



## Eat With Me Train With Me Terms of Use

- A. By signing up to Eat With Me Train With Me (**Program**) you agree to be bound by these terms, the **Evolution Rules of the Game** and the **Ezidebit Service Agreement** found here: <http://evolutiontowellbeing.com.au/Home/Members/Terms-Conditions> (together these **Terms**).
- B. The Program is provided by Mimika Solutions Pty Limited trading as Evolution to Wellbeing (ABN 25 074 906 264) of 10 / 2 Bligh Street Sydney NSW 2000 and Julijana Markoska trading as Eat Smarter (ABN 49 705 760 567) of 130 Edgecliff Road, Woollahra NSW 2025 (**we, us, our**).
- C. In these Terms, **Website** means [www.evolutiontowellbeing.com.au](http://www.evolutiontowellbeing.com.au) and any Facebook page or group run by Evolution to Wellbeing in relation to the Program.

### 1. Information Provided

The Program and information contained in it is provided for informational and educational purposes only. The Program does not constitute medical advice, must not be used as a diagnostic tool and does not replace a visit to your doctor, dietitian or another qualified health care provider.

We have done our best to ensure that the Program is accurate, reliable and current at the date of publication. However, we may amend the Program and update the information contained in it at any time. We do not represent or warrant that any information we provide is reliable, accurate or complete and we make no guarantees of any specific result from your use of the Program or the information contained in it. We are not liable for any loss arising from any action taken or reliance by you on the Program. It is your responsibility to evaluate the accuracy, completeness and usefulness of any such information.

### 2. Medical Advice

You should consult with your health care provider before beginning any fitness or nutrition regime. The Program is designed for relatively healthy people. If you:

- are pregnant;
- have a medical condition;
- have an injury;

- have recently recovered from a serious illness or injury; or
  - have any concerns about your health
- you should consult with your doctor and/or dietitian before signing up to the Program.

You acknowledge that it is your responsibility to check your suitability for the Program with your health care provider before you register for the Program.

**If there are any changes to your health or you have concerns about your health during the Program you should immediately seek medical attention.**

You are responsible for making your own inquiries and seeking independent advice from a healthcare professional before acting on any information or material made available to you through the Program or Website.

You acknowledge that you are participating in the Program voluntarily and, depending on your particular circumstances, there may be risks to your health. You further acknowledge that such risks may be caused by your own acts or omissions, or those of other users of the Program or Website, or may be risks that are not known to you or are not readily foreseeable at the time of using the information Program. This is a risk warning pursuant to relevant State fair trading legislation and the *Competition and Consumer Act 2010*. You assume all risks in connection with your participation in the Program. To the extent permitted by law, we exclude any express or implied warranties of reasonable care and skill.

### 3. Quality of Program

The Program and its content are delivered on an "as-is" and "as-available" basis. We will try our best, however, we do not promise that:

- the Program and Website will be error-free or uninterrupted;
- files you download from the Website will be free of viruses; and
- you will receive all electronic communications (including emails, forum posts, webinars).

### 4. Payment and Refunds

The cost of the Program is:

- AUD49.00 per four weeks for Eat With Me Train With Me Recipes & Meal Plans;
- AUD79.00 per four weeks for Eat With Me Train With Me 8 Week Nutrition Program (includes nutrition info, meal plans & recipes). This plan automatically rolls over to Eat With Me Train With Me Recipes & Meal Plans after two payments of AUD79.00;
- AUD329.00 per four weeks for Eat With Me Train With Me One-on-One Coaching (includes nutrition info, meal plans & recipes);

**(Fees).**

Fees are inclusive of GST.

Participation in the Program is by subscription. We will debit your account the applicable Fees every four weeks.

Continued access to the Program is subject to payment being made by you. Your participation in the Program may be terminated if you are not up to date with your payment.

All Fees are non-cancellable and non-refundable except as expressly set out in these Terms. If you choose to end your participation in the program you must notify us in writing and we will provide you with a pro-rata refund for the portion of the Program for which you have paid but have not been given access to, used or received, as the case may be. You acknowledge that your account will continue to be debited until you notify us in writing that you wish to cancel your participation in the Program.

## 5. Your Privacy

By registering for the Program you consent to your personal information being used and/or disclosed for the purposes of your participation in the Program. Your personal information will be handled in accordance with Evolution to Wellbeing's Privacy Policy. Unless you ask us not to, we may also use your personal information to send you related information and other promotional material to you.

## 6. User-Generated Content

You warrant that you have all the necessary rights and permissions needed to submit content to the Website (**User Generated Content**). You must ensure that the content you upload does not infringe the copyright, moral or other rights of third parties and you agree to indemnify us against any third party claims arising from your use of the Website in breach of this clause.

