

Effective July 5, 2019
Last Updated June 21, 2019

1. Terms of Use.

a) Acceptance of Terms. By accessing and/or using the Site, you accept and agree to be bound by these Terms, just as if you had agreed to these Terms in writing. If you do not agree to these Terms, do not use the Site.

b) Amendment of Terms. Kilter may amend the Terms from time to time. Unless we provide a delayed effective date, all amendments will be effective upon posting of such updated Terms. Your continued access to or use of the Site after such posting constitutes your consent to be bound by the Terms, as amended.

c) Additional Terms. In addition to these Terms, when using particular plans, offers, products, services or features, you will also be subject to any additional posted guidelines, or rules applicable to such plan, offer, product, service or feature, which may be posted and modified from time to time. All such additional terms are hereby incorporated by reference into the Terms, provided that in the event of any conflict between such additional terms and the Terms, the Terms shall control.

Welcome to Kilter! These Terms of Use (“Terms”) are a contract between you and Kilter Inc. (“Kilter” or “we”) and govern your access to and use of any Kilter website, mobile application (such as for iPhone or Android) or content, or products and/or services made available through Kilter (collectively, the “Site”).

Please read these Terms carefully before accessing and using the Site. THESE TERMS CONTAIN AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT REQUIRE YOU TO ARBITRATE ALL DISPUTES YOU HAVE WITH KILTER ON AN INDIVIDUAL BASIS. Please see Section 21 for more information about the Arbitration Agreement and class action waiver.

2. Kilter Platform

a) Kilter Platform. Kilter is a health incentives platform that enables Kilter members to compete in virtual fitness competitions for the chance to earn donations to causes of their choice and/or other prizes.

b) Kilter Causes Challenges. Kilter offers a variety of competitions called “Cause Challenges.” Based on the type of Cause Challenge you choose to participate in, you will be granted access to the Kilter mobile application in order to track your health and fitness activities. During a competition, you will earn points by completing daily fitness goals and compete to earn donation prizes for causes of your choice and/or other types of prizes offered by Kilter or Kilter’s partners.

c) Employer Programs. Kilter offers programs that employers may offer as a benefit to employees. If your employer incorporates Kilter into its benefits package for you to gain access to, you may use Kilter to earn donations on a daily basis for your cause of choice that is sponsored by your employer and/or participate in employer-sponsored competitions.

e) Use of Kilter. Your Kilter account is personal to you and you agree not to create more than one account. Kilter may not be used for commercial purposes. To use your Kilter membership, you must have access to the Internet. We continually update and test various aspects of the Kilter platform. We reserve the right to, and by using our service you agree that we may, include you in or exclude you from these tests without notice.

3. Billing

a) Billing. Kilter accounts are free to create, but to gain access to an employer program or a competition, you may be required to pay an entry fee and/or use a unique code that’s provided to you in order to take full advantage of the programs offered. For any events that require payment, you authorize us to charge you the rate associated with a given event or program, which may change from time to time. You acknowledge that the amount billed may vary for reasons that may include differing amounts due to promotional offers and/or changing or adding a plan, and you authorize us to charge your Payment Method for such varying amounts, which may be billed monthly in one or more charges. You also authorize us to charge you any other fees you may incur in connection with your use of the Site, such as any applicable sign-up fee, taxes and cancellation or late fees, as further explained below.

b) Billing Cycle. In the event that you sign up for any monthly or annual subscription based plans, the following rules apply. When you sign up and purchase your Kilter subscription, your first subscription cycle will be billed immediately. Your subscription will automatically renew each month and you will be billed on the same date each month. We reserve the right to change the timing of our billing (and if we do, we’ll make adjustments to the amounts we charge, as appropriate). In the event that your paying membership began on a day not contained in a given month, we may bill your Payment Method on a day in the applicable month or such other day as we deem appropriate. For example, if you started your Kilter membership or became a paying member on January 31st, your next payment date is likely

to be February 28th, and your Payment Method would be billed on that date. Your renewal date may change due to changes in your membership.

