

## **MYOSPORT TERMS OF USE**

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING OUR MOBILE APPLICATION (AS DEFINED BELOW), OUR WEBSITE, LOCATED AT WWW.MYOSPORT.CO (“SITE”), AND OUR RELATED SERVICES (COLLECTIVELY, THE “SERVICE”). YOUR USE OF THE SERVICE IS GOVERNED BY, AND CONFIRMS YOUR UNCONDITIONAL ACCEPTANCE OF, THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS OF USE, YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE SERVICE.**

**MYOSPORT INC. (“COMPANY” OR “WE”) PROVIDES YOU ACCESS TO AND USE OF THE SERVICE SUBJECT TO THESE TERMS OF USE (THE “TERMS”). BY ACCESSING OR USING THE SERVICE, YOU AGREE TO ABIDE BY THESE TERMS, AS THEY MAY BE AMENDED BY COMPANY FROM TIME TO TIME IN ITS SOLE DISCRETION, AND THAT SUCH AGREEMENT CONSTITUTES A BINDING CONTRACT BETWEEN YOU AND COMPANY.**

### **1. THE SERVICE**

- A. Information Related to Health.** The Service provides tools for the management of health and performance through exercise, including general exercise training routines, programs and techniques (“Training Programs”). However, the Service is for informational purposes only and is not a substitute for professional medical advice or a medical exam. Further, the Service is intended for use only by individuals healthy enough to perform strenuous exercise. In becoming a user of the Service, you represent that you are in sufficiently good health to do so and have no medical condition that would make use of the Service a risk to your health. Prior to beginning or modifying any exercise program or Training Program and/or if you suffer from any pre-existing medical condition, use any medical device (such as a pacemaker or hearing aid) or are pregnant, you should seek the advice of your physician or other qualified healthcare professional to determine if you are healthy enough to exercise, if the Training Program is appropriate for you and to provide ongoing monitoring of your health. Always remain hydrated while exercising and do not rely on the Service to inform you when to drink. Also, you should discontinue exercise in cases where it causes pain or severe discomfort, and should consult a medical expert prior to returning to exercise in such cases. While Company may provide Training Programs and other guidelines such as written descriptions, pictures, or videos describing how to perform specific exercises or activities, you assume sole responsibility for performing those exercises or activities with proper form, as risk of injury or illness increases with improper form. We encourage you to consider consulting with a qualified coach, instructor, personal trainer, or physical therapist, especially if you are new to any of the forms of training or activity you seek to perform. **USE OF OR RELIANCE ON ANY OF THE TRAINING PROGRAMS, TECHNIQUES, IDEAS, AND SUGGESTIONS ACCESSED THROUGH THE SERVICE IS AT YOUR SOLE DISCRETION AND RISK.**

COMPANY EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH YOUR USE OF THE TRAINING PROGRAMS.

- B. Prescribers.** The Service offers you the option of working, via our Mobile Application (as defined below) and Site, directly with a trainer, physical therapist, doctor or other wellness provider of your selection (“Prescriber”). In this way, you may receive Training Programs and related feedback from your Prescriber. HOWEVER, YOU ACKNOWLEDGE AND AGREE THAT THE SELECTION OF A PRESCRIBER IS AT YOUR OWN RISK AND THAT COMPANY DOES NOT ENDORSE ANY SUCH PRESCRIBER AND DISCLAIMS ANY AND ALL LIABILITY FOR ANY ACTION AND/OR OMISSIONS OF ANY PRESCRIBER.

