



TERMS AND CONDITIONS OF USE

Last updated: August 4, 2016.

These Terms govern your access to and use of this Website and any transactions you conduct through this Website.

PLEASE CAREFULLY READ THESE TERMS BEFORE USING THIS WEBSITE. THESE TERMS MAY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO BRING A LAWSUIT OR CLASS ACTION. BY USING THIS WEBSITE, YOU AGREE TO BE BOUND AND ABIDE BY THESE TERMS. IF YOU ARE UNDER 18 YEARS OF AGE, YOU MAY NOT USE THIS WEBSITE. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT USE THIS WEBSITE.

1. Definitions and Interpretation.

1.1 Definitions. As used in these Terms, the following italicized terms have the following definitions:

1.1.1 "*Yellow Jacket*" means Yellow Jacket Fitness LLC.

1.1.2 "*Website*" means this website, yellowjacketfitness.com, and any other sites, domains, and sub-domains owned or operated by Yellow Jacket.

1.1.3 "*Terms*" means these Terms and Conditions of Use.

1.1.4 "*Law*" means a current or future law, statute, ordinance, code, regulation, order, directive, requirement, constitution, opinion, ruling, decision, decree, treaty, common law, convention, or rule; whether issued or imposed by or through a Governmental Body. References to a specific Law include all amendments and supplements to that Law, and all successors of that Law.

1.1.5 "*You*" and "*your*" refer to any person who uses this Website.

1.1.6 "*Affiliates*" means any subsidiaries, parents, members, managers, shareholders, officers, directors, employees, representatives, affiliates, companies under common ownership, contractors, vendors, licensees, licensors, third party providers, successors, assigns, and agents of Yellow Jacket.

1.1.7 "*Uploaded Content*" means photographs, comments, audio, video clips, or other media uploaded to this Website.

1.1.8 "*Materials*" means materials on this Website including Yellow Jacket product logos, design, text, graphics, software, other files, and the selection and arrangement thereof.

1.1.9 "*Malware*" means any viruses or other harmful, disruptive, or destructive files, materials, spy ware, computer codes, programs, text, communications, software, images, data, or other content.

1.1.10 "*Notice Address*" means Yellow Jacket Fitness LLC, 6922 West Rayford Road, Suite 200, Spring, Texas 77389, U.S.A.

1.1.11 "*Damages*" means all of the following, whether fixed, speculative, or contingent, whether known or unknown, whether liquidated or unliquidated, and whether arising at law, in equity, in contract, or in tort: (i) damages of any type, including economic, non-economic, special, punitive, direct, indirect, actual, enhanced, statutory, equitable, contractual, treble, exemplary, and consequential damages; and (ii) any other charge, debt, remedy, disbursement, obligation, liability, commitment, payment, judgment, penalty, relief, exaction, reimbursement, insurance deductible, interest, expenditure, deduction, indenture, settlement, compromise, award, expense, deficiency, imposition, remuneration, redress, reparation, assessment, loss, attorneys' fee (whether as an advancement, payment, or reimbursement), fine, harm, injury, levy, fee, tax, and cost.

1.1.12 "*Dispute*" means any claim, suit, grievance, proceeding, dispute, investigation, prosecution, controversy, inquiry,

hearing, settlement, review, subpoena, dispensation, citation, demand, cause, trial, appeal, action, charge, order, injunction, summons, or legal or dispute resolution process, whether or not: (i) formal or informal; (ii) settled, threatened, preliminary, pending, or final; (iii) decided on its merits; (iv) ultimately designating fault; (v) substantive or procedural; (vi) conducted before or by a Governmental Body; or (vii) legislative, arbitral, prosecutorial, magistral, parliamentary, adjudicative, administrative, appellate, adversarial, criminal, civil, judicial, cooperative, ministerial, mediative, investigative, or litigious in nature.

1.1.13 “*Dispute Notice*” means a notice of a Dispute that includes a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested.

