

TERMS OF USE

Top Tier Coaching, LLC

The following terms and conditions, together with any documents they expressly incorporate by reference, including, without limitation, our Privacy Policy (collectively, “Terms of Use”), govern your access to and use of the website located at etoptier3.coach@gmail.com, including any content, functionality, services offered on or through our online application or the website. These Terms of Use also govern your purchase of services, including, but not limited to, Monthly Memberships, offered on or through the Website or App (“Services”). If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the Website, App, or Services.

This document contains very important information regarding your rights and obligations, as well as conditions, limitations, and exclusions that might apply to you. Please read it carefully. These terms require the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

The App and/or Website is offered and available to users who are 16 years of age or older. By using the App and/or Website, you represent and warrant that you are of legal age to and have the requisite capacity and authority to form a binding contract with Top Tier Coaching LLC. By clicking the “ACCEPT” button or by otherwise using the Website, App, or Services, you represent that you are at least 16 years of age.

ACCESSING THE WEBSITE AND ACCOUNT SECURITY

We reserve the right to withdraw or amend the App and/or Website, and any Service or material we provide on the App and/or Website, in our sole discretion without notice. We will not be liable if, for any reason, all or any part of the App and/or Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the App and/or Website, or the entire App and/or Website. You are responsible for: Making all arrangements necessary for you to have access to the App and/or Website as well as ensuring that all persons who access the App and/or Website through an internet connection which you share are aware of these Terms of Use and comply with them.

To access the App, Website or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the App and Website that all the information you provide on the App and/or Website is correct, current, and complete. You agree that all information you provide to register with this App, Website or otherwise, including, but not limited to, through the use of any interactive features on the App and/or Website, is governed by our Privacy Policy, and

you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this App or Website or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any username, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

If you are under the age of 18, you represent that your parent or legal guardian has reviewed and agreed to the Terms of Use on your behalf. If you are under the age of 18 and your parent or legal guardian has not reviewed and agreed to the Terms of Use, Top Tier Coaching LLC. has the right to restrict your account until a parent approves or assumes responsibility for your account.

If you are at least 18 years of age and you are the legal parent or guardian of a child that seeks to use our App, Website and/or Services, you may register your child with the App, Website and/or Services. You may create, register, manage and approve accounts only for your own child(ren) or child(ren) for whom you are a legal guardian. IF YOU REGISTER, APPROVE OR CONSENT TO A CHILD'S USE OF THE APP, WEBSITE OR SERVICES, OR OTHERWISE ASSUME RESPONSIBILITY FOR ANY CHILD USER, YOU REPRESENT AND WARRANT THAT YOU ARE THE LEGAL PARENT OR GUARDIAN OF SUCH CHILD AND YOU AGREE TO BE BOUND BY THE TERMS OF USE ON BEHALF OF SUCH CHILD, INCLUDING WITHOUT LIMITATION BEING LIABLE FOR ALL USE OF THE WEBSITE AND/OR SERVICES BY THE CHILD. You acknowledge that Top Tier Coaching LLC. may choose, but is not obligated, to make any inquiries, either directly or through third parties, that Top Tier Coaching LLC. deems necessary to validate your information, including without limitation engaging third parties to provide verification services. Top Tier Coaching LLC. reserves all rights to take legal action against anyone who misrepresents personal information or is otherwise untruthful about their identity.

CHANGES TO THE TERMS OF USE

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them. Your continued use of the Website and/or App following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page frequently so you are aware of any changes, as they are binding on you.

INTELLECTUAL PROPERTY RIGHTS & USE OF THIS WEBSITE

The App, Website and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video, audio, colors, background, objects, “look and feel,” layout, and the design, selection, and arrangement thereof), are owned by Top Tier Coaching LLC. or its licensors and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. All rights reserved. You are responsible for obeying all applicable copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws and these Terms of Use.

These Terms of Use permit you to use the App and/or Website for the limited personal purpose for which we provide the App and/or Website, namely for information relating to our products and services and purchase of the same (the “Purpose”). You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our App and/or Website, except as follows:

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You may store files that are automatically cached by your Web browser for display enhancement purposes.