## 2. ACCESS TO THE SERVICE

- A. License Grant.** Subject to these Terms, Company grants you a limited, non-commercial, non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable license to access the Service for your personal use, through a generally available web browser or through a mobile computing device (“Mobile Device”), and to view information on those areas of the Service generally available to all users and those areas of the Service for which you have registered. The Company reserves all rights not expressly granted herein in the Service. The Company may terminate this license at any time for any reason or no reason.
- B. Mobile Device Access.** Company offers access to the Service to users through Company’s proprietary MYOSPORT mobile software application operating on Mobile Devices (“Mobile Application”). If you access or use the Service through a Mobile Device, you understand and agree that information about your usage (including without limitation the duration and frequency of your usage), as well as other information (including without limitation, your geographic location and the unique identifying information of your Mobile Device), will be accessible to your mobile carrier, and may also be communicated to Company in the ordinary course of data exchange. By accessing or using the Service through a Mobile Device, you represent that, to the extent you import any of your data to your Mobile Device, you authorize such transfer and have authority to share the transferred data with your mobile carrier or other access provider. You also understand that, in the event you change or deactivate your mobile account, you must promptly update your Company account information to ensure that your messages are not sent to a third party acquiring your old number, and you acknowledge and agree that failure to do so is your sole responsibility. Company does not warrant that the Mobile Application will be compatible or interoperable with your Mobile Device or any other piece of hardware, software, equipment or device installed on or used in connection with your Mobile Device. Furthermore, you acknowledge that compatibility and interoperability problems can cause the performance of your Mobile Device to diminish or fail completely, and may result in permanent damage to your Mobile Device, loss of the data located on your Mobile Device, and corruption of the software and files located on your Mobile Device. You acknowledge and agree that Company shall have no

liability to you for any losses suffered resulting from or arising in connection with compatibility or interoperability problems.

**C. Mobile Application License.** Company hereby grants you a limited, non-commercial, non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable license to use a compiled code version of the Mobile Application for one account on one Mobile Device owned or leased solely by you, for your personal use. You acknowledge that Company may from time to

time issue upgraded versions of the Mobile Application, and may automatically electronically upgrade the version of the Mobile Application that you are using on your Mobile Device. You consent to such automatic upgrading on your Mobile Device, and agree that these Terms will apply to all such upgrades. This license grant is not a sale of the Mobile Application or any copy thereof, and Company retains all right, title, and interest in the Mobile Application.

### 3. REGISTRATION, USER ACCOUNT, PASSWORD AND SECURITY

To sign up for the Services, you must register for an account on the Service through using your Facebook credentials or otherwise registering for the Service. In consideration of your use of the Service, you represent and agree that you: (i) are of legally sufficient capacity to form a binding contract; (ii) are at least 18 years of age; and (iii) you will comply with all applicable laws, statutes, ordinances and regulations regarding your use of the Service. Children 14 years of age and older may only use the Service if (a) their parent or legal guardian has agreed to these Terms, and (b) their use is permitted and supervised by their parent or legal guardian. If you open an account to use the Service, you must: (x) complete the registration process by providing true, accurate and complete information requested on the registration form (“Registration Data”); (y) maintain the accuracy of the Registration Data; and (z) provide a user name and password. You are entirely responsible for the confidentiality and use of your user name and password. You may not use the account, username, or password of someone else at any time. You are responsible for all electronic communications, including account registration and other account holder information, email, financial and other content (“Electronic Communications”) entered through or under your user name and password. Company will act as though any Electronic Communications it receives under your user name and password will have been authorized by you. You agree to notify Company immediately of any unauthorized use of your account, user name, or password.

### 4. PAYMENT TERMS; INTEREST; PAYMENT PROCESSOR

All subscription and other fees, and all related payment terms, are determined by Company at its sole option and discretion, and unless otherwise agreed to by the Company, payment must be received by the Company prior to use of the Service. Your order is subject to cancellation by Company at Company’s sole discretion. We may use a third-party payment processor (the “Payment Processor”) to bill you through a payment account for use of the Service. The processing of payments will be subject to the terms, conditions and privacy policies of the

Payment Processor in addition to these Terms. We are not responsible for error by the Payment Processor. You agree to pay us, through the Payment Processor, all charges at the prices then in effect for any use of the Service in accordance with the applicable payment terms and you authorize us, through the Payment Processor, to charge your chosen payment provider. We reserve the right to correct any errors or mistakes that it makes even if it has already requested or received payment. All amounts due are payable in U.S. dollars. Any amount not paid when due will be subject to a finance charge of one and one-half percent (1-1/2%) per month, or the maximum amount allowed by law if lower, for the unpaid balance due. You shall be responsible for any expenses and/or fees (including but not limited to attorneys' fees), incurred by Company in collecting past due amounts from you.