c) Refunds. Generally, our fees (including the monthly fee for your membership and any other fees) are nonrefundable, except that we will provide a refund to members for their current prepaid period in the following circumstances: (i) if you are canceling your subscription and request a refund within 5 days of your initial purchase or (ii) if your subscription is cancelled prior to the end of a period for which you have incurred a charge, due to your relocation, disability or death; provided, however, in each case we reserve the right to charge a fee to cover the cost of any class or other services you may have used prior to your cancellation, to the extent permitted by law (such fee charges not to exceed the cost of the subscription itself). Any additional discounts or refunds that we may choose to provide are in our sole discretion and do not entitle you to any future discounts or refunds in the future for similar instances.

d) Price Changes. We reserve the right to adjust pricing at any time. Unless we expressly communicate otherwise, any price changes to your membership will take effect on your next billing cycle upon notice communicated through a posting on the Kilter website or mobile applicable or such other means as we may deem appropriate from time to time, such as email.

e) Payment Methods. You may edit your Payment Method information by logging online and editing it under "My Account" and then "Settings". If a payment is not successfully settled, due to expiration, insufficient funds or otherwise, and you do not edit your Payment Method information or cancel your account (see, "Cancellation" below), you nonetheless will remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated, including in the event you attempt to create a new account. This may result in a change to your payment billing dates. If we cannot charge your account, we reserve the right, but are not obligated, to terminate your access to our Site or any portion thereof.

f) Cancellation. You may terminate subscriptions at any time with 3 days' notice by going into your account settings on the Kilter website and canceling. Following any cancellation, you will continue to have access to your subscription through the end of your current prepaid billing period, unless you cancel and receive a refund, in which case your access will be terminated immediately.

g) Hold. In lieu of cancellation, we also may give you the option to put your membership on hold at any time, subject to a reduced fee per Membership Cycle. Please request a hold at least 3 days prior to your next billing date if you want to put your membership on hold. (i.e., if your next billing date is September 30th, notify Kilter that you want to put your membership on hold by September 27th.)

h) Gifts and Promotions. From time to time we may make available gift cards for Kilter membership, other types of promotions or promotional plans (including through the use of promotional codes or those provided as part of a third party promotion). Promotions and promotional plans may be redeemed as described in the specifics of the promotion and may be subject to additional or different terms. Unless otherwise expressly communicated to you in connection with your redemption, promotions and promotional plans are only available to new customers that have never had a Kilter account before, are not transferable, can only be used once, cannot be redeemed for cash, and may not be combined with other offers and are void where prohibited. To be eligible for certain promotions, your subscription may not be on “hold”.

4. Termination or Modification by Kilter.

a) Termination or Modification. You understand and agree that, at any time and without prior notice Kilter may (1) terminate, cancel, deactivate and/or suspend your subscription, your account, any orders placed, or your access to or use of the Site or your membership (or any portion thereof, including your access to any or all Rewards Partners or services) and/or (2) discontinue, modify or alter any aspect, feature or policy of the Site or your subscription. This includes the right to terminate or modify any subscription prior to the end of any pre-paid or committed period. Upon any termination, we may immediately deactivate your account and all related information and/or bar any further access to your account information and the Site. Upon any such termination by us without cause, as your sole recourse, we will issue you a pro rata refund of the prepaid portion of your subscription applicable to future unused services (less any fees or costs for classes or services already used). If we determine that you have violated these Terms or otherwise engaged in illegal or improper use of your membership or the Site, you will not be entitled to any refund and you agree that we will not be responsible to pay any such refund. You agree that Kilter will not be liable to you or any third party for any termination or modification to the service regardless of the reason for such termination or modification. You acknowledge that your only right with respect to any dissatisfaction with any modification or discontinuation of service made by us is to cancel or terminate your subscription.

b) Infringing or Fraudulent Activity. Kilter does not permit copyright infringing activities and reserves the right to terminate access to the Site and remove all content submitted by any persons who are found to be infringers. Any suspected fraudulent, abusive, or illegal activity that may be grounds for termination of your use of the Site may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies Kilter may have at law or in equity.