You may print or download one copy of a reasonable number of pages of the App and/or Website for internal business purposes relating to the Purpose only and not for further reproduction, publication or distribution.

If we provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for internal business purposes relating to the Purpose, provided you agree to be bound by our end user license agreement for such applications.

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If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the App and/or Website in breach of the Terms of Use, your right to use the Website will cease immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title or interest in or to the App and/or Website or any content on the App and/or Website is transferred to you, and all rights not expressly granted are reserved by us or our licensors. Any use of the Website not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

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PROHIBITED USES

You may use the App and/or Website only for lawful purposes and in accordance with these Terms of Use. Without limiting the generality of the foregoing, you agree not to

Use the App and/or Website in any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);

Decompile, reverse engineer, disassemble, rent, lease, loan, sell, sublicense, or create derivative works from the App and/or Website or the material contained on it;

Impersonate or attempt to impersonate Top Tier Coaching LLC, an employee of Top Tier Coaching LLC, another user or any other person or entity (including, without limitation, by using e-mail addresses associated with any of the foregoing).

Use any network monitoring or discovery software to determine the site architecture, including but not limited to the App and/or Website's "look and feel," and trade dress or extract information about usage or users.

Use any robot, spider, or other automatic or manual device or process to monitor or copy the App and/or Website, the App and/or Website's design, architecture, arrangement, or "look and feel," and trade dress or the material contained on it other than as expressly permitted in these Terms of Use.

Use any device, software, or routine that interferes with the proper working of the App and/or Website.

Frame this App and/or Website or link to a page other than the home page without our express written permission.

Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.

Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Website, the server on which the App and/or Website is stored, or any server, computer or database connected to the App and/or Website.

Attack the App and/or Website via a denial-of-service attack or a distributed denial-of-service attack.

Otherwise attempt to interfere with the proper working of the App and/or Website.

USE OF ANY HYPERLINK

We are not responsible for the content of any other website, including any website through which you may have gained access to our App and/or Website or to which you may gain access from our App and/or Website. We do not accept any liability in connection with any such sites or links.

Where we provide a hyperlink to a third party's website, we do so because we believe in good faith that such a website contains or may contain material which is relevant to that on our App and/or Website. Such a hyperlink does not signify that we have reviewed or approved of the connected third party's website or its contents – indeed in certain instances a hyperlink may connect you to a third party's website containing views contrary to those expressed on our App and/or Website or otherwise held by us.

INFORMATION ABOUT YOU AND YOUR VISITS TO THE APP AND/OR WEBSITE

All information we collect on the App and/or Website is subject to our Privacy Policy. By using the App and/or Website, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

MEMBERSHIP TERMS

You agree that if you purchase a monthly recurring membership (“Monthly Membership”) now or at any time in the future, you authorize Top Tier coaching LLC. to charge your credit card for the membership fee (“Monthly Fee”) each month. Membership Fees may increase from time to time at our sole discretion. You further agree that the Membership Fee may be charged with no prior notification unless the amount increases, in which case advance notice will be provided and you will be given an opportunity to terminate your Monthly Membership. You acknowledge that you are responsible for providing Top Tier Coaching LLC. prompt notice of any changes to your payment method.

Your Monthly Membership may be suspended if you fail to pay your Membership Fee when due. We may, at our discretion, cancel your membership on 30-days written notice without cause and on reasonable shorter notice with cause. In the event Top Tier Coaching LLC. closes its facilities for any reason, including repair, when possible, it will post advance notice.

Unless otherwise stated by us, single classes, class packages, and Monthly Memberships are not transferable. Classes purchased through third party vendors may be subject to different terms and conditions.

You may place your Monthly Membership on hold by providing Top Tier Coaching LLC. with 72 hours advance written notice. You must provide notice in writing to Top Tier Coaching LLC. at least 72 hours in advance of your bill date if you wish to terminate your Monthly Membership.