1.1.14 “*Arbitration Rules*” means the American Arbitration Association’s Consumer Arbitration Rules in effect at the time any arbitration is initiated.

1.1.15 “*Governmental Body*” means (i) a governmental body, authority, agency, tribunal, council, ministry, organization, principal, board, zone, office, seat, title, cabinet, administration, commission, service, center, magistracy, ombudsman, directorate, division, bureau, alliance, intermediary, group, league, panel, chancery, special master, confederation, grand jury, arbiter, referee, ward, institution, district, jurisdiction, union, entity, or person; whether administrative, prosecutorial, judicial, appellate, executive, adjudicative, parliamentary, sovereign, autocratic, investigative, or legislative in nature; whether at the international, national, federal, commonwealth or state, tribal, county, parish, borough, village, municipal, city, town, territorial, provincial, regional, district, local, or community level; (ii) a quasi-governmental entity, including those that are nominally non-governmental, but (a) are majority owned, controlled, or funded by an entity described in subsection (i); (b) whose governing persons are selected by an entity described in subsection (i); (c) exist for the benefit of an entity described in subsection (i); or (d) are operated or sponsored by an entity described in subsection (i); or (iii) a non-governmental entity that stands in place of, regulates conduct in a manner similar to, or exercises the powers of, an entity described in subsection (i) and is acting in such capacity, such as an arbitrator or a trade association with licensing or oversight authority.

1.1.16 “*Force Majeure*” means strikes, riots, acts of God, shortages of labor or materials, fire, flood, internet outages, communications outages, war, Law changes, inaccessibility or unusability of this Website, or any other causes of any kind whatsoever which are beyond the reasonable control of the party required to perform under these Terms.

1.2 Interpretation.

1.2.1 Whenever context requires, the gender of words used in these Terms include the masculine, feminine, and gender-neutral forms.

1.2.2 Each noun defined in these Terms has a comparable meaning when used in its plural or singular form. Each verb defined in these Terms has a comparable meaning when used in any conjugation.

1.2.3 Unless expressly stated otherwise, “includes” (and its variants), “for example”, “such as”, and other terms of specific enumeration are illustrative, non-exclusive, and not limited by or to the items that follow them.

1.2.4 Unless used in the negative, the word “may” is permissive and does not obligate the party to perform the act so permitted.

1.2.5 Unless expressly stated otherwise, the word “or” is not exclusive.

1.2.6 The headings and titles in these Terms are for convenience only and do not amplify, modify, or limit the provisions so headed or titled.

1.2.7 These Terms will be construed without regard to any presumption or rule requiring that it be construed against the drafting party.

1.2.8 Unless otherwise specified, references to time in these Terms refer to Central Time, as observed in the applicable portions of Texas. Time is of the essence as to all matters in these Terms.

1.2.9 Unless otherwise specified, references to particular documents or instruments include all amendments, allonges, consolidations, modifications, restatements, supplements, replacements, substitutions, exchanges, restructurings, alterations, extensions, reinstatements, and renewals of such documents or instruments.

2. Amendments, Inconsistencies & Other Agreements.

2.1 Yellow Jacket may update or amend these Terms from time to time to comply with Law or to meet Yellow Jacket's changing business requirements. If Yellow Jacket updates or amends these Terms, Yellow Jacket shall notify you of such updates or amendments by email at your most recent email address in Yellow Jacket's records or post a notice on the main index page of this Website. You may reject such updates and amendments by notifying Yellow Jacket of such rejection at the Notice Address within 30 days of the first to occur of Yellow Jacket emailing you or posting a notice on this Website. If you reject any such update and amendment, you thereby terminate these Terms and may not continue to use this Website.

2.2 If you have a Participant Agreement (or similar agreement) with Yellow Jacket separate from these Terms and it is inconsistent with these Terms, that Participant Agreement controls unless otherwise explicitly stated therein.

