

# PHOENIX FITNESS & YOGA, L.L.C.

## TERMS OF SERVICE

---

Last updated: March 12, 2021

Please read these Terms of Service ("Terms", "Terms of Service") carefully before using the <http://www.phoenixfitnessandyoga.com> website (the "Service") operated by Phoenix Fitness & Yoga, L.L.C. ("us", "we", or "our").

THE SERVICE AND ALL SOFTWARE, PRODUCTS, APPLICATIONS, MOBILE SERVICES, FEATURES AND SERVICES MADE AVAILABLE, DISPLAYED OR OFFERED BY OR THROUGH THE SERVICE IS OWNED AND OPERATED BY OR ON BEHALF OF PHOENIX FITNESS & YOGA, L.L.C, WITH OFFICES LOCATED AT 58 MEYERS CORNER, STAUNTON, VIRGINIA 24401.

BY ACCESSING, BROWSING, OR USING THIS SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, ACCEPTED, AND AGREED TO THESE TERMS OF USE WITHOUT LIMITATION OR QUALIFICATION. IF YOU DO NOT AGREE TO ALL OF THESE TERMS OF USE, DO NOT ACCESS, BROWSE, OR USE THIS SERVICE OR THE CONTENT OR SERVICES HEREON.

CERTAIN PORTIONS OF THE SERVICE MAY BE SUBJECT TO ADDITIONAL TERMS AND CONDITIONS SPECIFIED BY US FROM TIME TO TIME; YOUR USE OF THE SERVICE IS SUBJECT TO THOSE ADDITIONAL TERMS AND CONDITIONS, WHICH ARE INCORPORATED INTO THESE TERMS OF USE BY THIS REFERENCE.

### **I. Privacy Policy**

We respect your privacy. Our collection, use and disclosure practices regarding your personally identifiable information are set forth in our Privacy Policy. Please take some time to review our Privacy Policy as its terms are incorporated herein by reference and your assent to these Terms of Use includes your assent to our Privacy Policy. (LINK TO PRIVACY POLICY HERE.)

### **II. Registration and Eligibility**

We may allow users to establish an account to access various features of the Service, such as registration for classes, memberships, seminars and events and use of its message boards, discussion boards, and other public forums. If you register, you agree to provide us with accurate, truthful, complete, and updated registration information. Failure to do so shall constitute a breach of these Terms of Use, which may result in immediate suspension or termination of your account. Failure to provide accurate, truthful, complete, and updated registration information for certain events or features may also lead to your disqualification, expulsion or denial from such events or features. Further, registrants must agree, without limitation, to comply with the rules and guidelines as established by each instructor and the Assumption of Risk Waiver, all of which are incorporated herein by reference.

You must be 18 years of age or over to register for any function, service or class which requires such registration. This Service is not intended or designed to attract children under the age of 13. If you are under the age of 13, you may not use the Service. If you are a minor age between the ages of 13 and 18 you can use such functions or

services only in conjunction with, and under the supervision of, your parent or guardian who has agreed to these Terms of Use.

If you are a parent or legal guardian agreeing to these Terms of Use for the benefit of a minor between the ages of 13 and 18 you are fully responsible for his or her use of the Service and the User Content (as defined below), including all legal liability he or she may incur. By using this Service, you represent and warrant that you have the right, authority, and capacity to enter into these Terms of Use and to abide by all of the terms and conditions set forth herein.

### **III. Passwords**

When you are required to open an account to use or access this Service or any of its features or services, you will also be asked to provide a user name and password. You agree that we may store and use any registration data, including your user name and password, you provide for use in maintaining your account. You are entirely responsible for maintaining the confidentiality and security of your password and account. You may not use the account, username, or password of someone else at any time. You agree to notify us immediately of any unauthorized use of your account, user name, or password (collectively, a "User ID").

We shall not be liable for any loss that you incur as a result of someone else using your password, either with or without your knowledge. You may be held liable for any losses incurred by Phoenix Fitness & Yoga, L.L.C., its officers, directors, employees, consultants, staff, agents, and representatives due to someone else's use of your account or password. We reserve the right to refuse registration of, or cancel a User ID, in our sole discretion. You may not sell or transfer your account, or otherwise allow any third party to use your account for any purpose.

### **IV. Medical Disclaimer**

You expressly acknowledge and agree that this Service does not provide medical advice and is not a substitute for professional medical diagnosis, treatment or advice or a medical examination. The content of this Service may contain general information relating to certain medical conditions and their treatment. Such information is provided for informational purposes only and is not intended to replace or substitute for advice provided by a physician or other medical provider. You should not use the information provided by this Service for diagnosing a health problem or disease. Prior to participating in any program, workout, training, course, activity, exercise, diet, or use of any product, program, workout, exercise or treatment discussed on this Service, or if you have any questions regarding a medical condition, seek the advice of your physician and other qualified health-care professionals.

