

TERMS AND CONDITIONS OF USE

DISCLAIMER: READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS A BINDING LEGAL DOCUMENT BETWEEN YOU AND PRO4MER, LLC REGARDING YOUR USE OF PRO4MER. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT USE PRO4MER.

These Terms and Conditions of Use constitute a legal agreement (the "Agreement") between you and PRO4MER, LLC ("Owner") regarding your use of Owner's website, www.pro4mer.com, and the interactive tools and content contained on the website (collectively "Pro4mer"). Pro4mer connects parents and guardians of child athletes and adult amateur athletes with current and former professional athletes and facilitates private sports instruction. You will be deemed to have accepted and agreed to all of the terms and provisions of this Agreement when you access and use Pro4mer in any way. If you do not agree to all of the terms of this Agreement, you are not permitted to access or use Pro4mer.

Your right to use Pro4mer is subject to this Agreement and the following policies that are posted on Pro4mer from time to time: (i) the privacy policy (the "Privacy Policy"); and (ii) any additional terms and conditions of use (collectively, the "Policies"). Owner may modify this Agreement and the Policies at any time by posting revised versions on Pro4mer, and the modified versions will become effective immediately upon posting. By continuing to use Pro4mer after the effective date of any modifications to this Agreement or the Policies, you agree to be bound by those modifications. It is your responsibility to check Pro4mer regularly for modifications to this Agreement and any Policies.

Independent Instructors. Athlete instructors who are registered on Pro4mer (each, an "Instructor") are independent providers of private lessons and instruction in the areas listed in their profile on Pro4mer (the "Services"). When you schedule an appointment on Pro4mer, you are entering into a legally-binding contract directly with an Instructor (and not Owner) for Services. Pro4mer does not represent, warrant, covenant, or guarantee: (i) that any Instructor's biography is genuine or that the Instructor has the experience, knowledge, certifications, or expertise he or she represents as having; (ii) that the Instructor is skilled or competent in the Services he or she provides; (iii) that the Instructor has passed any background or similar checks; or (iv) any aspect of when or how Services are provided. You agree that the Instructor, and not Owner, is responsible for addressing any claims which you may have relating to Services, including without limitation to any claims relating to personal injury or property damage, dissatisfaction with the type of Services or the quality or performance of Services, and consumer protection laws or similar legislation. You, and not Owner or Pro4mer, are responsible for reading the full description of Services provided by an Instructor before scheduling any services. All contact, including Services, between an Instructor and a minor should take place in a supervised setting.

YOU ACKNOWLEDGE THAT INSTRUCTORS ARE NOT AFFILIATES,

SUBSIDIARIES, PRINCIPALS, AGENTS, EMPLOYEES, OR CONTRACTORS OF OWNER, AND THAT OWNER HAS NO ROLE IN HOW SERVICES ARE PERFORMED OR DELIVERED TO YOU. YOU AGREE THAT YOUR USE OF SERVICES IS AT YOUR SOLE RISK, AND THAT OWNER IS MAKING NO ASSURANCES TO YOU REGARDING THE QUALITY, PERFORMANCE, OR ACCURACY OF ANY SERVICES.

Payment, Taxes, and Refund Policy. Fees may be charged to you for Services at any time after they are scheduled on Pro4mer. All charges are subject to applicable sales taxes, with such sales taxes based on the bill-to address and the applicable sales tax rate in effect at the time you incur the charges. All sales are final unless you and the Instructor both agree to cancel them. If Services are not delivered at the time scheduled, it is your responsibility to immediately notify Owner. You agree that you will pay for all charges that you incur, and that Owner may charge your payment method for any charges incurred and for any additional amounts (including any taxes) that may be accrued through your Account (as defined below)). YOU ARE RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL CHARGES AND FOR PROVIDING OWNER WITH A VALID PAYMENT METHOD FOR PAYMENT OF ALL FEES. Prices may change at any time, and Owner does not provide price protection or refunds in the event of a price reduction or promotional offering. If any Services become unavailable following a purchase transaction but prior to your receiving the Services, your sole remedy is a refund. By using Pro4mer, you acknowledge and agree that you will pay Owner, and not the Instructor, for all charges in connection with the Services and that Owner's collection of charges from you does not create a contract between you and Owner for the Services and does not make the Instructor an employee or independent contractor of Owner. All payments are processed through payment processing companies that are unaffiliated with Owner, and Owner assumes no responsibility for those companies' use, transmission, storage, or handling of your payment information.