We recommend you reserve a space in advance of each class. Reservations can be made in person, on the App, by phone, or on our Website. We may give away your reservation if you do not arrive by class start time. You must cancel within the specified amount of time on specific membership and packages at time of purchase (each membership/package can be different) usually twenty-four (24) hours in advance of class start time to avoid a cancellation fee. Cancellations may be made via your online account. If you fail to cancel a reservation or arrive by the class start time, the following will apply: If you have a Monthly Membership, you will be charged a cancellation and/or

late fee. If you are a class package holder, your class package will be debited 1 class; if you purchased a single class, you will not receive a refund.

ONLINE PURCHASES AND OTHER TERMS AND CONDITIONS

The previous sections apply to all purchases through the App and/or Website or other transactions for the sale of Services formed through the App and/or Website or as a result of visits made by you. You may only purchase Services for your personal use. Services made available for purchase on or through the App and/or Website are not for commercial or industrial use.

You agree that your order is an offer to buy, under these Terms of Use, all Services listed in your order. All orders must be accepted by us or we will not be obligated to provide Services. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the Services you have ordered. Acceptance of your order and the formation of the contract of sale between Top Tier Coaching LLC. and you will not take place unless and until you have received your order confirmation email. You have the option to cancel your order at any time before we have sent your order confirmation email.

The price for Services available for purchase through the App and/or Website will be displayed to you on the App and/or Website. The prices displayed do not include taxes or any other applicable fees, including, without limitation, any shipping, handling, insurance, or recycling fees. Any applicable taxes or fees will be communicated to you before you place an order. We are not responsible for pricing, typographical, or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors.

Top Tier Coaching LLC. is not a bank, credit union, payment processor, or other financial institution. As such, the App and/or Website currently uses third-parties to process payments for transactions consummated through this App and/or Website such as Stripe ("Payment Processors"). By utilizing the App and/or Website to purchase Services, you authorize a Payment Processor to charge your credit card or other payment method. Our third-party Payment Processors accept payments through various credit cards, including Visa, MasterCard, American Express and Discover, as detailed on the applicable payment screen. Transactions processed via the App and/or Website may also be subject to the terms and conditions of the applicable Payment Processor. Financing, should it become available, will be subject to additional terms and conditions. You represent and warrant that (i) the credit card information you supply to such third party payment processors is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by

your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any. Top Tier Coaching LLC. is not responsible for any errors by the Payment Processor.

Refunds. No refunds are permitted except with respect to any statutory warranties or guarantees that cannot be excluded or limited by law. If your account is charged for items you did not purchase, or you did not receive the items you purchased, or you were charged an incorrect amount, you may request a refund or correction in accordance with payment provider policy. Any refund request must be received within 96 hours from the time of purchase in order for refunds to be issued in accordance with payment provider policy. Refund requests past 24-48 hours from time of purchase will be honored according to and only in accordance with our payment policy. Other than charges to your account, you agree to notify us about any billing problems or discrepancies within 30 days after they first appear on your account statement. If you do not bring them to our attention within 30 days, you agree that you waive your right to dispute such problems or discrepancies. You are responsible for and agree to reimburse us for all reversals, charge-backs, claims, fees, fines, penalties and other liability incurred by us (including costs and related expenses) that were caused by or arising out of payments that you authorized or accepted. You understand that we may suspend or terminate your account if for any reason a charge you authorize us to make to your credit card or other method of payment cannot be processed or is returned to us unpaid and, if such an event occurs, you shall immediately remit to us payment for such charge through an alternative payment method.

Trial Period. We may offer you, at our own discretion and subject to modification or withdrawal at any time, unpaid or reduced fee, trial, access to the Services for a limited period of time, as indicated on the sign up page ("Trial Period"). Notwithstanding the foregoing, we may terminate the Trial Period for any or no reason, with or without notice to you. We offer at most one Trial Period to you and you agree not to attempt to circumvent this limitation by, for example, signing up for the Services with more than one email account. During the Trial Period, you agree to abide by all of these Terms and understand that no warranty will be made by us to you as to the accessibility or performance of the Services or any liability associated with any of the foregoing, At the close of the Trial Period, you may be automatically enrolled in a monthly membership at the then current list price, unless you cancel your subscription before the conclusion of the Trial Period.

