related mobile applications and services. Please read on to learn the rules and restrictions that govern your use of our website(s), products, services and applications (the “Services”). If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at coach@ecoachsports.com.

These Terms of Use (the “Terms”) are a binding contract between you and eCoach, LLC (referred to herein as “eCoach,” “we,” “our,” and “us”). You must agree to and accept all of the Terms, or you don’t have the right to use the Services. Your use of the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document, as well as those in our Privacy Policy.

In some situations, you may choose to purchase products or services from us through our website or other technology services. Those transactions will be subject to additional Services Agreements. You can view those agreements at www.ecoachsports.com.

Will these Terms ever change?

We are constantly trying to improve our Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, and if we do, we will try (but will not guarantee) to bring it to your attention by placing a notice on the www.ecoachsports.com website, by sending you an email or other communication, or by some other means.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

What about my privacy?

We take the privacy of our users very seriously. For our current Privacy Policy, please visit: www.ecoachsports.com.

The Children’s Online Privacy Protection Act (“COPPA”) requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. We do not knowingly collect or solicit personally identifiable information from children under 13. **If you are a child under 13, you are not permitted to use our app or website, attempt to register for the Services, or send any personal information about yourself to us, so please do not attempt to do so.** If we learn we have collected personal information from a child under 13, we will delete that information as quickly as possible. If you believe that a child under 13 may have provided us personal information, please contact us at coach@ecoachsports.com.

What are the basics of using eCoach apps and services?

You will likely be required to sign up for an account, and select a password, user name, and/or other information (generally referred to herein as a “eCoach User ID”). You promise to provide

us with accurate, complete, and updated registration information about yourself. You may not select as your eCoach User ID or profile name a name that you don't have the right to use, or another person's name with the intent to impersonate that person. You may not transfer your account to anyone else without our prior written permission.

You represent and warrant that you are of legal age to form a binding contract (or if not, you've received your parent's or guardian's permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you're agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity's behalf and bind them to these Terms (in which case, the references to "you" and "your" in these Terms, except for in this sentence, refer to that organization or entity).

You will only use the Services for your own internal or personal use, and not on behalf of or for the benefit of any third party and only in a manner that complies with all laws that apply to you. **If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services. We can't and won't be responsible for your using the Services in a way that breaks the law.**

You will not share your account or password with anyone, and you must protect the security of your account and your password. You're responsible for any activity associated with your account.

Your use of the Services is subject to the following additional restrictions:

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

- (a) Infringes or violates the intellectual property rights or any other rights of anyone else (including eCoach);
- (b) Violates any law or regulation;
- (c) Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) Jeopardizes the security of your eCoach account or anyone else's (such as allowing someone else to log in to the Services as you);
- (e) Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) Violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- (h) "Crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) Copies or stores any significant portion of the Content;
- (j) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

What about messaging?

As part of the Services, you may receive communications through the Services, including messages that eCoach sends you (for example, via email or SMS). When signing up for the Services, you will receive a welcome message and instructions on how to stop receiving messages. **By signing up for the Services and providing us with your wireless number, you confirm that you want eCoach to send you information regarding your account or transactions with us, which may include eCoach using automated dialing technology to text you at the wireless number you provided, and you agree to receive communications from eCoach, and you represent and warrant that each person you register for the Services or for whom you provide a wireless phone number has consented to receive communications from eCoach.** You agree to indemnify and hold Mojo harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to your breach of the foregoing.

Payment Processing; Order Fulfillment

Our web site is or maybe hosted by third parties, which also assists in the processing of our orders. When you input your credit card information as payment for an order, such third-party may directly and securely transmits that information to its third-party payment processor, who verifies the credit card and remits the payment to us. Neither we, nor our representatives, ever store your credit card image or number. Sales and use taxes, as applicable by law, will be based on your location and our location and, purchase prices are inclusive of taxes. You will be responsible for paying any applicable taxes relating to your payments and will indemnify and hold harmless eCoach and its authorized representatives from your failure to pay any and all taxes, including sales tax, based incorrect information provided by you. If you believe you are entitled to a refund of any taxes, you are solely responsible for such determination.

eCoach and its authorized representative also fulfill all orders for digitally distributed content by making that content available for viewing. It will inform you of the device and system requirements for accessing this content. You are responsible for completing the digital download, and for all risk of loss of the content after download. You acknowledge that the resolution and quality of the content received will depend on a number of factors, including the type of device on which it is streamed and available bandwidth. While we strive to provide a high-quality viewing experience, neither we, nor any authorized representative or service provider of eCoach, make any guarantee as to the resolution or quality of the content.