You understand that the exercises and programs discussed on this Service can be strenuous and should be scaled or done in moderation. There is an inherent risk in any exercise that, while providing some health benefits, it can also cause unknown health issues. Application or reliance on the techniques, advice, ideas, and suggestions of any person associated with Phoenix Fitness & Yoga, L.L.C. are at your sole discretion and risk. Never disregard professional medical advice or delay in seeking it because of something you have read on the Service. If you think you may have a medical emergency, call your doctor or 911 immediately. We do not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned on the Service. Reliance on any information provided by the Service is entirely at your own risk.

### **V. Use of Service; Limited License**

All content on and otherwise available through the Service, including designs, logos, artwork, text, graphics, images, data, information, software, music, sounds,

interactive features, video, audio and other files, and all other copyrightable or otherwise legally protectable elements of the Service, including, without limitation, their selection, compilation and arrangement, is owned by Phoenix Fitness & Yoga, L.L.C. or its licensors. No content may be modified, distributed, framed, copied, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, licensed, bartered, leased or sold in any form or by any means, in whole or in part, other than as expressly permitted in these Terms of Use or as expressly authorized in writing by us. Subject to these Terms of Use, authorized users may access and use the Service and the Service's content and download or print a reasonable number of copies of portions of the Service content to which the user has properly gained access solely for the user's personal, non-commercial use (unless otherwise expressly authorized in writing by us), provided that the user maintains all copyright or other proprietary notices, without alteration, on all copies of such content.

You may not publish or otherwise distribute Service content, including via the Internet, any social media platform or network or any intranet or extranet Service, or incorporate this Service content in any other database or compilation. You may not use any data mining, robots, scraping or similar data gathering or extraction methods to obtain Service content. Any use of this Service or this Service's content other than as specifically authorized herein is prohibited and will automatically terminate your rights with respect to use of this Service and this Service's content granted herein. We reserve the right to suspend or deny, in our sole discretion, your access to all or any portion of the Service. In some cases the copyright or publicity rights for content on this Service may be held by someone other than Phoenix Fitness & Yoga, L.L.C., and permission to use such materials must be requested from the copyright or publicity rights owner, as applicable. All rights of Phoenix Fitness & Yoga, L.L.C. or its licensors that are not expressly granted in these Terms of Use are reserved to Phoenix Fitness & Yoga, L.L.C. and its licensors.

## **VI. Links to and from this Service**

Unless otherwise notified by us, you are free to link to this Service so long as you make it clear that (a) the linked content belongs to Phoenix Fitness & Yoga, L.L.C.; (b) such content is not your own; and (c) the originating website makes no claim of owning, being related to or owned or controlled by, being under common control with, or sanctioned by, approved by, or endorsed by, Phoenix Fitness & Yoga, L.L.C.. This Service may contain links or references to other websites maintained by third parties over whom we have no control. Such links are provided merely as a convenience. Such third party Services and third party content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any third party Services accessed through this Service or any third party content posted on or available through this Service, including the content, accuracy, advice, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the third party Services or the third party content. Inclusion of, linking to or permitting the use of any third party Service or any third party content does not imply approval or endorsement thereof by Phoenix Fitness & Yoga, L.L.C..

If you decide to leave this Service and access the third party services or to access or use any third party content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any third party Service to which you navigate from this Service or relating to any applications you use or install from this Service.

In addition to other third-party Services accessible through the Service, any YouTube videos published on our Service are implemented as a YouTube Data API Client application. By accessing these videos you agree to also consent to YouTube's Terms of Service (<https://www.youtube.com/t/terms>).

## **VII. Unsolicited Submissions**

We welcome your participation and contributions to our online forums and discussions, including your feedback and comments on your experiences with the Phoenix Fitness & Yoga, L.L.C. program, and Phoenix Fitness & Yoga, L.L.C.'s events, activities, competitions, certificate courses, seminars and workouts. But Phoenix Fitness & Yoga, L.L.C.'s policy is not to, and neither Phoenix Fitness & Yoga, L.L.C. nor any of its employees will, accept or consider unsolicited ideas, suggestions and other material. This is to avoid the possibility of future misunderstandings arising if Phoenix Fitness & Yoga, L.L.C. develops or implements or uses a program, product, equipment, service, feature, workout, software, application or tool that seems to be similar to your own ideas or creative work.

If you do submit any feedback, comments, ideas, suggestions, concepts, workouts, marketing plans, names for new events, or material (collectively, "Submissions") to Phoenix Fitness & Yoga, L.L.C., including any Submissions that we have asked you not to submit to us, then regardless of what your Submission and any accompanying correspondence might say, by submitting your Submission you acknowledge and agree that:

1. At the moment you submit your Submission to Phoenix Fitness & Yoga, L.L.C., you are automatically and irrevocably assigning your Submission and all rights to it to Phoenix Fitness & Yoga, L.L.C., and Phoenix Fitness & Yoga, L.L.C. will have no obligations to you in relation to your Submission;
2. In the event that your Submission is not assignable, you hereby acknowledge and agree that, from the moment you submit your Submission to Phoenix Fitness & Yoga, L.L.C., you grant Phoenix Fitness & Yoga, L.L.C. and its designees a worldwide, perpetual, irrevocable, sublicenseable, transferable, assignable, non-exclusive and royalty free right and license to reproduce, publish, distribute, prepare derivative works from, display, perform, modify, adapt, broadcast, license, sell, offer for sale, translate, make, have made, import and otherwise use, any Submission, including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights related thereto, for any purpose whatsoever, commercial or otherwise, in any medium now known or hereafter devised, without compensation or credit to you, including sublicensing any third party to do any of the foregoing.

