

## **TERMS OF SERVICE**

*Last Updated: August 9, 2020*

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY, AS THEY AFFECT YOUR LEGAL RIGHTS. THESE TERMS CONTAIN A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER. EXCEPT WHERE PROHIBITED BY LAW, BY ENTERING INTO THESE TERMS YOU EXPRESSLY AGREE THAT DISPUTES BETWEEN YOU AND BODY & SOUL WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU HEREBY WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

Body and Soul Ministries (“Body & Soul”, “we”, or “us”) provides an online fitness community and related products, services, content and features through Body & Soul website, Body & Soul FitTV, Body and Soul live and virtual fitness classes, and through mobile, desktop, or device applications (including iOS and Android applications (“Apps”)) and Body & Soul-controlled social media pages (including on Facebook, Instagram, Spotify and Twitter) (collectively “the Services”). By creating an account or by visiting, browsing, or using the Services in any way, you (as a “user”) accept and agree to be bound by these Terms of Service (“Terms”) as well as our Privacy Policy, which forms a binding agreement between you and Body & Soul.

These Terms apply to all visitors, users and others who wish to access or use the Services. If you disagree with any part of the Terms then you do not have permission to access the Services. To the extent that we use certain third party platforms (e.g. Vimeo OTT) to deliver or perform the Services, you agree to their Terms of Service and Privacy Policy, which are incorporated to these Terms by reference.

These Terms may be amended or modified at any time by posting the revised Terms on [bodyandsoul.org](http://bodyandsoul.org) and/or providing a copy to you via email. Revised Terms shall be effective as of the time they are posted, but will not apply retroactively. Your continued use of the Services after the posting of revised Terms constitutes your acceptance of the revised Terms. If you do not agree with amendments or modifications to these Terms, your sole and exclusive remedy is to terminate your use of the Services and close your account.

### **1. License to Use the Services**

Subject to your compliance with these Terms, Body and Soul grants you a limited, non-transferable, non-exclusive, revocable license to access and use the Services for your own personal, non-commercial purposes. This license includes the right to view On-Demand Content (defined below) available on the Services. This license is personal to you and may not be assigned or sublicensed to anyone else.

Except as expressly permitted in writing by an authorized representative of Body and Soul, you will not record, reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer, or disassemble the Services, nor will you take any measures to interfere with or damage the Services. All rights not expressly granted by Body and Soul in these Terms are reserved.

## **2. Age Requirement**

You must be at least 18 years old, or the age of legal majority in your jurisdiction of residence, to create a subscriber account and/or use the Services.

## **3. User Accounts**

**On-Demand Content.** In order to view on-demand content, you must create a subscriber account and purchase a subscription to Body & Soul® FitTV. You may not use someone else's name, or any name, location, other public profile information or image that violates any third party rights, is against the law, or that is offensive, obscene or otherwise objectionable (in Body and Soul's sole discretion).

**Live Classes.** In order to attend live and/or virtual fitness classes you must create a subscriber account and purchase a subscription to our live classes, as available on the Body & Soul website. Attendance and participation in virtual classes are subject to both these Terms as well as any Third-Party Platform Terms and Conditions (e.g., Facebook Terms of Service), as applicable.

You are responsible for maintaining the confidentiality of your account and password, including but not limited to the restriction of access to your computer and/or account. You agree to accept responsibility for any and all activities or actions that occur under your account and/or password, whether your password is with our Services or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

If you suspect that your account or any of your security details have been compromised or if you become aware of any fraud or attempted fraud or any other security incident (including a cybersecurity attack) affecting you and/or Body and Soul, you must notify us as soon as possible by email at [info@bodyandsoul.org](mailto:info@bodyandsoul.org) and continue to provide accurate and up to date information throughout the duration of the security breach. You must take any steps that we reasonably require to reduce, manage or report any security breach. Failure to provide prompt notification of any security breach may be taken into account in our determination of the appropriate resolution of the matter.

## **4. Term and Termination; Account Deletion**

These Terms begin on the date you first use the Services and continue as long as you have an account with us and/or continue to use the Services.