2.3 These Terms and the Participant Agreement constitute the entire agreement between Yellow Jacket and you with respect to your use of this Website, your transaction of business through this Website, and any products or services of Yellow Jacket made available through this Website. These Terms supersede any other terms and conditions previously published by Yellow Jacket and any representations or statements made by Yellow Jacket to you related to the matters contemplated by these Terms, whether oral, written, or otherwise. This subsection 2.3 is subject to the terms of subsection 2.2.

3. Your Conduct.

3.1 You may only use this Website for lawful purposes in its intended manner, and you must not use it in a way that infringes upon the rights of anyone else or that restricts or inhibits any other user's enjoyment of this Website.

3.2 Without prior written consent from Yellow Jacket or the respective copyright owner, you may not:

3.2.1 copy, download, display, reproduce, modify, distribute, publish, post, republish, re-post, republish, perform, transmit, sell, make into derivative works, or use any content on this Website in any form (including Materials), or by any means (including electronic, mechanical, photocopying, recording, or otherwise);

3.2.2 remove or alter any copyright or other proprietary notices contained in the content including Materials;

3.2.3 use meta tags or any other "hidden text" utilizing a Yellow Jacket name, trademark, or product name;

3.2.4 sell, resell, or make commercial use of this Website, its content, or services or products obtained through this Website;

3.2.5 make derivative uses of this Website or its content including Materials;

3.2.6 use any data mining, robots, or similar data gathering and extraction methods on this Website;

3.2.7 use the statements, writings, materials, views, or opinions of authors, trainers, experts, users, or other contributors expressed in this Website for advertising or product endorsement purposes; or

3.2.8 use the content of this Website for any commercial exploitation whatsoever.

3.3 By using this Website you agree:

3.3.1 to comply with all Laws that relate to your use or activities on this Website;

3.3.2 not to disrupt or interfere with the security of, or otherwise abuse, this Website or any services, system resources, accounts, servers, or networks connected to or accessible through this Website or affiliated or linked sites;

3.3.3 not to disrupt or interfere with any other user's enjoyment of this Website or any affiliated or linked websites;

- 3.3.4 not to upload, post, or otherwise transmit Malware through or on this Website;
- 3.3.5 not to create or use a false identity on this Website, share your account information, or allow any person besides yourself to use your account to access this Website;
- 3.3.6 not to collect or store personal data of others;
- 3.3.7 not to attempt to obtain unauthorized access to this Website or portions of this Website that are restricted from general access;
- 3.3.8 not to impersonate any person or entity, including Yellow Jacket or any Affiliate;
- 3.3.9 not to post any material that harasses, victimizes, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, disability, or otherwise in violation of any Law;
- 3.3.10 not to post any material that is knowingly defamatory, inaccurate, abusive, vulgar, hateful, obscene, profane, threatening, false, or invasive of a person's privacy; and
- 3.3.11 not to post any copyrighted material unless you own the copyright and are not restricted from doing so.

4. Copyright and Trademarks.

4.1 All of this Website's Materials are Copyright © 2016 Yellow Jacket Fitness, LLC. ALL RIGHTS RESERVED. Unless expressly stated otherwise, Yellow Jacket and, where applicable, its Affiliates own and retain other proprietary rights in all products available through this Website;

4.2 You are not conveyed any right or license by implication, estoppels, or otherwise in or under any patent, trademark, copyright, or other proprietary right of Yellow Jacket or any third party. It is Yellow Jacket's policy to respect the copyright and intellectual property rights of others. Yellow Jacket may remove content that appears to infringe the copyright or other intellectual property rights, including moral rights, of others. In addition, Yellow Jacket may terminate your access if you appear to infringe the copyright or other intellectual property rights of others. Further, Yellow Jacket may remove content that violates or appears to violate the Digital Millennium Copyright Act.