IN-APP PURCHASES (If and when App becomes available)

This section is applicable only when you access and use the Services through the App:

If using the Services through the App, we may include an opportunity to purchase Services or Monthly Memberships (an “In-App Purchase”). If you choose to make an In-App Purchase, you will be prompted to confirm your purchase with the applicable payment provider, and your method of payment (your card or a third party account such as the Apple App Store or the Google Play Store) (“Payment Method”) will be charged for the In-App Purchase at the prices displayed to you for the Service(s) you have selected as well as any sales or similar tax that may be imposed on your payments, and you authorize Top Tier Coaching LLC. or the third party account, as applicable, to charge you.

In-App Purchases made on other applications stores or platforms such as but not limited to Facebook, Apple iOS, or Android (a “Third Party Store”) will be subject to those platforms’ payment terms and conditions. Top Tier Coaching LLC. does not control how you can pay on those platforms and shall not be liable for processing the payment by such third parties. Please review those platforms’ terms of service for additional information.

If you purchase an auto-recurring subscription, such as a Monthly Membership, during a Trial Period, your Payment Method automatically will be charged at the start of each subscription period for the fees and taxes applicable to that period, including a new subscription period that starts immediately after the end of the Trial Period. To avoid future charges, cancel at least 72 hours before the renewal date. Your Payment Method information will be stored and subsequently used for the automatic card payments in accordance with these Terms.

If you do not want your subscription to renew automatically, or if you want to change or terminate your subscription, you will need to provide 72 hours written notice, even if you have otherwise deleted your account with us or if you have deleted the App from your device. Deleting your account or deleting the App from your device does not terminate or cancel your subscription. Top Tier Coaching LLC. will retain all funds charged to your Payment Method until you terminate or cancel your subscription in the manner described above, as applicable. If you terminate or cancel your subscription, you may use your subscription until the end of your then-current subscription term, and your subscription will not be renewed after your then-current term expires.

Generally, all charges for In-App Purchases are nonrefundable, and there are no refunds or credits for partially used Monthly Memberships or subscription periods. We may make an exception if a refund for an In-App Purchase is requested within fourteen days of the transaction date, or if the laws applicable in your jurisdiction provide for refunds. You acknowledge that Top Tier Coaching LLC. is not required to provide a refund for any other reason, and that you will not receive money or other compensation

for unused In-App Purchases when an account is closed, whether such closure was voluntary or involuntary, or whether you made a payment through the Website, or a Third Party Store. If you made a purchase through a Third Party Store, refunds are handled by those Third Party Stores, not Top Tier Coaching LLC.

For users residing in any other state/province/country, the terms below apply:

You may cancel your subscription, without penalty or obligation, at any time given 72 hours written notice is provided to Top Tier Coaching LLC.. In the event that you die before the end of your subscription period, your estate shall be entitled to a refund of that portion of any payment you had made for your subscription, which is allocable to the period after your death. In the event that you become disabled (such that you are unable to use the services of Top Tier Coaching LLC. before the end of your subscription period, you shall be entitled to a refund of that portion of any payment you had made for your subscription, which is allocable to the period after your disability by providing Top Tier Coaching LLC. in the same manner as you request a refund as described below.

If you made a purchase using your Apple ID, refunds are handled by Apple, not Top Tier coaching LLC.. To request a refund, go to the Apple App Store, click on your Apple ID, select "Purchase history," find the transaction and hit "Report Problem". You can also submit a request at <https://getsupport.apple.com>.

If you subscribed using your Google Play Store account or through Top Tier Coaching LLC. directly: please email us with your order number from the Google Play Store. You may also mail or deliver a signed and dated notice which states that you, the buyer, are canceling this Agreement, or words of similar effect.

Please also include the email address or mobile number associated with your account along with your order number.