## 5. PRIVACY POLICY

Company is committed to maintaining the privacy and security of information that you provide to Company through the Service. Registration Data and certain other information about you are subject to our Privacy Policy, which is incorporated herein by this reference. By using the Service you consent to the collection and use of this information (as set forth in the Privacy Policy), including the transfer of this information to or from the United States and/or other countries for storage, processing and use by Company and its affiliates. For more information, see our full Privacy Policy at: [WWW.MYOSPORT.CO](http://WWW.MYOSPORT.CO)

## 6. USE RESTRICTIONS

Company imposes certain restrictions on your permissible use of the Service, which includes the Mobile Application. You represent, warrant and agree that you will not:

1. use the Service in connection with any commercial endeavor, unless you have a prior written agreement with Company signed by an officer of Company;
2. market or distribute access to the Service or any portion thereof;
3. assign; sublicense, sell, lease or otherwise transfer or convey your rights under these Terms;
4. remove, circumvent, disable, damage or otherwise interfere and/or violate or attempt to violate any security feature of the Service;
5. access or attempt to access any content, data, programs or other Company systems not intended for you, or log onto a server or account that you are not expressly authorized to access
6. attempt to probe, scan, or test the vulnerability of the Service or any associated system or network, or to breach security or authentication measures without proper authorization;
7. damage, disable, overburden or impair the Service or interfere or attempt to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Service, overloading, "flooding," "spamming," "mail bombing," or "crashing;"
8. attempt to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by Company in providing the Service, except to the extent that such restriction is expressly prohibited by law;
9. delete copyright and/or other proprietary rights notices on the Service
10. attempt to modify, copy, distribute, transmit, display, perform, reproduce, publish, rent, lease, loan, license, or create derivative works based on the Service;
11. frame in another web page, use on any other web Service, transfer or sell any information, software, lists of users, databases, Company IP (as defined below) or other lists, products or services provided through or obtained from the Service, or engage in the practices of

“data

mining,” “screen scraping,” “database scraping,” or any other activity with the purpose of obtaining lists of users or other information from the Service;

12. use any meta tags or any other “hidden text” utilizing Company IP (as defined below) without the express written consent of Company;
13. impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
14. send email messages or use the Service in any manner which intentionally or unintentionally violates any applicable local, state, national or international law or regulation (including without limitation, policies and laws related to spamming, privacy, obscenity or defamation);
15. send email messages or make posts that contain falsified or misleading routing information, a return address that is either invalid or belongs to a third party and is used without permission, a misleading subject line and/or body copy, or promote a fraudulent scheme; or
16. upload, download, post, email, transmit or otherwise make available any materials that:
  - (i) are inappropriate, misleading, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, offensive, sexually explicit, promote gambling, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable;
  - (ii) you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
  - (iii) contain software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
  - (iv) contain unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation; or
  - (v) infringes any patent, trademark, service mark, trade secret, copyright or other proprietary rights of any party. You are solely responsible for any violations of any relevant laws and for any infringements of third party rights caused by any content you provide or transmit, or that is provided or transmitted using your user identification. The burden of proving that any content does not violate any laws or third party rights rests solely with you.

Company reserves the right to investigate suspected violations of these Terms. If Company becomes aware of a possible violation, Company may initiate an investigation which may include gathering information from you or companies involved and the complaining party. If Company believes, in its sole discretion, that a violation of these Terms has occurred, it may take responsive action. Such action may include, but is not limited to, temporary or permanent blocking of your access to the Service and/or deleting any materials from Company’s system. Violations of these Terms could also subject you to criminal or civil liability. Company

reserves the right to release the contact information of users involved in violations of system security to system administrators at other sites, in order to assist them in resolving security incidents. Company intends to cooperate fully with any law enforcement officials or agencies in their investigation of any violation of these Terms or of any applicable laws.