5. Eligibility; Registration Information and Password; Site Access.

a) Eligibility Criteria. The availability of all or part of our Site may be limited based on geographic, age, or other criteria as we may establish from time to time. You understand and agree we may disallow you from subscribing to Kilter or may terminate your subscription at any time based on these criteria. For example, you must be 18 years of age or older to use this Site or to purchase a Kilter membership.

THESE TERMS ARE ONLY APPLICABLE TO USERS IN THE U.S. AND SEPARATE TERMS APPLY TO USERS IN OTHER JURISDICTIONS. THE SITE IS NOT AVAILABLE TO ANY USERS SUSPENDED OR REMOVED FROM THE SITE BY KILTER. BY USING THE SITE, YOU REPRESENT THAT YOU ARE A RESIDENT OF THE UNITED STATES, AT LEAST 18 YEARS OLD AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE SITE. THOSE WHO CHOOSE TO ACCESS THE SITE DO SO AT THEIR OWN INITIATIVE AND ARE RESPONSIBLE FOR COMPLIANCE WITH ALL LOCAL RULES INCLUDING, WITHOUT LIMITATION, RULES ABOUT THE INTERNET, DATA, EMAIL OR OTHER ELECTRONIC MESSAGES, OR PRIVACY.

b) Subscribing Organizations. If you are using or opening an account on behalf of a company, entity, or organization (a "Subscribing Organization"), then you represent and warrant that you are an authorized representative of that Subscribing Organization with the authority to bind such organization to these Terms; and agree to be bound by these Terms on behalf of such Subscribing Organization.

c) Account Information. You agree that the information you provide to Kilter at registration and at all other times will be true, accurate, current, and complete. You also agree that you will ensure that this information is kept accurate and up-to-date at all times. When you register, you will be asked to create a password. You are solely responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account.

6. Privacy.

Your privacy is important to Kilter. The Kilter Privacy Policy is hereby incorporated into these Terms by reference. Please read the privacy policy carefully for information relating to Kilter's collection, use, and disclosure of your personal information. When you make a reservation, the applicable Rewards Partner partner will have access to certain information about you, such as your name and email address, so it can provide services to you, communicate with

you regarding the class you reserved and send you other communication that may be of interest to you such as marketing offers. Please see the Privacy Policy for more information.

7. Prohibited Conduct.

You agree not to:

- Harass, threaten, disrupt or defraud users, members or staff of Kilter or Rewards Partners or Providers or otherwise create or contribute to an unsafe, harassing, threatening or disruptive environment;
- Make unsolicited offers, advertisements, proposals, or send junk mail or “spam” to users;
- Impersonate another person or access another user’s account;
- Share Kilter-issued passwords with any third party or encourage any other user to do so;
- Permit anyone to use any classes or services booked under your own membership, including other members;
- Reserve or cancel any Kilter class or service appointment directly with a Rewards Partner or Provider, rather than through the Kilter Site,
- Misrepresent the source, identity, or content of information transmitted via the Site, including deleting the copyright or other proprietary rights;
- Upload material (e.g. virus) that is damaging to computer systems or data of Kilter or users of the Site;
- Upload copyrighted material that is not your own or that you do not have the legal right to distribute, display, and otherwise make available to others; or
- Upload or send to Site users pornographic, threatening, embarrassing, hateful, racially or ethnically insulting, libelous, or otherwise inappropriate content.

8. Prohibited Uses.

As a condition of your use of the Site, you will not use the Site for any purpose that is unlawful or prohibited by these Terms. You may not use the Site in any manner that could damage, disable, overburden, or impair it or interfere with any other party’s use and enjoyment of the Site. You may not attempt to gain unauthorized access to the Site, or any part of the Site, other accounts, computer systems or networks connected to the Site, or any part of them, through hacking, password mining, or any other means or interfere or

attempt to interfere with the proper working of the Site or any activities conducted on the Site. You may not remove, circumvent, disable, damage or otherwise interfere with security-related features of the Site, any features that prevent or restrict use or copying of any content accessible through the Site, or any features that enforce limitations on the use of the Site or the content therein. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Site. You agree neither to modify the Site in any manner or form, nor to use modified versions of the Site, including (without limitation) for the purpose of obtaining unauthorized access to the Site. The Site may contain robot exclusion headers. You agree that you will not use any robot, spider, scraper, or other automated means to access the Site for any purpose without our express written permission or bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Site.