Your Account. As a registered user of Pro4mer, you must establish an account ("Account"). Only individuals eighteen (18) years or older may create an Account or schedule any Services on Pro4mer. You may not reveal your Account information to anyone else. You are solely responsible for maintaining the confidentiality and security of your Account, and for all activities that occur through your Account, and you agree to immediately notify Owner of any security breach of your Account. Owner shall not be responsible for any Losses (as defined below) arising out of the unauthorized use of your Account. In order to use Pro4mer and to purchase and use Services, you must enter your ID and password in order to authenticate your Account for transactions. You agree to provide accurate and complete information ("User Information") when you register with, and as you use, Pro4mer, and you agree to update your User Information to keep it accurate and complete. You agree that Owner may store and use the User Information you provide for use in maintaining and billing fees to your Account, among other things. You are solely responsible for any and all charges, fees, and expenses incurred through your Account. You cannot use Pro4mer or your Account to impersonate another person.

Usage License. Subject to the terms of this Agreement, Owner grants to you a personal, non-

exclusive, non-transferable, and revocable license to access and use Pro4mer. This license to access and use Pro4mer does not give you any ownership interest in Pro4mer or any proprietary information of Owner or its licensors, but only the right to access and use Pro4mer under the terms of this Agreement.

Restrictions on Use. You agree that the license granted to you under this Agreement expressly prohibits you from: (i) redistributing, retransmitting, publishing, transferring, commercializing, or otherwise exploiting Pro4mer; (ii) reverse engineering, decompiling, or modifying Pro4mer; and (iii) copying or redistributing Pro4mer, including, but not limited to, creating an archive of any portion or content of Pro4mer. You agree that you are strictly prohibited from accessing or attempting to access any areas of the computer system where Pro4mer is hosted. You further agree that you will not: (i) use any robot, spider, other automatic device or manual process to “screen scrape”, monitor, mine, or copy any portion of Pro4mer or the content contained therein; (ii) spam or send unsolicited communications to any other user of Pro4mer for any reason; (iii) enter into or transmit via Pro4mer any information that contains a virus, bug, or other harmful item; (iv) use any device, software or routine to interfere or attempt to interfere with the proper working of Pro4mer; (v) enter into or transmit via Pro4mer any unlawful, fraudulent, harassing, libelous, or obscene information of any kind, or otherwise utilize Pro4mer for any unlawful, fraudulent, harassing, libelous, or obscene purpose; (vi) enter into or transmit via Pro4mer any information (including but not limited to, text, imagery, audio recordings, or video recordings) in violation of another party’s copyright or intellectual property rights; (vii) take any action that imposes an unreasonable or disproportionately large load on the infrastructure hosting Pro4mer; or (viii) violate any laws, regulations, or terms and conditions applicable to you or your use of Pro4mer. In the event of your breach of any of these restrictions or any other term of this Agreement, Owner may terminate this Agreement and your usage of Pro4mer, without any refund of any payments made by you, directly or indirectly, to Owner in connection with Pro4mer, and you shall indemnify, defend, and hold harmless Owner against any and all losses or damages suffered by Owner as a result of any such breach.

Intellectual Property. You agree that ownership of and title in and to all intellectual property rights in Pro4mer, including patent, trademark, service mark, copyright, and trade secret rights belong to Owner and its licensors. You agree not to remove, alter, or otherwise obscure any trademark, copyright, or other proprietary rights contained within or displayed by Pro4mer. Owner reserves the right to update and make changes, additions, or deletions to Pro4mer (“Modifications”) at any time, for any reason, and without notice to you. All rights in any such Modifications will be owned exclusively by Owner. Owner may make any such Modifications available to you under the terms of this Agreement or any other terms and conditions offered by Owner, and may cease usage of prior versions of Pro4mer, in its sole and absolute discretion. You agree not to take any action that would limit Owner’s development, marketing, sale, assignment, licensing, or use of Pro4mer.