## 7. USER CONTENT

You retain all of your ownership rights in your User Content (as defined below). However, by submitting, posting, downloading, displaying, performing, transmitting, or otherwise distributing data, information or other content (“User Content”) to an area of the Service that is intended by Company to be publicly accessible, including without limitation any bulletin boards, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities designed to enable you to exchange thoughts and opinions with other members of the public, you are: (i) granting Company a worldwide, royalty-free, perpetual, sublicensable, transferable, non-exclusive license to use the User Content in connection with the operation of Company, and its affiliates, including without limitation, a right to use, host, copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat User Content; (ii) representing and warranting that you own the rights to the User Content or are otherwise authorized to post, distribute, display, perform, transmit, or otherwise distribute User Content. You will not be compensated for any User Content. All User Content, whether publicly posted or privately transmitted, is the sole responsibility of the person from which such content originated.

You are solely responsible for all User Content that you upload or otherwise transmit via the Service, and for confirming the sufficiency and reliability of any User Content posted by others that you may use or rely upon. Company does not control or endorse any User Content, or any opinion, recommendation, or advice expressed therein, uploaded or otherwise transmitted by you or other users via the Service and, as such, does not guarantee the accuracy, integrity or quality of such User Content. Company expressly disclaims any liability in connection with User Content. Company and its designees shall have the right (but not the obligation) in their sole discretion to refuse or to remove any User Content contained on the Service at any time for any reason with or without notice. Always use caution when posting any personally identifying information about yourself or your children on the Service.

YOU UNDERSTAND THAT WHEN USING THE SERVICE, YOU MAY BE EXPOSED TO USER CONTENT FROM A VARIETY OF SOURCES, INCLUDING PRESCRIBERS, AND THAT COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY, USEFULNESS, SAFETY, OR INTELLECTUAL PROPERTY RIGHTS OF OR RELATING TO SUCH USER CONTENT. YOU FURTHER UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY BE EXPOSED TO USER CONTENT THAT IS INACCURATE, OFFENSIVE, INDECENT, OR OBJECTIONABLE, AND YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST COMPANY WITH RESPECT THERETO, AND AGREE TO INDEMNIFY AND HOLD COMPANY, ITS PARENT, SUBSIDIARIES, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS, HARMLESS TO THE FULLEST EXTENT ALLOWED BY LAW REGARDING ALL MATTERS RELATED TO YOUR USE OF THE SERVICE.

## 8. USER SUBMISSIONS

Any comments, feedback, suggestions and ideas disclosed, submitted or offered to Company in connection with your use of the Service (collectively “Submissions”) shall be owned exclusively by Company. You agree that Company shall: (i) not be under any obligation of confidentiality, express or implied, with respect to the Submissions; (ii) be entitled to use or disclose Submissions for any purpose, without restriction worldwide; and (iii) not owe you any compensation or reimbursement of any kind under any circumstances for use or disclosure of Submissions.

## 9. THIRD PARTY SERVICES AND SITES

The Service may provide links to other web sites or resources. Your business dealings with any third party, third party web site or third party content (collectively “Third Party”) whether found on or through the Service or not, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations, associated with such dealings, are solely between you and such Third Party. Company makes no endorsement or guarantee about the content, goods or services provided by any Third Party. Company shall not be responsible for any loss or damage of any sort incurred as the result of: (i) any dealings or transaction between you and any Third Party or as the result of the presence of such Third Party on the Service;

(i) any insufficiency of or problems with any such Third Party’s background, insurance, credit or licensing; or (iii) the quality of services performed by any such third party or any other legal liability arising out of or related to the performance of such services. In the event that you have a dispute with any such third party, you release Company, its parent, subsidiaries, affiliates, directors, officers, employees, agents, partners and licensors, from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. Unless expressly provided otherwise, these Terms govern your use of any and all third party content.