Kilter reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.

9. User Submissions.

a) General. The Site may provide certain features which enable you and other users to submit, post, and share content, which may include without limitation text, graphic and pictorial works, or any other content submitted by you and other users through the Site (“User Submissions”). Kilter does not guarantee any anonymity or confidentiality with respect to any User Submissions, and strongly recommends that you think carefully about what you upload to the Site. You understand and agree that User Submissions may be made public without any additional notice to or consent by you and you should assume that any person (whether or not a user of Kilter’ platform), including any Rewards Partner or Provider, may read your User Submissions. Kilter is not responsible for the use or disclosure of any information that you disclose in connection with User Submissions, including any personal information. User Submissions are displayed for information purposes only and reflect the opinions of the person making the submission. They are not controlled by, and may not reflect the opinion of, Kilter. You understand that all User Submissions are the sole responsibility of the person from whom such User Submission originated. This means that you, and not Kilter, are entirely responsible for all User Submissions that you upload, post, e-mail, transmit, or otherwise make available through the Site.

b) Right to Remove or Edit User Submissions. Kilter makes no representations that it will publish or make available on the Site any User Submissions, and reserves the right, in its sole discretion, to refuse to allow any User Submissions on the Site, or to edit or remove any User Submission at any time with or without notice. Without limiting the generality of the preceding sentence, Kilter complies with the Digital Millennium Copyright Act, and will

remove User Submissions upon receipt of a compliant takedown notice (see the “Digital Millennium Copyright Act” section below).

c) License Grant by You to Kilter. You retain all your ownership rights in original aspects of your User Submissions. By submitting User Submissions to Kilter, you hereby grant Kilter and its affiliates, sublicensees, partners, designees, and assignees of the Site (collectively, the “Kilter Licensees”) a worldwide, non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable, sublicensable, and transferable license to use, reproduce (including by making mechanical reproductions), distribute, modify, adapt, translate, prepare derivative works of, publicly display, publish, publicly perform, and otherwise exploit your User Submissions and derivatives thereof in connection with the Site and Kilter’s (and its successors’) business, including, without limitation, for marketing, promoting, and redistributing part or all of the Site (and derivative works thereof), in any media formats and through any media channels now known or hereafter discovered or developed.

d) User Submissions Representations and Warranties. You are solely responsible for your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, you affirm, represent, and warrant that: (i) you own, or have the necessary licenses, rights, consents, and permissions to use and authorize Kilter to use all patent, trademark, copyright, or other proprietary rights in and to your User Submissions to enable inclusion and use of your User Submissions in the manner contemplated by Kilter and these Terms, and to grant the rights and license set forth above, and (ii) your User Submissions, Kilter’ or any Kilter Licensee’s use of such User Submissions pursuant to these Terms, and Kilter’ or any of Kilter Licensee’s exercise of the license rights set forth above, do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) contain any material that is illegal, threatening, obscene, racist, defamatory, libelous, hateful, pornographic, purposely false or otherwise injurious to third parties, promotional in nature, promotes any illegal activity or harm to groups or individuals, or consists of or contain software, computer viruses, commercial solicitation, political campaigning, chain letters, mass mailings, any form of “spam” or references to illegal activity, malpractice or false advertising; (c) violate these Terms or any applicable law or regulation; or (d) require obtaining a license from or paying fees or royalties to any third party for the exercise of any rights granted in these Terms, including, by way of example and not limitation, the payment of any royalties to any copyright owners, including any royalties to any agency, collection society, or other entity that administers such rights on behalf of others. Kilter may, but is not obligated to, monitor and edit or remove any activity or content, including but not limited to content that Kilter determines in its sole discretion to violate the standards of this Site. Kilter takes no responsibility and assumes no liability for any User Submissions.

e) Inaccurate or Offensive User Submissions. You understand that when using the Site, you may be exposed to User Submissions from a variety of sources and that Kilter does not endorse and is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable. YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST KILTER WITH RESPECT THERETO.

f) Feedback. If you provide Kilter with any comments, bug reports, feedback, or modifications proposed or suggested by you to the Site (“Feedback”), Kilter shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Site. You hereby grant Kilter a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use your Feedback for any purpose.

