

# ***Orangetheory Fitness Text Messaging Terms and Conditions***

Please read these Text Messaging Terms and Conditions ("Terms") carefully. By submitting your telephone number or otherwise agreeing to receive text messages ("Opting In," "Opt In" or "Opt-In") from Ultimate Fitness Group, LLC d/b/a Orangetheory Fitness ("Company," "we" or "us"), you agree to be bound by these Terms, the Company's websites' Terms of Use, the Company's Privacy Policy, and any other applicable terms and conditions related to your participation in the Company's text messaging service ("Service"). If you do not agree with these Terms, you must immediately cease using the Service and opt out, as described below. We may update or amend these Terms, at any time, and such amendments will be effective upon posting of the updated Terms at

<https://otfbrentwoodnocal.com/sms-terms-of-service>.

Note: These Terms contain a dispute resolution and arbitration provision, including a class action waiver that affects your rights under the Terms and with respect to disputes you may have with the Company. You may opt out of the binding individual arbitration and class action waiver as provided below.

When You Opt In

By Opting In, you confirm that you are the subscriber to the relevant phone number or that you are the customary user of that number on a family or business plan and that you are authorized to Opt In.

You agree that the Service provided may use text messages sent from an automated system, an autodialer, an automated system for the selection and/or dialing of telephone numbers, an automatic telephone dialing system ("ATDS"), and/or any other type of systems, software, hardware, or machines (no matter how they may be named or classified, and whether used alone or in conjunction with one another) that may use an automated procedure or process for sending messages, to the telephone number associated with your Opt-In.

Upon Opting In you may receive one or more welcome messages or administrative messages, such as (in some cases) a request to confirm your Opt-In.

**Note: You do not have to Opt In as a condition of receiving informational or transactional messages.**

You may Opt Out (defined below) of these communications at any time, and your consent to receive text messages from the Company is not required and is not a condition to purchase any goods or services.

## How to Opt Out

You can stop receiving text messages from the Company at any time ("Opting Out," "Opt Out" or "Opt-Out"). If you wish to Opt Out of receiving text messages, or no longer agree to these Terms, text [the applicable Short Code] or directly reply to any text message received under these Terms with STOP, END, CANCEL, UNSUBSCRIBE, or QUIT. You may receive an additional text message confirming your decision to Opt-Out. You understand that the text message Service may not recognize and respond to unsubscribe requests that contain words or phrases other than those set forth above and agree that the Company and its service providers will have no liability for failing to honor such requests.

## Message Frequency

Message frequency will vary. The Company reserves the right to alter the frequency of messages sent at any time, so as to increase or decrease the total number of sent messages. We also reserve the right to change the short code or phone number from which messages are sent and we will notify you when we do so.

## Costs

Message and data rates may apply. Please check with your mobile carrier for details about your pricing plan and the charges for sending and receiving text messages. You are solely responsible for any costs related to or associated with your receipt of text messages, as set forth more fully in these terms.

## Supported Carriers

Not all mobile devices or handsets may be supported and our messages may not be deliverable in all areas. The Company, its service providers and the mobile carriers supported by the Service are not liable for delayed or undelivered messages.

The Service is able to deliver messages to the following mobile phone carriers: Major carriers: AT&T, Verizon Wireless, Sprint, T-Mobile, MetroPCS, U.S. Cellular, Boost Mobile, and Virgin Mobile.

## Privacy

We value your privacy. Please review our Privacy Policy, available here <https://www.orangetheory.com/en-us/privacy-policy>, which explains how we use information that you submit to the Company.

## Disclaimer of Warranties

THE SERVICE IS PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND, AND COMPANY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. THE COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE SERVICE. WITHOUT LIMITING THE FOREGOING, THE COMPANY WILL NOT BE LIABLE FOR ANY DELAYS IN THE RECEIPT OF ANY TEXT MESSAGES, AS DELIVERY IS SUBJECT TO THE EFFECTIVE TRANSMISSION FROM YOUR CARRIER AND/OR NETWORK OPERATOR. THE ABOVE EXCLUSIONS MAY NOT APPLY IN JURISDICTIONS THAT DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES.

#### Limitation of Liability

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR USE, OR INABILITY TO USE, THE SERVICE OR ANY TEXT MESSAGE CONTENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE), EVEN IF THE COMPANY KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES, AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE THEREOF (INCLUDING, BUT NOT LIMITED TO, ORANGETHEORY FRANCHISEES). YOU UNDERSTAND THAT WE DO NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SERVICES. WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS

AND INTERACTIONS WITH ANY PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, PARTICULARLY IF YOU MEET OFFLINE OR IN PERSON.

## Governing Law

This Agreement shall be governed by the laws of the State of Florida, without reference to conflict of laws principles. Any suit to enforce these Terms, to the extent such suit is excluded from the dispute resolution and arbitration provisions and class action waiver below, will be brought exclusively in the State and U.S. District Courts located in Palm Beach County, Florida and you hereby submit to the personal jurisdiction of such courts and waive any venue objection.