4.3 If you believe that Yellow Jacket or any user has infringed on your copyright in any material way, please notify Yellow Jacket, and provide the following:

- 4.3.1 an identification of the intellectual property right claimed to have been infringed;
- 4.3.2 an identification of the material that you claim is infringing so that Yellow Jacket may locate it;
- 4.3.3 your address, telephone number, and email address;
- 4.3.4 a statement by you that you have a good faith belief that the disputed use is not authorized by the owner, their licensee, and agent of either of the foregoing, or the law; and
- 4.3.5 a statement by you that the above information in your notice is accurate, made under penalty of perjury, and that you are authorized to act on behalf of the owner of the intellectual property interest involved.

4.4 Please direct inquiries regarding intellectual property infringement issues by mail to the Notice Address.

5. Right to Remove. Yellow Jacket has the right to remove any Uploaded Content, material, or posting you make on this Website if Yellow Jacket determines that it does not comply with the conduct or content standards set out in these Terms.

6. Disclaimers. The views and opinions of authors, trainers, experts, users, and other contributors expressed on this Website do not necessarily state or reflect the attitudes and opinions of Yellow Jacket. Testimonials found on this Website are statements by participants of Yellow Jacket's fitness program, and may not reflect the typical participant experience and are not intended to represent or guarantee that anyone will achieve the same or similar results. Information on this Website is not a substitute for

professional medical advice or a medical exam. Prior to participating in any exercise program or activity, you should seek the advice of your physician or other qualified health professional. You may not use any health information provided by this Website to diagnose, treat, cure or prevent any medical condition. If you apply or rely on the techniques, ideas, and suggestions accessed through this Website, you do so at your sole discretion and risk.

7. Privacy Policy. You should refer to Yellow Jacket's Privacy Policy for information about how Yellow Jacket uses and collects information, which may be accessed by clicking on the appropriate link on this Website. By using this Website, you agree that Yellow Jacket may disclose your personal information and health information as described in the Privacy Policy.

8. Security and Password. In order to access some of the services on this Website, you will be required to create and use a user account and password. You are solely responsible for maintaining the confidentiality of your password and account and for any and all statements, transactions, acts or omissions that occur through the use of your password and account. You may not transfer or share your account with anyone. You may not use your account to breach security of another account or attempt to gain unauthorized access to another network or server. Not all areas of this Website are available to you. If you violate this Website's system or network security, you may incur criminal or civil liability.

9. Uploaded Content. If Yellow Jacket offers you the ability to upload any Uploaded Content to this Website and you do so, you hereby grant Yellow Jacket a perpetual, royalty-free, transferrable license to use, distribute, copy, and create derivative works from any elements of such Uploaded Content in connection with and as part of its business, including in any advertising or any media, as Yellow Jacket in its sole discretion sees fit without further notice, consent, or payment. Yellow Jacket holds all right, title, and interest in any results, derivative works, and proceeds from its use of the Uploaded Content. Yellow Jacket may transfer the aforementioned rights to use the Uploaded Content to any third party. Yellow Jacket may alter, adapt, or edit the Uploaded Content and any further material created by Yellow Jacket from such Uploaded Content, and may market and exploit it entirely at Yellow Jacket's sole discretion. Yellow Jacket is not obligated to make any use of the Uploaded Content or to exercise any of the rights granted by these Terms. You may only post Uploaded Content that is owned by, and features you, and no other parties.

10. Linked Sites. Yellow Jacket makes no claim, endorsement, warranty, guarantee, or representation regarding, and accepts no responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from this Website, or sites linking to this Website. The linked sites are not under the control of Yellow Jacket, and Yellow Jacket is not responsible for the content of any linked Website or any link contained in a linked website, or for any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation, endorsement, or adoption by Yellow Jacket of the website so linked or any information contained therein. When leaving this Website, you should be aware that these Terms and Yellow Jacket's policies no longer govern, and therefore you should review the applicable terms and policies, including privacy and data-gathering practices, of that website.