11. Ownership; Proprietary Rights.

The Kilter website and mobile applications are owned and operated by Kilter. The visual interfaces, graphics, design, compilation, information, computer code, products, software (including any downloadable software), services, and all other elements of the Site provided by Kilter (“Materials”) are protected by the copyright, trade dress, patent, and trademark laws of the United States and other countries, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any content uploaded by you, all Materials contained on the Site are the copyrighted property of Kilter or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Kilter or its affiliates and/or third-party licensors. Except as expressly authorized by Kilter, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials.

12. Third-Party Sites, Products and Services; Links.

The Site may include links or access to other web sites or services (“Linked Sites”) solely as a convenience to users. Kilter does not endorse any such Linked Sites or the information, material, products, or services contained on other linked sites or accessible through other Linked Sites. Furthermore, Kilter makes no express or implied warranties with regard to the information, material, products, or services that are contained on or accessible through linked sites. ACCESS AND USE OF LINKED SITES, INCLUDING THE INFORMATION,

MATERIAL, PRODUCTS, AND SERVICES ON LINKED SITES OR AVAILABLE THROUGH LINKED SITES, IS SOLELY AT YOUR OWN RISK.

Sometimes promotional plans are offered in conjunction with the provision of third party products and services. We are not responsible for the products and services provided by such third parties, and use of such products and services is at your own risk.

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Site are solely between you and such advertiser. YOU AGREE THAT KILTER WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE OF ANY SORT INCURRED AS THE RESULT OF ANY SUCH DEALINGS OR AS THE RESULT OF THE PRESENCE OF SUCH ADVERTISERS ON THE SITE.

13. Notice.

Except as explicitly stated otherwise, legal notices will be served, with respect to Kilter, on Kilter' national registered agent, and, with respect to you, to the email address you provide to Kilter during the registration process. Notice will be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to the address provided during the registration process. In such case, notice will be deemed given three days after the date of mailing.

14. Electronic Signatures and Agreements.

You acknowledge and agree that by clicking on the button labeled "CONFIRM PURCHASE," "SUBMIT", "DOWNLOAD", "PLACE MY ORDER", "I ACCEPT" or such similar links as may be designated by Kilter to accept the terms and conditions of these Terms, you are submitting a legally binding electronic signature and are entering into a legally binding contract. You acknowledge that your electronic submissions constitute your agreement and intent to be bound by these Terms. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") or other similar statutes, YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE SITE OR SERVICES OFFERED BY KILTER. Further, you hereby waive any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means.

15. Disclaimers; No Warranties.

CLASSES, APPOINTMENTS, ACTIVITIES, AND OTHER NON-KILTER PRODUCTS AND SERVICES OFFERED VIA THE SITE ARE OFFERED AND PROVIDED BY THIRD PARTIES (AND THE DESCRIPTIONS OF THE FOREGOING POSTED ON THE SITE ARE PROVIDED BY SUCH THIRD PARTIES), NOT KILTER. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, YOUR ATTENDANCE AT AND PARTICIPATION IN THESE CLASSES, ACTIVITIES, AND YOUR USE OF THESE NON-KILTER PRODUCTS AND SERVICES IS SOLELY AT YOUR OWN RISK. IN NO EVENT SHALL KILTER BE LIABLE FOR ANY ACT, ERROR OR OMISSION BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WHICH ARISES OUT OF OR IS ANY WAY CONNECTED WITH A USER'S ATTENDANCE, USE OF OR PARTICIPATION IN A CLASS, SERVICE, PRODUCT OR APPOINTMENT MADE THROUGH THE SITE, OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY PROVIDER IN CONNECTION WITH THE SERVICES. KILTER IS NOT AN AGENT OF ANY THIRD PARTY PROVIDER.

THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, KILTER, ON BEHALF OF ITSELF AND ITS SUPPLIERS AND PARTNERS, DISCLAIMS AND EXCLUDES ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS.

WITHOUT LIMITING THE FOREGOING, KILTER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS (I) THAT THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (II) REGARDING THE USE OF THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. ANY MATERIAL OR DATA THAT YOU DOWNLOAD OR OTHERWISE OBTAIN THROUGH THE SITE IS AT YOUR OWN RISK. YOU ARE SOLELY

RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS SET FORTH IN THESE TERMS MIGHT NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

16. Waiver and Release.

You understand that Kilter is not a gym or fitness studio or other service provider and the classes you take or services you use are operated and delivered by the applicable Rewards Partner and not by Kilter. Although Kilter endeavors to offer inventory that is of high quality, Kilter is not responsible for the quality of any class or service. You understand that there are certain inherent risks and dangers in exercising and that the classes you may attend offer a range of activity and intensity level. By signing up for a Kilter membership, you acknowledge and agree, on behalf of yourself, your heirs, personal representatives and/or assigns that you are aware of these risks which include, but are not limited to, property damage, illness and bodily injury or death. You acknowledge that some of these risks cannot be eliminated and you specifically assume the risk of injury or harm. You acknowledge and agree that it is your responsibility to consult with your primary care physician prior to participating and to determine if and how participating in any class or service is appropriate for you. You also understand and agree that the Site offers health and fitness information that is designed for informational, educational and entertainment purposes only. The use of any of the information provided on the Site is solely at your own risk.

Therefore, to the fullest extent permitted by law, you release, indemnify, and hold harmless Kilter, its parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns, from any and all responsibility, claims, actions, suits, procedures, costs, expenses, damages and liabilities arising out of or in any way related to your participation in or use of your Kilter membership or the Site, including with respect to bodily injury, physical harm, illness, death or property damage.

17. Indemnification; Hold Harmless.

You agree to indemnify and hold Kilter, its affiliated companies, and its suppliers and partners harmless from any claims, losses, damages, liabilities, including attorneys' fees, arising out of your misuse of the Site, violation of these Terms, violation of the rights of any

other person or entity, or any breach of your representations, warranties, and covenants set forth in these Terms.

18. Limitation of Liability and Damages.

IN NO EVENT WILL THE Kilter ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE Kilter ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE Kilter ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO Kilter FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE CLAIM OR (ii) \$100. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 15 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

19. Rewards Partner Waivers and Terms.

Members taking classes or attending a gym are deemed to agree to the liability waivers of individual Rewards Partners. Your participation in any class or service may be subject to additional policies, rules or conditions of the applicable Rewards Partner and you understand and agree that you may not be permitted to reserve or attend classes or services if you do not comply with these Terms or the policies of the Rewards Partners. If you have questions about a Rewards Partner's waiver or other terms, please see the applicable Rewards Partner's website or contact the Rewards Partner directly.

20. Arbitration Agreement

PLEASE READ THE FOLLOWING CAREFULLY:

a) Purpose. This Arbitration Agreement facilitates the prompt and efficient resolution of any disputes that may arise between you and Kilter. Arbitration is a form of private dispute resolution in which parties to a contract agree to submit their disputes and potential disputes to a neutral third person (called an arbitrator) for a binding decision, instead of having such dispute(s) decided in a lawsuit, in court, by a judge or jury trial.

Please read this Arbitration Agreement carefully. It provides that all disputes between you and Kilter shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Entering into this Arbitration Agreement constitutes a waiver of your right to litigate claims in court and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this Arbitration Agreement and can award the same damages and relief as a court (including attorney's fees).