Body and Soul may, in its sole discretion, suspend, disable, or delete your account (or any part thereof), for any lawful reason, including if Body and Soul determines that you have violated these Terms. If Body and Soul deletes your account, you may not re-register for or use the Services under any other user name or profile. Body and Soul may block your access to the Services to prevent re-registration.

Upon termination of these Terms all licenses granted by Body and Soul will terminate. The following sections survive termination: Privacy, User Content, Indemnification, No Warranties, Limitation of Liability, Safety Warnings, Intellectual Property, Disputes, Class Action Waiver, Governing Law and all general provisions. If you cancel your subscription or it is terminated for any reason, you will lose access to all on-demand content and/or features provided through the Services.

## **5. Content**

Content means text, graphics, images, music, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services. On-Demand Content means audiovisual materials available for streaming with a FitTV subscriber account. Content includes, without limitation, On-Demand Content.

## **6. General Prohibitions and Body and Soul's Enforcement Rights**

You agree not to do any of the following:

- a. Use, display, mirror or frame the Services or any individual element within the Services, Body and Soul's name, any Body and Soul trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Body and Soul's express written consent;
- b. Access, tamper with, or use non-public areas of the Services;
- c. Attempt to probe, scan or test the vulnerability of any Body and Soul system or network or breach any security or authentication measures;
- d. Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Body and Soul to protect the Services or Content;
- e. Attempt to access, scrape or search the Services or Content or download Content from the Services, including through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools, plugins, add-ons or

the like), other than the software and/or search agents provided by Body and Soul or other generally available third-party web browsers;

- f. Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms or permitted expressly in writing by Body and Soul;
- g. Violate any applicable law or regulation; or
- h. Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, to comply with applicable law or other legal requirements and to maintain the integrity and reputation of the Services and Body and Soul's website. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

## **7. Indemnification**

You agree to indemnify, defend, and hold harmless Body and Soul and its directors, officers, employees, and agents, from and against all claims, damages, losses and costs that arise from or relate to your activities on the Services or your violation of these Terms.

## **8. No Warranties**

Body and Soul reserves the right to modify the Services, including, but not limited to updating, adding to, enhancing, modifying, removing or altering any Content or features of the Services, at any time, in its sole discretion. You are responsible for providing your own access (e.g., computer, mobile device, Internet connection, etc.) to the Services.

The Services are provided on an "AS IS" and "AS AVAILABLE" basis. You therefore use the Services at your own risk. Body and Soul expressly disclaims any and all warranties of any kind, whether express or implied, including, but not limited to implied warranties of merchantability, fitness for a particular purpose, non-infringement, quiet enjoyment and any other warranty that might arise under any law. Without limiting the foregoing, Body and Soul makes no representations or warranties:

- That the Services will be uninterrupted or error-free;
- Concerning any Content;
- That the Services will meet your personal or professional needs;
- That Body and Soul will continue to support any particular feature of the Services.

To the extent that another party may have access to or view Content on your device, you are solely responsible for informing such party of all disclaimers and warnings in these Terms. TO THE EXTENT ANY DISCLAIMER OR LIMITATION OF LIABILITY DOES NOT APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL APPLICABLE EXPRESS, IMPLIED, AND STATUTORY WARRANTIES WILL BE LIMITED IN DURATION TO A PERIOD OF 30 DAYS AFTER THE DATE ON WHICH YOU FIRST USED THE SERVICES, AND NO WARRANTIES SHALL APPLY AFTER SUCH PERIOD.

## **9. Limitation of Liability**

To the fullest extent permitted by law: (i) Body and Soul shall not be liable for any indirect, incidental, special, consequential, punitive, or exemplary damages, including but not limited to damages for loss of profits, economic or pure economic losses, goodwill, use, data, service interruption, computer damage, system failure, inability to use the Services or Content or other intangible losses, even if a limited remedy set forth herein is found to have failed its essential purpose; and (ii) Body and Soul's total liability to you for all claims, in the aggregate, will not exceed the amount actually paid by you to Body and Soul over the 12 months preceding the date your first claim(s) arose. If you live in a jurisdiction that does not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation does not apply to you. To the extent that one or any aspect of Body and Soul's limitations set out above does not apply, all remaining aspects survive. The exclusions and limitations of damages set forth above are fundamental elements of the basis of the bargain between Body and Soul and you.