THIRD PARTY APPLICATION STORES

The following additional terms and conditions apply to you if you download the App from a Third Party Store. To the extent that the other terms and conditions of these Terms are less restrictive than, or otherwise conflict with, the terms and conditions of this section, the more restrictive or conflicting terms and conditions in this section will apply, but solely with respect to the Application and the Third Party Store. You acknowledge and agree that:

These Terms are concluded solely between you and Top Tier Coaching LLC. and not with the providers of the Third Party Store, and Top Tier Coaching LLC. (and not the Third Party Store providers) is solely responsible for the Application and the content thereof. To the extent that these Terms provide for usage rules for the Application which are less restrictive or in conflict with the applicable terms of service of the Third Party

Store from which you obtain the Application, the more restrictive or conflicting term of the Third Party Store will take precedence and will apply.

The Third Party Store provider has no obligation whatsoever to provide any maintenance and support services with respect to the App. Top Tier Coaching LLC. is solely responsible for any product warranties, whether expressed or implied by law, to the extent not effectively disclaimed. The Third Party Store provider will have no warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of top Tier Coaching LLC..

Top Tier Coaching LLC., not the Third Party Store provider, is responsible for addressing any claims you or any third party may have relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; (iii) claims arising under consumer protection or similar legislation; and/or (iv) intellectual property infringement claims.

The Third Party Store provider and its subsidiaries are third party beneficiaries of these Terms, and, upon your acceptance of these Terms, the Third Party Store provider from whom you obtained the App will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary thereof.

In the event of a conflict between a Third Party Store's or mobile carrier's applicable terms and conditions and these Terms, the terms and conditions of the Third Party Store or mobile carrier shall govern and control. We are not responsible and have no liability whatsoever for third-party goods or services you obtain through a Third Party Store or mobile carrier. We encourage you to make whatever investigation you feel necessary or appropriate before proceeding with any online transaction with any of these third parties.

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The information, material, and content provided in the pages of this App and/or Website may be changed at any time without notice. Information, material, and content is not necessarily complete or up-to-date. Any of the information, material and content on the App and/or Website may be out of date at any given time, and we are under no obligation to update such information, material, and content.

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You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the App and/or Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE APP AND/OR WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE APP AND/OR WEBSITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

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LIMITATION ON LIABILITY

IN NO EVENT WILL TOP TIER COACHING LLC, ITS AFFILIATES OR SUBSIDIARIES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS,

OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE APP, WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE APP AND/OR WEBSITE OR SUCH OTHER WEBSITES, OR ANY GOODS OR SERVICES PURCHASED THROUGH THE APP, WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

INDEMNIFICATION

You agree to defend, indemnify and hold harmless Top Tier Coaching LLC, its affiliates, subsidiaries, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the App and/or Website, including, but not limited to, any use of the App and/or Website's content, services, and products other than as expressly authorized in these Terms of Use or your use of any information obtained from the App and/or Website.

ARBITRATION & CLASS ACTION WAIVER

YOU AND TOP TIER COACHING LLC. ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS THROUGH THE WEBSITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

The arbitration will be administered in Yakima, Washington by the American Arbitration Association (“AAA”) in accordance with the Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this Section 12. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. If you prevail on any claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable fees to you under the standards for fee shifting provided by law.

You agree to an arbitration on an individual basis. In any dispute, NEITHER YOU NOR TOP TIER COACHING LLC. WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

WAIVER AND SEVERABILITY

No waiver by Top Tier Coaching LLC of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of Top tier Coaching LLC to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

In the event that any or any part of the terms contained in these Terms of Use shall be determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such terms shall to that extent be severed from the remaining terms which shall continue to be valid and enforceable to the fullest extent permitted by the applicable law.

ENTIRE AGREEMENT

The Terms of Use and any documents linked to and/or incorporated herein by reference, including, without limitation, the Privacy Policy, constitute the sole and entire agreement between you and ETop Tier Coaching LLC with respect to the App and/or Website and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Website.

GOVERNING LAW

Your use of this Website and downloads from it, and the operation of these Terms of Use, shall be governed in accordance with the laws of the State of Washington, without regard to conflict of law provisions.