11. Indemnification. You shall indemnify, defend, and hold harmless Yellow Jacket and all Affiliates from all Damages and Disputes arising from or related to any one or more of the following: (i) your performance or breach of these Terms; (ii) your negligence, gross negligence, strict liability, recklessness, malfeasance, or intentional acts; (iii) any of your representations or warranties being or becoming untrue; and (iv) any of your acts or omissions whatsoever. The foregoing applies if a claim or allegation in a Dispute appears to pertain to any item enumerated above, regardless of how groundless, defective, untrue, or legally unsound such claim or allegation appears, **regardless of the strict liability or sole, comparative, contributory, concurrent, or joint negligence of an indemnified party**, regardless of whether a Dispute is decided on its merits, decided on procedural grounds, settled, or otherwise disposed, and regardless of whether fault is designated. You may not settle, compromise, or admit fault for any Damages or Disputes pertaining to an indemnified party without the consent of such indemnified party. The duty to defend continues through final resolution of such Dispute, permits an indemnified party to select its own counsel, and includes the prompt payment of such counsel's fees and other Damages related to such defense upon request, whether as an advancement, reimbursement, or payment, without more than a summary invoice from such counsel. This section 11 survives the termination of these Terms.

12. Disclaimer of Warranties.

12.1 YOU EXPRESSLY AGREE THAT USE OF THIS WEBSITE OR OTHER PRODUCTS OR SERVICES OF YELLOW JACKET IS AT YOUR SOLE RISK. YOU UNDERSTAND AND AGREE THAT THIS WEBSITE AND THE INFORMATION, SERVICES, PRODUCTS, AND MATERIALS AVAILABLE THROUGH IT ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED

WARRANTIES OF MERCHANTABILITY, SUITABILITY, TITLE, USABILITY, GOOD AND WORKMANLIKE QUALITY, COMPLIANCE WITH ANY LAW, AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

12.2 You agree that:

12.2.1 YELLOW JACKET DOES NOT CONTROL ANY ADVERTISEMENTS OR CONTENT BY THIRD PARTIES ON OR THROUGH THIS WEBSITE;

12.2.2 EXCEPT AS OTHERWISE AGREED IN WRITING, YELLOW JACKET AND ITS AFFILIATES ASSUME NO RESPONSIBILITY FOR AND MAKE NO WARRANTY, GUARANTEE, OR REPRESENTATION AS TO THE ACCURACY, CURRENTNESS, COMPLETENESS, RELIABILITY, OR USEFULNESS OF CONTENT, ADVERTISING, OR PRODUCTS DISTRIBUTED OR MADE AVAILABLE BY THIRD PARTIES THROUGH THIS WEBSITE;

12.2.3 YELLOW JACKET DOES NOT MAKE ANY REPRESENTATION, GUARANTEE, OR WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THIS WEBSITE, ANY CONTENT ON THIS WEBSITE, OR ANY PRODUCTS OR SERVICES OFFERED OR SOLD THROUGH THIS WEBSITE;

12.2.4 ALTHOUGH YELLOW JACKET STRIVES TO PREVENT THE INTRODUCTION OF MALWARE TO THIS WEBSITE, YELLOW JACKET DOES NOT WARRANT, GUARANTEE, OR REPRESENT THAT THIS WEBSITE IS FREE OF MALWARE;

12.2.5 YELLOW JACKET DOES NOT REPRESENT, GUARANTEE, OR WARRANT THAT ACCESS TO AND USE OF THIS WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED;

12.2.6 YELLOW JACKET DISCLAIMS ANY WARRANTY, GUARANTEE, OR REPRESENTATION THAT ANY INFORMATION STORED BY YELLOW JACKET OR TRANSMITTED THROUGH THIS WEBSITE WILL BE KEPT CONFIDENTIAL;

12.2.7 TO THE EXTENT ALLOWED BY LAW, YELLOW JACKET DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, WARRANTIES, TERMS, AND CONDITIONS NOT EXPLICITLY STATED IN THESE TERMS; AND

12.2.8 SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS.

12.3 IF YELLOW JACKET SELLS ANY GOODS OR SERVICES THROUGH THIS WEBSITE WHICH ARE PRODUCED OR DELIVERED BY THIRD PARTIES, YELLOW JACKET MAKES NO REPRESENTATION, GUARANTEE, ENDORSEMENT, OR WARRANTY REGARDING THOSE GOODS OR SERVICES, BUT THOSE GOODS OR SERVICES MAY BE WARRANTED BY SUCH THIRD PARTIES. CONTACT THE THIRD PARTIES FOR DETAILS.