Acceptable Use

You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses our web site in a manner that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser. You agree to comply with all applicable laws in your use of our web site.

What are my rights in eCoach?

We make materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, video, illustrations and so forth (all of

the foregoing, the “eCoach Content”) are protected by copyright, trademark, patent and/or other intellectual property laws.

You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any eCoach Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any eCoach Content not owned by you, (i) without the prior consent of the owner of that eCoach Content or (ii) in a way that violates someone else’s (including eCoach’s) rights.

You understand that eCoach owns the Services. You won’t modify, publish, reverse engineer, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), creative derivative works based on, or otherwise exploit any of the Services.

The Services may allow you to copy or download certain eCoach Content or other content; please remember that just because this functionality exists, doesn’t mean that all the restrictions above don’t apply – they do!

What about Content and Proprietary Rights?

Through our web site, we offer, sell, and digitally distribute videos, audiovisual combinations, music, sounds, graphics, photos, and other content, as well as sell products related to that content. We are the owner or authorized licensee of all information, materials, functions and other content contained on our web site, and you acknowledge that you are only receiving a limited right to access or use this content. No content from our web site may be used, reproduced, transmitted, distributed or otherwise exploited in any way other than as part of our web site.

We also own any information and data collected by us from you, including without limitation any data regarding your use and viewing of our web site and its content. We may use such information and data for benchmarking and other service enhancements. We will handle and treat any information we collect from you in compliance with our current Privacy Policy.

The name “eCoach” and our graphics, logos, designs, page headers, button icons, scripts, and service names are registered and/or common law trademarks, trade names, or trade dress of eCoach in the U.S. and/or other countries. These trademarks, trade names, and trade dress may not be used in connection with any product or service in any manner that is likely to cause confusion. We reserve all rights in or to such trademarks, trade names, or trade dress.

We respect the intellectual property rights of others and expect our users to do the same. It is our policy, in appropriate circumstances and at its discretion, to disable or terminate the accounts of users who repeatedly infringe or are repeatedly charged with infringing the intellectual property rights of others.

Do I have to grant any licenses to eCoach or to other users?

Our Business Services Agreements can be found at www.ecoachsports.com and contain information on our rights to user submitted content. The provisions of those agreements control if you submit content under one or more of them.

In general, when you upload, add, contribute, or otherwise bring your content into the Services, you are giving us the right to use the content to provide our Services and to use the content to market and publicize our Services and eCoach.

For purposes of this Agreement, anything you post, upload, share, store, or otherwise provide through the Services is your “User Submission.” Some User Submissions are viewable by other users and business partners of eCoach. In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions.

For all User Submissions, you hereby grant eCoach a license to translate, modify (for technical purposes, for example making sure your content is viewable on an iPhone as well as a computer) and reproduce and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services, as described in more detail below.

You grant eCoach the license above, as well as a license to display, perform, and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Services.

You grant eCoach a license to display, perform, and distribute your User Submission for the sole purpose of making that User Submission accessible to other users or businesses if, in providing the Services, it is necessary to do so. Also, you grant such other specified users and businesses a license to access that User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

You agree that the licenses you grant are royalty-free, perpetual, sublicensable, irrevocable, and worldwide, provided that when you delete your eCoach account, we may stop displaying your User Submissions to other users (if applicable), but you understand and agree that it may not be possible to completely delete that content from eCoach’s records, and that your User Submissions may remain viewable elsewhere to the extent that they were copied or stored by other users.

You understand and agree that eCoach, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media, and the foregoing licenses include the rights to do so.

Finally, eCoach has the right to use the data from all uses of the Service for our purposes in an aggregated manner. This may include providing the aggregate information to business partners or clients.

Please note that all of the above licenses are subject to our Privacy Policy at www.ecoachsports.com to the extent they relate to User Submissions that are also your personally-identifiable information.

These are licenses only – your ownership in User Submissions is not affected.

What if I see something on the Services that infringes my copyright?