You must not:

- post or transmit any advertisements, spam, illegal, threatening, infringing, discriminatory, harassing, abusive, offensive, defamatory, racially or sexually vilifying, obscene, pornographic or indecent material; and
- knowingly post or transmit material which contains a computer virus or other corruptible material.

You are legally responsible for all content you submit. We accept no responsibility or liability for User Content. However, we may monitor, remove or refuse any User Generated Content which we consider, in our sole discretion, to be in breach of this clause

Where you are the owner of the intellectual property rights in User Content, you assign to us all right, title and interest in the User Generated Content on creation.

Where you are a licensee of the intellectual property

rights in the User Content, you grant to us a royalty-free, non-exclusive world-wide licence to use, copy, sub-licence, re-distribute, adapt, transmit, publish and/or broadcast, publicly perform and display the User Generated Content on any media platform and by any means. To the full extent permitted by law, you consent to us (and all persons authorised by us) infringing any of the moral rights that you may have in the User Generated Content.

## 7. Intellectual Property

Copyright in the Program (including text, graphics, logos, icons, sound recordings, video, software and advertisements) is owned or licensed by us. Information procured from a third party may be the subject of copyright owned by that third party. Other than for the purposes of personal use, and subject to the conditions prescribed under the *Copyright Act 1968 (Cth)*, and except where expressly stated, you may not in any form or by any means adapt, modify, download, reproduce, distribute, publicly display, perform, publish, create derivative works or otherwise publicly make available any part of the Program without our written permission or, in the case of third party material, from the owner of the copyright in that material. You may access, listen, view, retrieve, personally store and print a copy of any information delivered via the Program and contained on the Website for your personal use. You may on-sell information obtained from the Program or Website or post it to another website.

## 8. LIABILITY

### 8.1 Indirect and Consequential Loss

To the extent permitted by law, in no event will we (or our employees, agents and subcontractors) be liable to you for indirect, special or incidental, punitive, exemplary or consequential loss, costs, expenses and damages (or any loss of revenue, loss of data, loss of profits or loss of opportunity whether the losses be direct or indirect), suffered or incurred by you and arising out of or in connection with your access to or use of the Program, the Website, any linked website, or your reliance on any information obtained through the Program and the Website, regardless of whether liability is based on any breach of contract, tort (including negligence) or warranty, arises under statute, or any other basis of liability.

### 8.2 Terms Implied by Law

To the extent permitted by law, any condition or warranty which would otherwise be implied into these Terms is excluded. Where legislation implies any condition or warranty that cannot be excluded our liability for breach of that condition or warranty will be limited to, at our option, re-supplying, or paying the cost of re-supplying, the Program. Upon receipt of a refund this agreement will end. You agree that this is your sole remedy in these circumstances.

### **8.3 Total Liability**

To the extent permitted by law, our total liability in respect of all claims in connection with this agreement (whether based in negligence or any other tort, contract, statutory liability or otherwise) will be the total sum of all fees paid or payable by you under this agreement up until and including the date the cause of action accrued. The limitation of liability set out in these Terms and conditions does not attempt or purport to exclude liability arising under statute if, and to the extent, such liability cannot be lawfully excluded.

### **8.4 Third Party Content**

We do not accept responsibility for any loss or damage, however caused (including through negligence), which you may directly or indirectly suffer in connection with or arising from the Program including acts, omissions and conduct of any third party users of the Program, other members, other contributors to the Website.

### **8.5 External Websites**

The Website may reference or link to third party sites on the internet. We have no control over these sites or the content within them. We cannot guarantee, represent or warrant that the content contained in the sites is accurate, legal and/or inoffensive. We do not endorse the content of any third party site, nor do we warrant that they will not contain viruses or otherwise impact your computer. By using the Website to search for or link to another site, you agree and understand that you will not make any claim against us for any damages or losses, however arising, which results from your use of the link to access another site.

### **9. Indemnity**

You agree to indemnify us and our employees, agents and subcontractors, from and against any third party claims, and must pay on demand all losses, expenses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by us, which arises out of your use of the Program and the Website, including your use of the Website to provide a link to another site or to upload content or other information to the Website.

### **10. Severability**

If a provision of these Terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other Terms.

### **11. Survival**

Clauses 6, 7, 8 and 9 survive the termination and expiry of this agreement.

### **12. Entire Agreement**

These Terms contain everything the parties have agreed to in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee

of that party, before these Terms were executed, save as permitted by law.

### **13. Governing Law**

These Terms are governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its courts.