Third-Party Software. The obligations of Owner set forth in this Agreement do not extend to any software or materials which may be made available by Owner, or are otherwise obtained or

used by you, subject to an open source license or other open source terms (“Open Source Software”). You agree that all Open Source Software shall be and shall remain subject to the terms and conditions under which it is provided and you shall not use or combine the Open Source Software with any items in any manner that would subject Pro4mer, in whole or in part, to open source terms and conditions.

Internet/Wireless Service Provider Costs. Pro4mer makes use of a data network operated by your Internet or wireless service provider to send information from your device to our servers and to send information back to you. Depending on your data plan, you may incur charges from your provider for use of their network in connection with Pro4mer. You are solely responsible for any and all costs you incur with your Internet and wireless service providers and any other third parties as a result of your use of Pro4mer.

Third Party Websites and Services. Pro4mer invokes a number of websites, software, and services that were not developed or are not operated by Owner and that are not under the control of Owner, including, but not limited to, your mobile phone’s or computer’s operating system, browser, email and SMS programs, dialer and other websites and services. Owner cannot assure you that these third party websites and services will function and expressly denies any liability related to such third party websites and services.

Consent to Use of Data. You agree that Owner and its affiliates may, at any time or from time to time in their sole and absolute discretion, monitor, record, collect, and use any data and related information that is inputted into Pro4mer by you or which is generated by Pro4mer for you (“Data”). Owner and its affiliates may use Data in any manner, and for any purpose, as Owner or its affiliates decide in their sole and absolute discretion. All Data is subject to a worldwide, perpetual, royalty-free, and irrevocable license and right in favor of Owner and its affiliates to monitor, record, and permanently retain the Data in any manner permitted by applicable law, to the extent necessary to perform Owner's obligations under this Agreement, and to analyze, mine, process, aggregate, and to perform any other task or function with respect to Data including, without limitation, the sale of independent or aggregated Data to third parties. Any analysis, database, aggregation, derivative, discovery, or other work developed by Owner or its affiliates from Data shall be the sole and exclusive property of such party, and you hereby waive and disclaim any and all rights thereto.

DISCLAIMER OF WARRANTIES. PRO4MER, INCLUDING ALL CONTENT, APPLICATIONS, FUNCTIONS, AND INFORMATION, IS PROVIDED “AS IS,” “WITH ALL FAULTS” AND WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED. OWNER DISCLAIMS ALL WARRANTIES WITH RESPECT TO PRO4MER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CONDITION, UNINTERRUPTED USE, MERCHANTABILITY OF COMPUTER PROGRAMS, AND DATA ACCURACY, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. OWNER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE OPERATION OF PRO4MER, THE USE, VALIDITY, ACCURACY, OR RELIABILITY OF, OR THE RESULTS OF, PRO4MER CONTENT, AND OWNER MAKES NO COMMITMENT TO UPDATE PRO4MER OR ITS CONTENT. OWNER DOES NOT WARRANT THAT ANY CONTENT AVAILABLE FOR ACCESS ON PRO4MER, IF ANY, WILL BE FREE FROM INFECTION, VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFEST CONTAMINATING OR DESTRUCTIVE PROPERTIES. OWNER DOES NOT WARRANT THAT PRO4MER WILL OPERATE UNINTERRUPTED OR ERROR-FREE, THAT ACCESS TO PRO4MER WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS IN PRO4MER WILL BE CORRECTED. YOU AGREE THAT FROM TIME TO TIME OWNER MAY REMOVE, DISCONTINUE, OR CANCEL ANY ASPECT OF PRO4MER (INCLUDING, WITHOUT LIMITATION, CERTAIN INSTRUCTORS AND SERVICES), AND THAT PRO4MER AND INSTRUCTORS MAY REMOVE, DISCONTINUE, OR CANCEL ANY UNSCHEDULED SERVICES FOR INDEFINITE PERIODS OF TIME, ALL WITHOUT NOTICE TO YOU. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OWNER OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE OR BE DEEMED TO CREATE ANY REPRESENTATION, WARRANTY, OR COVENANT OF ANY TYPE OR NATURE WHATSOEVER. IF YOU ARE NOT SATISFIED WITH THE NATURE OF SERVICES OR HOW THEY ARE PROVIDED, YOU AGREE TO LOOK SOLELY TO THE INSTRUCTOR, AND NOT TO OWNER, FOR CORRECTION AND REMEDIATION. OWNER DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND COVENANTS ABOUT INSTRUCTORS, THEIR SERVICES, AND HOW SERVICES ARE DELIVERED TO YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER; THEREFORE, IN SUCH AN EVENT, THE FOREGOING PROVISIONS SHALL BE CONSTRUED TO PROVIDE THE MAXIMUM EXCLUSION AND LIMITATION OF WARRANTIES AS PERMITTED BY SUCH APPLICABLE LAW.