You may have heard of the Digital Millennium Copyright Act (the “DMCA”), as it relates to online service providers, like eCoach, being asked to remove material that allegedly violates someone’s copyright. We respect others’ intellectual property rights, and we reserve the right to

delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; to review our complete Copyright Dispute Policy and learn how to report potentially infringing content, go to www.ecoachsports.com To learn more about the DMCA, go to <http://www.copyright.gov/legislation/dmca.pdf>

Who is responsible for what I see and do on the Services?

Any information or content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such content originated, and you access all such information and content at your own risk, and we aren't liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the content or what actions you may take as a result of having been exposed to the content, and you hereby release us from all liability for you having acquired or not acquired content through the Services. We can't guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services. Do not post or publish any content (including photos or video) that you do not have the right to post or publish.

The Services may contain links or connections to third party websites or services that are not owned or controlled by eCoach. When you access third party websites or use third party services, you accept that there are risks in doing so, and that eCoach is not responsible for such risks. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilize.

eCoach has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third-party websites or by any third party that you interact with through the Services. In addition, eCoach will not and cannot monitor, verify, censor or edit the content of any third-party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third-party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that eCoach shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site, or between users and any third party, you agree that eCoach is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release eCoach, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil

Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

Who is responsible if I get hurt?

You are. eCoach is designed to improve sports performance through providing a place to connect with coaches and content and the software tools for coaches to enhance their coaching businesses and athletes and parents the tools to gain digital access to coaches. The activities and sporting endeavors contemplated by use of the Services are dangerous and may result in injury.

Do you guarantee or certify coaches or other participants?

We do not. eCoach provides an opportunity for athletes and coaches to interact. All participants are independent contractors and are not certified, employed, or insured by eCoach. You are responsible for your relationship to a coach or athlete. We provide no warranties.

Will eCoach ever change the Services?

We're always trying to improve the Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. Similarly, we reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

Does eCoach cost anything?

Yes. For information on paid Services and products go www.ecoachsports.com.

The Services may be free or we may charge a fee for using the Services. If you are using a free version of the Services, we will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services. Note that if you elect to receive text messages through the Services, data and message rates may apply. Any and all such charges, fees or costs are your sole responsibility. You should consult with your wireless carrier to determine what rates, charges, fees or costs may apply to your use of the Services.

1. Paid Services. Certain of our Services may be subject to payments now or in the future (the "Paid Services"). Please see our Paid Services page for a description of the current Paid Services. Please note that any payment terms presented to you in the process of using or signing up for a Paid Service are deemed part of these Terms. For example, some Paid Services will charge a fee for downloading or installing the Services through the App Store (as defined below) linked to your specific device. You agree to comply with, and your license to use our mobile application is conditioned upon your compliance with, such App Store terms and conditions. Any refunds relating to the applications or inquiries regarding refunds relating to the applications shall be

handled solely by the applicable App Store in accordance with such App Store's terms and conditions.

2. **Billing.** We use a third-party payment processor (the "Payment Processor") to bill you through a payment account linked to your account on the Services (your "Billing Account") for use of the Paid Services. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to these Terms. Currently, we use Stripe, Inc. as our Payment Processor. You can access Stripe's Terms of Service at <https://stripe.com/us/checkout/legal> and their Privacy Policy at <https://stripe.com/us/privacy>. We are not responsible for any error by, or other acts or omissions of, the Payment Processor. By choosing to use Paid Services, you agree to pay us, through the Payment Processor, all charges at the prices then in effect for any use of such Paid Services in accordance with the applicable payment terms, and you authorize us, through the Payment Processor, to charge your chosen payment provider (your "Payment Method"). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that the Payment Processor makes even if it has already requested or received payment.

3. **Payment Method.** The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. If we, through the Payment Processor, do not receive payment from you, you agree to pay all amounts due on your Billing Account upon demand.

4. **Recurring Billing.** Some of the Paid Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by you. By choosing a recurring payment plan, you acknowledge that such Services have an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. WE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY US) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE WE REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, GO TO ACCOUNT SETTINGS.

5. **Current Information Required.** YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT ACCOUNT SETTINGS. IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF PAID SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR PAID SERVICES AS SET FORTH ABOVE.