12.4 The terms of this section 12 apply to the extent permitted by Law and survive any termination of these Terms.

13. Limitations on Liability.

13.1 IN NO EVENT (INCLUDING THE SOLE NEGLIGENCE OF YELLOW JACKET OR ITS AFFILIATES) WILL YELLOW JACKET OR ITS AFFILIATES BE LIABLE FOR, AND YOU WAIVE ALL RIGHT AND CLAIM TO, ALL PUNITIVE, TREBLE, INDIRECT, EXEMPLARY, ENHANCED, STATUTORY, EQUITABLE, NON-ECONOMIC, SPECIAL, AND CONSEQUENTIAL DAMAGES, AND ALL DISPUTES, WHICH ARISE FROM OR RELATE TO:

13.1.1 THIS WEBSITE;

13.1.2 THE USE OR INABILITY TO USE THIS WEBSITE;

13.1.3 THE USE OF OR RELIANCE ON ANY CONTENT OR INFORMATION IN OR ON THIS WEBSITE;

13.1.4 THE TRANSACTION OF ANY BUSINESS THROUGH THIS WEBSITE, WHETHER OR NOT COMPLETED;

13.1.5 UNAUTHORIZED ACCESS TO, ALTERATION OF, OR LOSS OF YOUR TRANSMISSIONS, DATA, OR OTHER INFORMATION; OR

13.1.6 MALWARE, ERRORS, SYSTEM DOWNTIME, NETWORK OR SYSTEM OUTAGES, FILE CORRUPTION, OR SERVICE INTERRUPTIONS.

13.2 YELLOW JACKET WILL NOT BE LIABLE IN ANY AMOUNT FOR FAILURE TO PERFORM ANY OBLIGATION UNDER THESE TERMS IF SUCH FAILURE IS CAUSED BY ANY FORCE MAJEURE.

13.3 The terms of this section 13 survive any termination of the Terms.

14. Termination of Use. Yellow Jacket reserves the right, without notice and in its sole discretion, to terminate or suspend your ability to use this Website and to block or prevent future access to and use of this Website if you breach these Terms or any other agreement between you and Yellow Jacket or its Affiliates. You agree that Yellow Jacket will not be liable for any termination or suspension of your use of or access to this Website. Upon termination or suspension, regardless of the reason, your right to use this Website immediately ceases. Yellow Jacket may deactivate or delete your account and all information and files in your account upon such suspension or termination. Yellow Jacket will not be liable for any Disputes or Damages arising out of any termination or suspension or for any other actions taken by Yellow Jacket in connection with such termination or suspension.

15. No Third Party Beneficiaries. Except when in favor of an Affiliate, no third parties are beneficiaries of these Terms.

16. Choice of Law. SUBJECT TO THE ARBITRATION PROVISIONS IN THESE TERMS, THE PARTIES DESIGNATE THE LAWS OF THE STATE OF TEXAS FOR INTERPRETING AND ENFORCING THESE TERMS AND FOR GOVERNING ALL MATTERS AND DISPUTES ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THESE TERMS. The parties intend that this section be interpreted without regard to the conflicts of laws principles thereof and without regard to the United Nations Convention on the International Sales of Goods. Subject to section 18, you hereby agree and submit to the personal jurisdiction of and to venue in the courts in Harris County, Texas for any Disputes arising out of these Terms or related to the transactions contemplated by these Terms.