Availability. You agree that Pro4mer may not be available on a continuous or uninterrupted basis and that Pro4mer may be inaccessible or inoperable for any reason, including, but not limited to, periodic maintenance or repairs, equipment malfunctions, Internet or wireless service interruption or failure, and other causes beyond the control of Owner or that could not be reasonably foreseen by Owner. The use of Pro4mer on more than one device may result in the

loss of data or information. Owner does not guarantee the integrity of information transmitted via Pro4mer. Owner shall not be liable for the inadvertent disclosure of, or corruption or erasure of, information transmitted or received or sorted on Owner's system. Owner shall further not be liable for any Losses which may be suffered by you as a result of the loss of information, your inability to access or use Pro4mer, or any other service interruptions, regardless of whether they are caused by the fault or negligence of Owner.

Your Additional Acknowledgements and Responsibilities. You acknowledge and agree that: (i) Pro4mer and particular Instructors and Services may not meet your needs and requirements, and that you assume all responsibilities and obligations with respect to the selection of particular Instructors and Services to achieve your desired results; (ii) Owner has no responsibility for any information entered into Pro4mer by or on behalf of you and you agree to indemnify, defend, and hold harmless Owner against any and all Losses suffered by Owner relating to information entered into Pro4mer by or on behalf of you; and (iii) the Internet is a network of computers worldwide and that any information submitted by you through Pro4mer is routed via third party computers, and that Owner is not responsible for lapses in online security and does not assume liability for improper use of your information by a third party.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO CASE SHALL OWNER OR ITS MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, PRINCIPALS, OR LICENSORS BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE PRO4MER OR ANY SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN SUCH AN EVENT, THE FOREGOING PROVISIONS SHALL BE CONSTRUED TO PROVIDE FOR THE MAXIMUM LIMITATION OF LIABILITIES AS PERMITTED BY SUCH APPLICABLE LAW. In no event shall Owner's total liability to you for damages, other than as may be required by applicable laws, exceed the amount of Fifty and No/100 Dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose. Owner will not entertain or respond to any claim that it believes is false, fraudulent, or made in bad-faith.

Indemnity and Waiver. To the maximum extent permitted by applicable laws, you agree to indemnify, save, pay, insure, defend, protect, and hold harmless the following individuals in the following manners:

- (a) **Owner.** Owner, its affiliates, and their respective members, managers,

officers, employees, affiliates, agents, contractors, principals, and licensees from and against any and all claims, actions, suits, proceedings, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees through all levels of adjudication, including settlement and appeal) (collectively, "Losses") arising out of or accruing from: (a) your use or misuse of Pro4mer; (b) any breach by you of your obligations under this Agreement; (c) your violation of any applicable laws; (d) any Services; (e) any claim brought by an Instructor relating to you, except with respect to payment for Services to the extent that you have made such payments to Pro4mer; (f) any injuries, losses, or damages that you incur that were caused by an Instructor; and (g) any act of fraud, negligence, or willful misconduct made by you.

(b) **Instructors.** Instructors from and against any and all Losses arising out of or accruing from: (a) your use or misuse of Pro4mer; (b) your violation of any applicable laws; (c) any injuries, losses, or damages that an Instructor incurs that were caused by you; (d) any injuries, losses, or damages that you incur during any Services; and (e) any act of fraud, negligence, or willful misconduct made by you.