## **10. Safety Warnings**

THE SERVICES OFFER HEALTH AND FITNESS INFORMATION AND IS DESIGNED FOR EDUCATIONAL AND ENTERTAINMENT PURPOSES ONLY. YOU SHOULD CONSULT YOUR PHYSICIAN OR GENERAL PRACTITIONER BEFORE BEGINNING A NEW FITNESS PROGRAM. YOU SHOULD NOT RELY ON THIS INFORMATION AS A SUBSTITUTE FOR, NOR DOES IT REPLACE, PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH, YOU SHOULD ALWAYS CONSULT WITH A PHYSICIAN, GENERAL PRACTITIONER OR OTHER HEALTH-CARE PROFESSIONAL. DO NOT DISREGARD, AVOID OR DELAY OBTAINING MEDICAL OR HEALTH RELATED ADVICE FROM YOUR HEALTHCARE PROFESSIONAL BECAUSE OF SOMETHING YOU MAY HAVE READ ON THE BODY AND SOUL WEBSITE OR HEARD ON THE SERVICES. THE USE OF INFORMATION PROVIDED THROUGH THE SERVICES IS SOLELY AT YOUR OWN RISK AND IS NOT MEDICAL OR HEALTHCARE ADVICE.

NOTHING STATED OR POSTED ON THE WEBSITE OR AVAILABLE THROUGH ANY OF THE SERVICES IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICAL OR COUNSELING CARE. FOR PURPOSES OF THESE TERMS, THE PRACTICE OF MEDICINE AND COUNSELING INCLUDES, WITHOUT LIMITATION, PSYCHIATRY, PSYCHOLOGY, PSYCHOTHERAPY, OR PROVIDING HEALTH CARE

TREATMENT, INSTRUCTIONS, DIAGNOSIS, PROGNOSIS OR ADVICE. THE SERVICES ARE CONTINUALLY UNDER DEVELOPMENT AND, TO THE FULL EXTENT PERMITTED BY LAW, BODY AND SOUL MAKES NO WARRANTY OF ANY KIND, IMPLIED OR EXPRESS, AS TO ITS ACCURACY, COMPLETENESS OR APPROPRIATENESS FOR ANY PURPOSE. IN THAT REGARD, DEVELOPMENTS IN MEDICAL RESEARCH MAY IMPACT THE HEALTH, FITNESS AND NUTRITIONAL ADVICE THAT APPEARS HERE. NO ASSURANCE CAN BE GIVEN THAT THE ADVICE CONTAINED IN THE SERVICES WILL ALWAYS INCLUDE THE MOST RECENT FINDINGS OR DEVELOPMENTS WITH RESPECT TO THE PARTICULAR MATERIAL.

In becoming a user of the Services, you affirm that either (A) all of the following statements are true: (i) no physician or general practitioner has ever informed you that you have a heart condition or that you should only do physical activities recommended by a physician or general practitioner; (ii) you have never felt chest pain when engaging in physical activity; (iii) you have not experienced chest pain when not engaged in physical activity at any time within the past month; (iv) you have never lost your balance because of dizziness and you have never lost consciousness; (v) you do not have a bone or joint problem that could be made worse by a change in your physical activity; (vi) your physician or general practitioner is not currently prescribing drugs for your blood pressure or heart condition; (vii) you do not have a history of high blood pressure, and no one in your immediate family has a history of high blood pressure or heart problems; and (viii) you do not know of any other reason you should not exercise; or (B) your physician or general practitioner has been specifically consulted by you and approved of your use of the Services.

If applicable, you further affirm that (a) you are not pregnant, breastfeeding or lactating; unless (b) your physician or general practitioner has been specifically consulted and approved your use of the Services.

Body and Soul reserves the right to refuse or cancel your subscription if we determine that you have certain medical conditions or that the representations set forth above are untrue in any respect.

