

# Terms of Use Agreement

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**Disclaimer of Warranty.** The Services are provided on as "AS IS", "AS AVAILABLE" basis and we expressly disclaim all warranties, including without limitation, the warranties of merchantability, fitness for a particular use, and non-infringement.

**Limitation of Liability.** A Covered Party, as defined below, shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Services, (b) the unavailability or interruption of the Services, (c) your use of the Services, regardless of whether or not you received any assistance from a Covered Party, (d) your use of any equipment in connection with the Services, or (e) your use of the workouts provided and any health or nutritional information provided in the Services. "Covered Party" means (a) us and our affiliates and partners, and any officer, director, employee, subcontractor, agent, successor or assign of us or our affiliates and partners; and (b) each third party supplier of information or services, their affiliates, and any officer, director, employee, subcontractor, agent, successor or assignee of any third party supplier or any of their affiliates.

THE COVERED PARTIES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE SERVICES OR THE USE OF OR INABILITY TO USE THE SERVICES. TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS PROHIBITED FOR ANY REASON, THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE

SERVICES SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00), AND YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.

**Indemnity.** You agree to defend, indemnify and hold harmless, us, our officers, directors, employees, partners, affiliates, and agents from and against any and all claims, liabilities, damages, losses or expenses, including settlement amounts and reasonable attorneys' fees and costs, arising out of or in any way connected with your access to or use of the Services. You agree to seek and obtain written permission from us before agreeing to settle any claim.

**Third Party Content.** Third party products and content may appear as part of the Services or may be accessible via links from the Services. We are not responsible for and assume no liability for any mistakes, misstatements, defamation, omissions, falsehood, obscenity or profanity in the statements, opinions, representations or any other form of content contained in any third party content appearing as part of the Services.

**Changes to Agreement.** We may change this agreement at any time. Those changes will be effective immediately upon our posting of the modification(s) of the Services. The "last updated" date will always be prominently displayed at the bottom of this agreement. You agree to review this agreement from time-to-time to make sure that you are aware of any changes. Your continued use of the Services indicates your acceptance of the modified agreement.

**General.** Our failure to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this agreement.

The provisions of this agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions. You may not assign your rights or delegate your duties under this agreement without our prior written consent.

This agreement shall be governed by and construed in accordance with the laws of The State of Utah. The sole jurisdiction and venue for any litigation arising out of your access to or use of the Services shall be a federal or state court located in Davis County, Utah.

**Contact Us:** ProActive Health Solutions, LLC PO Box 445 Kaysville, UT 84037.

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