6. **Change in Amount Authorized.** If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to receive, and we shall provide, notice of the amount to be

charged and the date of the charge before the scheduled date of the transaction. Any agreement you have with your payment provider will govern your use of your Payment Method. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

7. Auto-Renewal for Paid Services. Unless you opt out of auto-renewal, which can be done through your account settings, any Paid Services you have signed up for will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional rate. To change or resign your Paid Services at any time, go to account settings or, for mobile applications, cancel your subscription in the subscription management section of the applicable App Store. If you terminate a Paid Service, you may use your subscription until the end of your then-current term, and your subscription will not be renewed after your then-current term expires. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. If you do not want to continue to be charged on a recurring monthly basis, you must cancel the applicable Paid Service through your account settings or terminate your eCoach account before the end of the recurring TERM. Paid Services cannot be terminated before the end of the period for which you have already paid, and except as expressly provided in these terms, eCoach will not refund any fees that you have already paid.

8. Reaffirmation of Authorization. Your non-termination or continued use of a Paid Service reaffirms that we are authorized to charge your Payment Method for that Paid Service. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially selected to use the Paid Service.

9. Free Trials and Other Promotions. Any free trial or other promotion that provides access to a Paid Service must be used within the specified time of the trial. You must stop using a Paid Service before the end of the trial period in order to avoid being charged for that Paid Service. If you cancel prior to the end of the trial period and are inadvertently charged for a Paid Service, please contact us at coach@ecoachsports.com.

What if I want to stop using eCoach?

You're free to do that at any time. Please refer to our Privacy Policy, as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

eCoach is also free to terminate (or suspend access to) your use of the Services or your account, for any reason in our discretion, including your breach of these Terms. eCoach has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any content associated with your account, so keep that in mind before you decide to terminate your account.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

What about Mobile Applications and In-App Purchases?

You acknowledge and agree that the availability of our mobile application is dependent on the third party stores from which you download the application, e.g., the App Store from Apple or the Android app market from Google (each an “App Store”). Each App Store may have its own terms and conditions to which you must agree before downloading mobile applications from such store, including the specific terms relating to Apple App Store set forth below. You agree to comply with, and your license to use our application is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms of Use, the more restrictive or conflicting terms and conditions in these Terms of Use apply.

Through our mobile applications, you may purchase (“In-App Purchase”) certain goods or features designed to enhance the performance of the Services. When you make an In-App Purchase, you are doing so through either the Apple iTunes service or the Google Play service and you are agreeing to their respective Terms and Conditions, available at <http://www.apple.com/legal/internet-services/itunes/us/terms.html> and http://play.google.com/intl/en_us/about/play-terms.html). eCoach is not a party to any In-App Purchase.

I use the eCoach App available via the Apple App Store – should I know anything about that?

These Terms apply to your use of all the Services, including the iPhone and iPad applications available via the Apple, Inc. (“Apple”) App Store (the “Application”), but the following additional terms also apply to the Application:

- (a) Both you and eCoach acknowledge that the Terms are concluded between you and eCoach only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- (b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- (c) You will only use the Application in connection with an Apple device that you own or control;
- (d) You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- (e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple’s sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- (f) You acknowledge and agree that eCoach, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;

- (g) You acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, eCoach, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- (h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (i) Both you and eCoach acknowledge and agree that, in your use of the Application, you will comply with any applicable third-party terms of agreement which may affect or be affected by such use; and
- (j) Both you and eCoach acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

What else do I need to know?

Warranty Disclaimer. eCoach does not make any representations or warranties concerning any content contained in or accessed through the Services or third-party services (such as coaching or drills), and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. We make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. Products and services purchased or offered (whether or not following such recommendations and suggestions) through the Services are provided "AS IS" and without any warranty of any kind from eCoach or others (unless, with respect to such others only, provided expressly and unambiguously in writing by a designated third party for a specific product). THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ECOACH BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY

AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO ECOACH IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (III) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. To the fullest extent allowed by applicable law, You agree to indemnify and hold eCoach, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims by you or any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action ("Claim"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without eCoach's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law; Arbitration. These Terms are governed by and will be construed under the laws of the Commonwealth of Kentucky, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in Lexington, Fayette County, Kentucky, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, Lexington, Fayette County, Kentucky.

Miscellaneous. You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services, provided that the eCoach may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and eCoach agree that these Terms are the complete and exclusive statement of the mutual understanding between you and eCoach, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms, and that all modifications to these Terms must be in a writing signed by both parties (except as otherwise provided herein). No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind eCoach in any respect whatsoever. Except as expressly set forth in the section above regarding the Apple Application, you and eCoach agree there are no third-party beneficiaries intended under these Terms.

eCoach, our software platforms, and the Services are protected by copyright, trademark, and other intellectual property rights.