## **11. Intellectual Property**

You acknowledge that the Services contain software and other content that is protected by copyrights, patents, trademarks, trade secrets or other proprietary rights, and that these rights are valid and protected in all forms, media and technologies existing now or hereafter developed. All Content is copyrighted individually and/or as a collective work under the U.S. copyright laws and all applicable international copyright (or equivalent) laws in all jurisdictions; further, as between you and Body and Soul, Body and Soul owns a copyright in the selection, coordination, arrangement and enhancement of all Content in the Services. Subject to your compliance with these Terms, and solely for so long as you are permitted by us to access and use the Services, Body and Soul hereby grants you a limited, revocable, non-exclusive, non-transferable right and license to access and use the content made available on the Services for

your personal, non-commercial use of the Services and for no other purpose whatsoever. Unless otherwise specified, copying or modifying any content or using content for any purpose other than your personal, non-commercial use of the Services, including use of any such content on any other website or networked computer environment, is strictly prohibited.

The Body and Soul name, logos and affiliated properties, designs and marks are the exclusive property of Body and Soul Ministries, whether registered or unregistered, and may not be used in connection with any product or service that is not ours, or in any manner that is likely to cause confusion as to our endorsement, affiliation or sponsorship of any person, product or service. Nothing contained on the Services should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or other intellectual property without our express prior written consent.

Any other trademarks appearing on the Services are trademarks of their respective owners. Our partners or service providers may also have additional proprietary rights in the content that they make available through the Services. All rights not expressly granted in these Terms are reserved.

## **12. Disputes**

If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Claims shall be heard by a single arbitrator. The place of arbitration shall be Washington D.C. The arbitration shall be governed by the laws of the State of Maryland. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

## **13. Class Action Waiver**

THE PARTIES HERETO AGREE THAT BY ENTERING INTO THIS AGREEMENT, EACH PARTY WAIVES ITS RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY

GENERAL ACTION OR OTHER REPRESENTATIVE ACTION AGAINST THE OTHER IN A COURT OR IN ARBITRATION. THE PARTIES FURTHER AGREE THAT EACH MAY BRING DISPUTES AGAINST EACH OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Dealers and Agent agree otherwise, arbitration claims may not be joined or consolidated in the arbitration proceeding. In no event shall the arbitrator have authority to preside over any form of representative or class proceeding or to issue any relief that applies to any person or entity other than Dealers and/or Agent individually. If this Class Action Waiver is found to be invalid or unenforceable in whole or in part, then the entirety of this Binding Arbitration section (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver.

#### **14. Governing Law and Jurisdiction**

These Terms shall be governed by the laws of the State of Maryland, without regard to principles of conflicts of law.

#### **15. Interpretation; Severability; Waiver; Remedies**

Headings are for convenience only and shall not be used to construe these Terms. If any term of these Terms is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from these Terms. No failure or delay by Body and Soul in exercising any right hereunder will waive any further exercise of that right. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Body and Soul. Body and Soul's rights and remedies hereunder are cumulative and not exclusive.

#### **16. Successors; Assignment; No Third Party Beneficiaries**

These Terms are binding upon and will inure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives, and permitted assigns. You may not assign or transfer these Terms without Body and Soul's prior written consent. Body and Soul may assign its rights, obligations and/or these Terms at any time at its sole discretion without notice to you.

#### **17. Notices**

You consent to receive all communications including notices, agreements, disclosures, or other information from Body and Soul electronically. Body and Soul may communicate by email or by posting to the Services. For support-related inquiries, you may email [info@bodyandsoul.org](mailto:info@bodyandsoul.org). For all other notices to Body and Soul, write to the following addresses:

Body and Soul Ministries

P.O. Box 1005  
Bowie, Maryland 20718

Nothing in these Terms or otherwise limits Body and Soul's right to object to subpoenas, claims, or other demands.

### **18. Entire Agreement**

These Terms, the Privacy Policy, and Subscriber Agreement, incorporated by reference herein, comprise the entire understanding and agreement between you and Body and Soul as to the subject matter hereof, and supersedes any and all prior discussions, agreements and understandings of any kind (including without limitation any prior versions of these Terms), and every nature between and among you and Body and Soul.

### **19. Force Majeure**

Neither Party shall be liable for any failure or delay in performance under these terms (other than for delay in the payment of money due and payable in accordance with these terms) for causes beyond the party's reasonable control and not caused by that party's fault, or negligence, including, but not limited to, "acts of God", acts of government, flood, fire, civil unrest, acts of terror, strikes or other labour problems, computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility, but in each case, only if and to the extent that the non-performing Party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming Party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.