17. Severability. If any provision in these Terms is invalid or unenforceable, that provision will be construed, modified or, if necessary, severed, to the extent necessary to become valid and enforceable.

18. Arbitration.

18.1 You and Yellow Jacket agree to arbitrate all Disputes between the parties pursuant to the provisions in this section 18. (ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED.)

18.2 You and Yellow Jacket further agree that:

18.2.1 these Terms memorializes a transaction in interstate commerce;

18.2.2 all Disputes will be resolved by a single neutral arbitrator;

18.2.3 both parties will have a reasonable opportunity to participate in the selection of the arbitrator;

18.2.4 for subject matter determinations, including statutes of limitations, the arbitrator will apply the Laws of the State of Texas, subject to these Terms;

18.2.5 for procedural matters, the arbitrator will apply the Arbitration Rules, subject to these Terms;

18.2.6 if the Arbitration Rules conflict with these Terms, these Terms will govern;

18.2.7 this section 18 will survive termination of these Terms;

18.2.8 the arbitrator will have the authority to resolve all Disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms;

18.2.9 the arbitrator may take any action that a court sitting in Harris County, Texas could take, other than the award of Damages waived in these Terms;

18.2.10 in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court;

18.2.11 the parties shall keep all Disputes strictly confidential, except for disclosures required in the ordinary course of business or by applicable Law;

18.2.12 neither party may disclose the amount of any settlement offer made by either party related to a Dispute;

18.2.13 the arbitrator's award will be binding on you and Yellow Jacket and may be entered as a judgment in any court in Harris County, Texas;

18.2.14 neither party may disclose to the arbitrator the amount or terms of any settlement offer made by either party until after the arbitrator determines the amount and terms, if any, to which the parties are entitled;

18.2.15 you may choose to engage in arbitration hearings by telephone; and

18.2.16 arbitration hearings not conducted by telephone will take place in Harris County, Texas.

18.3 YOU AND YELLOW JACKET AGREE THAT: (a) EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER PARTY ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, INCLUDING FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS; AND (b) UNDER THE ARBITRATION PROCEDURES OUTLINED IN THIS SECTION 18, AN ARBITRATOR MAY NOT COMBINE OR CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES TO AN ARBITRATION PROCEEDING.

18.4 In the event of a Dispute, the party raising such Dispute must first send to the other party a Dispute Notice. The Dispute Notice to Yellow Jacket must be addressed to the Notice Address. The Dispute Notice to you will be sent to the most recent address in Yellow Jacket's records for you. Following submission and receipt of the Dispute Notice, both you and Yellow Jacket agree to act in good faith to seek to resolve the Dispute before commencing arbitration. If Yellow Jacket and you do not reach an agreement to resolve the Dispute within 60 days after the Dispute Notice is received, you or Yellow Jacket may commence an arbitration proceeding pursuant to this section 18.

19. Legal Fees. If Yellow Jacket or its Affiliates commence a Dispute to enforce these Terms and prevails, you shall pay all costs, expenses, and attorney's fees incurred by them in connection with such Dispute.

20. Waiver. If Yellow Jacket consents to, approves, or waives, express or implied, any term, condition, or breach of these Terms, Yellow Jacket does not thereby consent to, approve, waive, or render unnecessary any consent, approval, or waiver for a subsequent or similar instance or for any other term, condition, or breach of these Terms. If Yellow Jacket fails to declare a default when it occurs, or to promptly act, Yellow Jacket does not thereby waive such default or right to act.

21. General. Nothing in these Terms will be construed as creating a joint venture, partnership, employment, or agency relationship between you and Yellow Jacket and you do not have any authority to create any obligation or make any representation on Yellow Jacket's behalf. You may not assign or transfer any rights or obligations of these Terms, by operation of Law or otherwise, without Yellow Jacket's written consent. Yellow Jacket may assign, transfer, or sub-contract any of Yellow Jacket's rights or obligations under these Terms to any third party at Yellow Jacket's discretion.