## 10. STORAGE AND ACCESS

Company may, in its sole discretion: (i) limit the duration and frequency of your access to the Service; and (ii) delete accounts that are inactive for an extended period of time. Company shall have no responsibility or liability for the deletion or failure to store any account, messages, postings, communications or other content maintained or transmitted by the Service.

## 11. MODIFICATIONS

Company may, in its sole discretion and without prior notice, (i) revise these Terms; (ii) modify the Service; and (iii) discontinue the Service, or any of its constituent parts, including, without limitation, any products and/or services featured on the Service, at any time. Company shall post any revision to these Terms, and the revised Terms shall be effective immediately on such posting. You agree to review these Terms and other online policies posted on the Service

periodically to be aware of any revisions. Your continued use of any of the Service shall constitute your acceptance of the revised Terms. If you do not agree to any of such changes, you may terminate these Terms and immediately cease all access and use of the Service. You agree

that such termination will be your exclusive remedy if you do not wish to abide by any changes to these Terms.

## 12. TERMINATION

You acknowledge and agree that Company may at any time in its sole discretion terminate your access to and use of the Service, or any part thereof, with or without notice and without any liability to you or any third party. You agree that upon termination Company may delete all files and information related to your account, if any, and may bar your access to your account, if any, and the Service, and that you will immediately destroy any Company software in your possession or control.

## 13. PROPRIETARY RIGHTS

The design of the Service, Training Programs and all text, graphics, information, content, and other material displayed on or that can be downloaded from the Service are protected by copyright, trademark and other laws and may not be used except as permitted in these Terms or with prior written permission of the owner of such material. The software, technology components and contents of the Service are copyrighted. All rights not expressly granted hereunder are reserved. You agree that as between the parties, Company is the exclusive owner of the Service, Training Programs and all constituent parts, including without limitation, all software code, all photographs, videos and any other content on the Service (excluding User Content), HTML scripts, the uniform resource locators (URL's) for the Service, the organization and layout of the Service, all Company trademarks (including without limitation MyoSTATS, trade names, service marks, trade dress and logos, all enhancements and improvements thereto, and derivatives thereof, and all patent, copyright, trademark, trade secret, trade dress and other intellectual property rights therein throughout the world (collectively the "Company IP"). Any goodwill attached to, or generated by, such Company IP is owned exclusively by Company, or its licensors, and shall inure solely to the benefit of Company, or its licensors. Nothing contained herein or on the Service should be understood as granting you any right or license to any of the Company IP, except as expressly granted herein. All rights not expressly granted herein are reserved by Company, or its licensors. Company, or its licensors, retains full and complete title to the Company IP. You shall not: (i) use or copy the Company IP in any manner not specifically set forth herein; (ii) include Company IP in your corporate name, within a domain name or within any part of URL's; (iii) obtain, use, register, or otherwise acquire any trade names, trademarks, service marks, and/or trade dress that are confusingly similar to Company IP; (iv) have any claim of ownership in the Company IP; or (v) sell, redistribute, transfer, sublicense or reproduce the Company IP, nor may you decompile, reverse-engineer, disassemble, or otherwise convert any of the Company IP to a human-perceivable form. These Terms do not limit any rights that Company may have under trade secret, copyright, patent, trademark or other laws. You acknowledge and agree that the Service contains proprietary information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that content contained in any sponsor advertisements or information that may have been presented to you

through the Service or its advertisers, if any, may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Other trademarks that may appear on the Service are the

property of their respective owners. Any images of persons or personalities contained on or accessible through the Service are not an indication or endorsement of Company or the Service, unless otherwise indicated.