THESE PROVISIONS MEAN THAT YOU CANNOT SUE OR RECOVER ANY DAMAGES FROM OWNER, ANY INSTRUCTOR, OR ANY OTHER INDEMNIFIED PARTIES RELATING TO THE SERVICES, INCLUDING FOR PERSONAL INJURY, EXCEPT FOR REFUNDS OF PAYMENTS MADE BY YOU FOR SERVICES THAT YOU NEVER RECEIVED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

Insurance. You agree that your personal insurance is your primary source of recovery with respect to any Losses you might suffer in connection with Pro4mer and any Services, and that you will look first to your own insurance provider in each instance. Any insurance carried by Instructors or Owner (whether Owner's personal insurance policy or a blanket insurance policy maintained by Pro4mer with respect to Services generally) shall be a secondary source of recovery to you only. There is no representation, warranty, or guarantee with respect to any insurance policy or coverage amount that may or may not be carried by Instructors or Owner. A blanket insurance policy maintained by Pro4mer with respect to Services generally, if any, does not indicate in any way that Owner or Pro4mer are assuming any responsibility to you with respect to Services.

Allocation of Risks; Severability of Actions. The provisions of the Agreement allocate the risks between Owner and you and the fees reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended by the parties to be severable and independent of any other provision and to be enforced as such.

Term and Termination. This Agreement becomes effective immediately upon your accessing

Pro4mer and shall remain in effect until your use of Pro4mer is terminated. You may terminate your access to Pro4mer at any time. Owner reserves the right to terminate this Agreement at any time and for any reason upon written notice. Upon termination of this Agreement for any reason, all rights granted to you under this Agreement will terminate and revert to Owner and you shall immediately cease all use of Pro4mer. Termination of this Agreement shall not relieve you of any liability for your breach of any provision of this Agreement accruing or occurring prior to the termination, and you will remain liable for all amounts due under your Account up to and including the date of termination (including, without limitation, charges for all Services scheduled). Notwithstanding any termination of this Agreement, Owner shall have the right to enjoin the unlawful or unauthorized use of Pro4mer or any other Owner intellectual property or proprietary information. The provisions in this Agreement regarding limits on liability, intellectual property, indemnification, governing law, jurisdiction, venue and your other responsibilities shall survive the termination of this Agreement and shall remain in effect indefinitely.

Other Provisions. No amendment or waiver of any provision of this Agreement is binding on Owner unless in writing and signed by Owner. This Agreement binds and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. You may not assign your rights or delegate your obligations under this Agreement without the prior written consent of Owner in each instance, which consent may be granted or withheld in Owner's sole and absolute discretion. No assignment by you shall relieve you of any of your obligations or responsibilities under this Agreement. In the event any provision, or portion thereof, of this Agreement is held by a court of competent jurisdiction to be unenforceable in any jurisdiction, then such portion or provision will be deemed to be severable as to such jurisdiction (but, to the extent permitted by applicable laws, not elsewhere) and will not affect the remainder of this Agreement, which will continue in full force and effect. If any provision of this Agreement is held to be so broad as to be unenforceable, such provision will be interpreted to be only as broad as is necessary for it to be enforceable. In the event that one party brings an action against the other party to enforce or interpret any of the provisions of this Agreement, the "prevailing party" in such action shall, in addition to any other recovery, be entitled to recover from the other party such "prevailing party's" reasonable attorneys' fees and expenses arising from such action and any appeal or any bankruptcy action related thereto, regardless of whether such matter proceeds to court. For purposes of this Agreement, "prevailing party" shall mean, in the case of a party asserting a claim, such party if it is successful in obtaining substantially all of the relief sought, and in the case of a party defending against or responding to a claim, if such party is successful in denying substantially all of the relief sought. Owner and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Owner's or its affiliates' reasonable control. This Agreement shall be construed as if both you and Owner jointly prepared it, and no provision shall be construed against Owner on the basis that Owner prepared it. You acknowledge and agree that any breach or threatened breach by you of any of the covenants and restrictions related to usage of Pro4mer, intellectual property, proprietary information, termination, and your other responsibilities contained in this Agreement will give rise to irreparable injury which may not be adequately compensated by damages and, therefore, you agree that in the event of any such breach or threatened breach, Owner may seek and shall be entitled to injunctive relief and to the enforcement of these covenants and restrictions by specific performance, in addition to any other rights and remedies available hereunder or under applicable law. Owner and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Owner's or its affiliates' reasonable control, including from acts of God, labor disputes or other industrial disturbances, system electrical, telecommunications, or other utility failures, earthquake, storms, or other elements of nature, blockages, embargoes, riots, acts, or orders of government, acts of terrorism, or war.

Dated: June 10th, 2016

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