For the purpose of this Arbitration Agreement, "Kilter" means Kilter and its parents, subsidiaries, and affiliated companies, and each of their respective officers, directors, employees, and agents. The term "Dispute" means any dispute, claim, or controversy between you and Kilter regarding any aspect of your relationship with Kilter, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, gross negligence or reckless behavior), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Agreement (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced.

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR

OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT.

b) Pre-Arbitration Dispute Resolution. Before initiating any Dispute, whether in court or arbitration, you must first give Kilter an opportunity to resolve the Dispute by mailing written notification to Kilter, Legal Department, 316 W. Washington Ave. Suite 675, Madison, WI 53713. That written notification must include (1) your name, (2) your address, (3) a written description of the Dispute, and (4) a description of the specific relief you seek. If Kilter does not resolve the Dispute to your satisfaction within 45 days after it receives your written notification, you may pursue your Dispute in arbitration.

c) Arbitration Procedures. If the Dispute is not resolved as provided above in the Pre-Arbitration Claim Resolution section, either you or Kilter may initiate arbitration proceedings. The American Arbitration Association (“AAA”), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. All issues shall be for the arbitrator to decide, including the scope of this Arbitration Agreement. For arbitration before the AAA, for Disputes in which less than \$75,000 is at issue, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA’s Commercial Arbitration Rules will apply. In either instance, the AAA’s Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. In the event that this Arbitration Agreement conflicts with the applicable arbitration rules, this Arbitration Agreement shall govern. Under no circumstances will class action procedures or rules apply to the arbitration. Because your contract with Kilter, the Terms of Use, and this this Arbitration Agreement concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

d) Arbitration Award. The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator shall make any award in writing but need not provide a statement of reasons unless requested by a party. Such award by the arbitrator will be final and binding on the parties, except for any right of appeal provided by applicable federal law, including but not limited to the Federal Arbitration Act (“the FAA”), and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

e) Location of Arbitration. Arbitration shall take place in Dane County, Wisconsin, but it may proceed by telephone if you so choose.

f) Payment of Arbitration Fees and Costs. Kilter will pay all arbitration filing fees and arbitrator's costs and expenses upon your written request given prior to the commencement of the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law.

g) Class Action Waiver. Any Disputes arising out of or relating to any purchase you make on or through the Site, any information you provide via the Site, these Terms (including the formation, performance, or alleged breach), and your use of the Site shall be submitted individually by you and will not be subject to any class action or representative status. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, representative action, consolidated action or private attorney general action) . Neither you, nor any other Member of Kilter and/or user of Kilter services, can be a class representative, class member, or otherwise participate in a class, representative, consolidated or private attorney general proceeding with respect to the matters set forth in the first sentence of this paragraph. You agree that this Class Action Waiver is material and essential to the arbitration of any dispute between you and Kilter and is nonseverable from the Arbitration Agreement. If any portion of this Class Action Waiver is limited, voided, or cannot be enforced, then the Arbitration Agreement shall be null and void. You understand that by agreeing to this Class Action Waiver, you may only pursue Dispute against Kilter in an individual capacity and not as a plaintiff or class member in any purported class action or representative proceeding.

h) Limitation of Procedural Rights. You understand and agree that, by entering into this Arbitration Agreement, you and Kilter are each agreeing to arbitration instead of the right to a trial before a judge or jury in a public court. In the absence of this Arbitration Agreement, you and Kilter might otherwise have a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). By using the Kilter Site and products and services, you are entering into this Arbitration Agreement, and you give up those procedural rights. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited in arbitration. The right to appellate review of an arbitrator's decision is much more limited than in court, and in general an arbitrator's decision may not be appealed for errors of fact or law.

i) Severability. If any clause within this Arbitration Agreement, other than the Class Action Waiver clause above, is found to be illegal or unenforceable, that clause will be severed from this Arbitration Agreement, and the remainder of this Arbitration Agreement will be given full force and effect. If the Class Action Waiver clause is found to be illegal or

unenforceable, then this entire Arbitration Agreement will be unenforceable and the Dispute will be decided by a court of competent jurisdiction.

j) Continuation. This Arbitration Agreement shall survive the termination of your contract with Kilter and your use of the Kilter Site and services.