#### 14. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU TO THE FULLEST EXTENT PERMITTED BY LAW. THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. THE INFORMATION CONTAINED ON THE SERVICE MAY INCLUDE INACCURACIES, ERRORS AND OMISSIONS. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY, ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS: (A) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY WARRANTY ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING; (B) MAKE NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) ANY INFORMATION OBTAINED FROM THE SERVICE WILL BE ACCURATE, APPROPRIATE, COMPLETE, CORRECT, RELIABLE, SUFFICIENT OR TIMELY, (IV) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (V) ANY ERRORS IN THE SERVICE WILL BE FIXED; AND (C) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THESE TERMS OR THE SERVICE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ANY CONTENT OR MATERIAL DOWNLOADED OR UPLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR NETWORK OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR UPLOAD OF ANY SUCH MATERIAL OR THE USE OF THE SERVICE. COMPANY IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS OR OMISSIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM COMPANY OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS, SO THE FOREGOING EXCLUSIONS AND LIMITATIONS ONLY APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

15. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT COMPANY, ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE FOR AND HEREBY EXPRESSLY DISCLAIM ANY AND ALL ACTUAL, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, LOSS OF PROFITS, INTERRUPTION OF BUSINESS, ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SERVICE OR OTHER WEB SITE(S) YOU MAY ACCESS THROUGH THE SERVICE (IF ANY), CONTENT NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION, GOODWILL, USE, CONTENT OR OTHER INTANGIBLE LOSSES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SERVICE; (II) ANY INFORMATION OBTAINED THROUGH OR FROM THE SERVICE, OR OTHERWISE ARISING OUT OF OR RELATED TO THE USE OF THE SERVICE; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES RESULTING FROM ERROR OR INADEQUACY OF ANY GOODS, INFORMATION OR SERVICE PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (IV) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; (VI) INJURY TO PERSON OR PROPERTY ARISING FROM OR RELATED TO YOUR ACCESS TO AND USE OF THE SERVICE; (VII) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IX) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (X) ANY BUGS, VIRUSES, TROJAN HORSES, OR OTHER ACTUALLY OR POTENTIALLY HARMFUL CODE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICE; AND/OR (XI) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT SHALL COMPANY, ITS OFFICERS, EMPLOYEES, AGENTS, AND LICENSORS, LIABILITY TO YOU OR TO ANY THIRD PARTY EXCEED FIFTY DOLLARS (\$50.00).

#### 16. INDEMNITY

You agree to defend, indemnify and hold Company, its parent, subsidiaries, affiliates, directors, officers, employees, agents, partners and licensors, harmless from and against any and all claims, demands, losses, liability, costs and expenses (including but not limited to attorneys' fees) arising from your User Content, your use of the Service, your connection to the Service, your violation of the terms of these Terms, or your violation of any third party's rights, including but not limited to infringement of any intellectual property right, violation of any proprietary right and invasion of any privacy rights. This indemnification obligation will survive the termination



of your account, your access to the Service and/or these Terms.

## 17. CLAIMS OF COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT

In accordance with the Digital Millennium Copyright Act, Company has in place certain legally mandated procedures regarding allegations of copyright infringement occurring on the Service. Company has adopted a policy that provides for the immediate suspension and/or termination of any Service user who is found, in Company's sole discretion, to have potentially infringed on the rights of Company or of a third party, or otherwise potentially violated any intellectual property laws or regulations. Company's policy is to investigate any allegations of copyright infringement brought to its attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want Company to delete, edit, or disable the material in question, you must provide Company with all of the following information: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (iii) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Company to locate the material; (iv) information reasonably sufficient to permit Company to contact you, such as an address, telephone number, and if available, an electronic mail address at which you may be contacted;

(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; and (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. For this notification to be effective, you must provide it to Company's designated agent, Noah Wickliffe, at: [noah@MyoSportinc.com](mailto:noah@MyoSportinc.com)

## 18. APPLE DEVICE AND APPLICATION TERMS

As you are accessing the Service via the Mobile Application on a device provided by Apple, Inc. ("Apple"), or obtained the Mobile Application through the Apple App Store, the following shall apply:

- A. Both you and Company acknowledge that these Terms are concluded between you and Company only, and not with Apple, and that Apple is not responsible for the Mobile Application or its content;
- B. The Mobile Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Service for your private, personal, non-commercial use, subject to these Terms as they are applicable to the Service;
- C. You will only use the Mobile 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 Mobile Application;

- E. In the event of any failure of the Mobile 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 Mobile Application;
- F. You acknowledge and agree that Company, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Mobile Application;
- G. You acknowledge and agree that, in the event of any third party claim that the Mobile Application or your possession and use of the Mobile Application infringes that third party's intellectual property rights, Company, 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 Company acknowledge and agree that, in your use of the Mobile 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 Company 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.