## Dispute Resolution and Arbitration; Class Action Waiver

**Please read the following Dispute Resolution and Arbitration; Class Action Waiver provision (this “Provision”) carefully. It affects your rights (without limiting any rights available to you under any applicable Non-excludable Guarantees).**

All Disputes (as defined below) between you and the Company shall be resolved by binding arbitration. Arbitration is a form of private dispute resolution and replaces the right to go to court. In the absence of this Provision, 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). Except as otherwise provided, entering into these Terms constitutes a waiver of your right to litigate claims 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 these Terms and can award the same damages and relief as a court (including attorney’s fees).

For the purpose of this Provision, “the Company” means the Company and its parents, subsidiary, and affiliate companies, and each of their respective officers, directors, employees, and agents. The term “Dispute” means any dispute, claim, or controversy between you and the Company regarding, arising out of or relating to any aspect of your relationship with the Company, whether based in

contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable cause of action or claim for relief, and includes the validity, enforceability or scope of this Provision (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, and shall include any claims against other parties relating to services or products provided or billed to you (such as the Company's licensors, suppliers, dealers or third-party vendors) whenever you also assert claims against us in the same proceeding.

YOU AND THE COMPANY 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 PROVISION.

#### Pre-Arbitration Claim Resolution

For all Disputes, whether pursued in court or arbitration, you must first give the Company an opportunity to resolve the Dispute. You must commence this process by mailing written notification to Ultimate Fitness Group, LLC, 6000 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487, Attn.: Legal Department, Telephone: (954) 530-6903. That written notification must include (1) your name, (2) your address, (3) a written description of your claim, and (4) a description of the specific relief you seek. If the Company does not resolve the Dispute within 45 days after it receives your written notification, you may pursue your Dispute in arbitration. You may pursue your Dispute in a court only under the circumstances described below.

#### Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, you or the Company may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court or, to the extent it has jurisdiction, an equivalent authority; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THESE TERMS (the "Opt-Out Deadline"). You may opt out of this Provision by mailing written notification to Ultimate Fitness Group, LLC, 6000 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487, Attn.: Legal Department, Telephone: (954) 530-6903. Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve disputes with the Company through arbitration. Your decision to opt-out of this Arbitration Provision will have no

adverse effect on your relationship with the Company. Any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your Dispute in arbitration or small claims court (or, to the extent it has jurisdiction, an equivalent authority).

#### Arbitration Procedures

If this Provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either you or the Company may initiate arbitration proceedings. The American Arbitration Association (“AAA”), [www.adr.org](http://www.adr.org), or JAMS, [www.jamsadr.com](http://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 only, and shall in no event be commenced as a class arbitration or a consolidated or representative action or arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, 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](http://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](http://www.jamsadr.com) or by calling 1 (800) 352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative action procedures or rules apply to the arbitration.

Because the Site, the mobile applications, and these Terms 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.

**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 will make any award in writing but need not provide a statement of reasons unless requested by a party or if required by applicable law. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA or other applicable law and may be entered in any court having jurisdiction over the parties for

purposes of enforcement.

**Location of Arbitration** – You or the Company may initiate arbitration in either Palm Beach County, Florida or the federal judicial district that includes your billing address.

**Payment of Arbitration Fees and Costs** – The Company will pay all arbitration filing fees and AAA or JAMS hearing fees and any arbitrator's hearing fees, costs and expenses upon your written request to the arbitrator given at or before the first evidentiary hearing in 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. In addition to any rights to recover fees and costs under applicable law, if you provide notice and negotiate in good faith with the Company as provided in the section above titled "Pre-Arbitration Claim Resolution" and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

#### **Class Action Waiver**

Except as otherwise provided in this Provision, 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, consolidated action, representative action, or private attorney general action) unless both you and the Company specifically agree to do so in writing following initiation of the arbitration. If you choose to pursue your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to you. Neither you, nor any other user of the Site or the mobile applications can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

#### **Jury Waiver**

You understand and agree that by entering into these Terms, to the extent that a civil jury trial would otherwise be available to you and the Company, you and the Company are each waiving the right to a jury trial or a trial before a judge in a public court (except where applicable law prohibits such a waiver). In the absence of this Provision, you and the Company might otherwise have had 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). Except as otherwise provided below, those rights are waived. 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 or may also be waived.

#### Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision, and the remainder of this Provision will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable, and the Dispute will be decided by a court.

If this Provision as a whole is not enforceable for any reason, then, except where prohibited by law , you agree that exclusive jurisdiction and venue in any legal proceeding directly or indirectly arising out of or relating to any Dispute will be decided in the courts located in Palm Beach County in the State of Florida.

#### Continuation

This Provision shall survive the termination of your service with the Company or its affiliates. Notwithstanding any provision in these Terms to the contrary, we agree that if the Company makes any change to this Provision (other than a change to the Notice Address), you may reject any such change and require the Company to adhere to the present language in this Provision if a dispute arises between you and the Company.