## 19. GENERAL INFORMATION

- A. Entire Agreement; Interpretation.** These Terms and any documents referenced herein constitute the entire agreement between you and Company and govern your use of the Service, superseding any prior agreements between you and Company (including, but not limited to, any prior versions of these Terms) with respect to its subject matter. You also may be subject to additional terms and conditions that may apply when you use affiliate or other Company services or products, third-party content or third-party software. In the event any term contained in these Terms conflicts with any other term contained in any other agreement referenced in these Terms, these Terms shall control. Except as otherwise provided in these Terms, these Terms may only be modified in a writing signed by an authorized officer of Company. The language in these Terms shall be interpreted as to its fair meaning and not strictly for or against any party.
- B. Consent to Email Communications.** You consent to receive communications from Company electronically and agree that we may communicate with you by email or by posting notices on the Service. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement

that such communications be in writing.

- C. Assignment; Waiver.** You may not assign these Terms or any rights granted herein. Any attempt by you to transfer any of the rights, duties or obligations hereunder is void. Company may assign or transfer these Terms or its rights or obligations hereunder without notice and without your prior approval. These Terms are for the sole benefit of the parties hereto and do not create any third-party beneficiaries, whether intended or incidental. These Terms will inure to the benefit of Company and its successors and assigns. The failure of Company to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. No waiver, express or implied, by either party of any breach of or default under these Terms will constitute a continuing waiver of such breach or default or be deemed to be a waiver of any preceding or subsequent breach or default.
- D. Governing Law.** THE VALIDITY, CONSTRUCTION, INTERPRETATION, AND PERFORMANCE OF THESE TERMS WILL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF CALIFORNIA, EXCEPT AS TO ITS PRINCIPALS OF CONFLICTS OF LAWS, AND WITHOUT REGARD TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. THE PARTIES AGREE THAT THIS CONTRACT IS NOT A CONTRACT FOR THE SALE OF GOODS; THEREFORE, THIS AGREEMENT WILL NOT BE GOVERNED BY ANY CODIFICATION OF ARTICLE 2 OR 2A OF THE UNIFORM COMMERCIAL CODE, OR ANY CODIFICATION OF THE UNIFORM COMPUTER INFORMATION TECHNOLOGY ACT (“UCITA”), OR ANY REFERENCES TO THE UNITED NATIONAL CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.
- E. Injunctive Relief.** You hereby acknowledge that a breach of these Terms may cause irreparable harm and significant injury to Company that may be difficult to ascertain, and that a remedy at law may be inadequate. Accordingly, you agree that Company shall be entitled, without waiving any additional rights or remedies otherwise available to Company at law or in equity and without the necessity of posting bond, to seek injunctive and other equitable relief in the event of a breach or intended or threatened breach by you. Notwithstanding anything to the contrary, Company shall be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.
- F. Arbitration.** Except in the case of legal action brought by Company to obtain injunctive or other equitable relief of whatsoever kind, all of which may be brought in any court or other tribunal of competent jurisdiction, ANY CONTROVERSY, CLAIM, DISPUTE OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR THEIR SUBJECT MATTER, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, SHALL BE SUBMITTED TO THE OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION LOCATED IN, OR CLOSEST TO, ORANGE COUNTY, CALIFORNIA,

AND WILL BE SETTLED BY ARBITRATION TO OCCUR IN ORANGE COUNTY,  
CALIFORNIA, SAID ARBITRATION TO BE ADMINISTERED BY THE AMERICAN  
ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL  
ARBITRATION RULES, IN EFFECT AT THE

TIME OF THE ARBITRATION, THE LAWS OF THE STATE OF CALIFORNIA GOVERNING SUCH ARBITRATIONS, AND IN ACCORDANCE WITH THESE TERMS. SUCH ARBITRATION MUST BE FILED WITHIN TWELVE (12) MONTHS OF THE FIRST ACCRUAL OF THE CAUSE OF ACTION, AND THE PARTIES AGREE THAT THE STATUTE OF LIMITATIONS FOR ANY CAUSE OF ACTION BROUGHT PURSUANT TO, IN CONNECTION WITH, OR RELATING TO A DISPUTE WILL BE TWELVE (12) MONTHS FROM THE FIRST ACCRUAL OF THE CAUSE OF ACTION, NOTWITHSTANDING ANY STATUTE TO THE CONTRARY. ANY ARBITRATION UNDER THESE TERMS WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.

The arbitration will be heard and decided no later than seven (7) months after the notice of arbitration is filed with the American Arbitration Association by one arbitrator. The arbitrator will hear and determine any preliminary issue of law asserted by a party to be dispositive of any claim, in whole or in part, in the manner of a court hearing a motion to dismiss for failure to state a claim or for summary judgment, pursuant to such terms and procedures as the arbitrator deems appropriate. No witness or party may be required to waive any privilege recognized under California law. The hearing will not last longer than four (4) days unless all parties agree otherwise, with time to be divided equally between you and Company. The arbitrator will be an attorney, licensed to practice law in the State of California for no less than ten (10) years, with no less than five (5) years' experience as an arbitrator. The parties and the arbitrator will treat all aspects of the arbitration proceedings, including, without limitation, discovery, testimony and other evidence, briefs, and the award, as strictly confidential and not subject to disclosure to any third party or entity, other than to the parties, the arbitrator, and the American Arbitration Association. The arbitrator must give full effect to the applicable law and to all of these Terms, and are specifically divested of any power to add to, subtract from, modify or alter any of the terms or conditions of these Terms, or to render decisions in derogation thereof. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual direct damages, except as may be required by statute. THE PARTIES UNDERSTAND THAT THEY ARE WAIVING THEIR RIGHTS TO A JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION. YOU AND COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE

PROCEEDING. Further, unless both you and Company agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator will issue written findings of fact and conclusions of law, the decisions of the arbitrator will be binding and conclusive upon all parties involved, and judgment upon any decision of the arbitrator may be entered in any federal or state courts with jurisdiction. You are solely responsible for your



interactions with other users of the Service. Company reserves the right, but has no obligation, to monitor disputes between you and other users of the Service.

- G. Attorney Fees.** In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under these Terms (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under these Terms, in addition to any other relief to which the prevailing party may be entitled, the prevailing party will be entitled to recover its reasonable attorney fees, costs and expenses to resolve the dispute and to enforce the final judgment.
- H. Legal Compliance.** You agree to comply with all local laws and rules regarding use of the Service. Use of the Service is not authorized in any jurisdiction that does not give effect to all provisions of these Terms. The Service is controlled and operated by Company from its offices in Larkspur, California, in the United States of America. Company makes no representation that any of the Service (including, without limitation, any products or services available on or through the Service) are available or appropriate for use outside of the United States of America. Your use of or access to the Service should not be construed as Company's purposefully availing itself of the benefits or privilege of doing business in any state or jurisdiction other than California.
- I. Severability.** If any provision(s) of these Terms, including without limitation, the warranty disclaimers and liability limitations set forth above, are found by a court of competent jurisdiction to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms shall continue in effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.
- J. Legal Equivalency.** These Terms and any other electronic documents, policies and guidelines incorporated herein shall be: (i) deemed for all purposes to be a "writing" or "in writing," and to comply with all statutory, contractual, and other legal requirements for a writing;
- (ii) legally enforceable against any party hereto as a signed writing; and (iii) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Any electronic documents introduced as evidence in any judicial, arbitration, mediation or administrative proceeding shall, if established and maintained in the ordinary course of business, be admissible to the same extent as business records in written form that are similarly established and maintained.