To the extent permitted by applicable laws, you also give up any claim that any use by Phoenix Fitness & Yoga, L.L.C. and/or its licensee(s) of any Submission violates any of your rights, including but not limited to moral rights, privacy rights, rights to publicity, proprietary, statutory or other rights, and/or rights to credit for the material or ideas set forth therein;

3. Your Submission will not contain any proprietary or confidential information;
4. Phoenix Fitness & Yoga, L.L.C. is under no obligation to keep your Submission confidential or to otherwise protect your Submission;
5. Phoenix Fitness & Yoga, L.L.C. may already be considering or developing a similar idea, program, concept, product, service, feature, movement, workout, software, application or tool; and
6. We shall determine, in our sole discretion, whether materials you submit to us or to the Service are classified as Submissions or User Content.

**SOFTWARE AND APPLICATIONS AVAILABLE ON THIS SERVICE** Any software or application that is made available via this Service ("Software") is the copyrighted work of Phoenix Fitness & Yoga, L.L.C. and/or third party providers or other suppliers of Phoenix Fitness & Yoga, L.L.C. In addition to these Terms of Use, your use of the Software is governed by the terms of the end-user license agreement, if any, which accompanies or is included with the Software ("License Agreement"), which License Agreement is incorporated herein by reference. End users shall not install or use any Software that is accompanied by or includes a License Agreement unless the end user first agrees to the License Agreement terms, and shall not circumvent or attempt to circumvent any click-through consents required to install or use any Software. For any Software not accompanied by a License Agreement, the following shall constitute the License

Agreement: "Subject to the Phoenix Fitness & Yoga, L.L.C. Terms of Use and your agreement therewith, Phoenix Fitness & Yoga, L.L.C. hereby grants to you, the user, a personal, non-transferable, non-exclusive license during the term of this license agreement to use this software for its intended purpose in accordance with this license agreement, and for no other purpose. Please note that this software is owned by Phoenix Fitness & Yoga, L.L.C. and/or third party providers or other suppliers of Phoenix Fitness & Yoga, L.L.C. and is protected by copyright laws and international treaty provisions. Any reproduction, exchange, transfer or redistribution of this software is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible."

WITHOUT LIMITING THE FOREGOING, COPYING, REPRODUCTION, REVERSE ENGINEERING, DECOMPILING, DERIVING SOURCE CODE FROM, OR DISASSEMBLING, IN WHOLE OR IN PART, OF THE SOFTWARE MADE AVAILABLE VIA THIS SERVICE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION, OR CREATING DERIVATIVE WORKS BASED OFF SUCH SOFTWARE, IS EXPRESSLY PROHIBITED. THE SOFTWARE MAY BE SUBJECT TO OTHER LIMITATIONS, DISCLAIMERS OR WARRANTIES SET FORTH IN THE APPLICABLE LICENSE AGREEMENT ENTERED INTO BY YOU IN CONNECTION WITH YOUR PURCHASE OR USE OF THE SOFTWARE. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF SUCH LICENSE AGREEMENT AND THESE TERMS OF USE, THE LICENSE AGREEMENT SHALL CONTROL WITH RESPECT TO THE SOFTWARE ONLY. THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE APPLICABLE LICENSE AGREEMENT. EXCEPT AS WARRANTED IN THE LICENSE AGREEMENT, AND SUBJECT TO THE "NO WARRANTIES" SECTION OF THESE TERMS OF USE, PHOENIX FITNESS & YOGA, L.L.C. AND PHOENIX FITNESS & YOGA, L.L.C.'S THIRD PARTY PROVIDERS AND SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

### **VIII. User Content**

By submitting, posting, uploading, displaying, performing, transmitting, or otherwise distributing information, including workout, nutrition, gym and biographical information, messages, notes, text, listings, videos, pictures, graphics, drawings, audio, music and sound, text, data, communications or other content ("User Content"), to this Service, you authorize Phoenix Fitness & Yoga, L.L.C. to treat any User Content as non-confidential and non-proprietary. You retain all of your rights in User Content you post to our Service. However, from the time of uploading or submission of the User Content, you grant Phoenix Fitness & Yoga, L.L.C., its subsidiaries, entities owned, related to or controlled by Phoenix Fitness & Yoga, L.L.C., officers, directors, employees, staff, consultants, agents, and representatives, a nonexclusive, worldwide, perpetual, irrevocable, royalty-free, fully-paid, sublicenseable and freely transferable right and license to reproduce, publish, distribute, prepare derivative works from, display, perform, modify, adapt, broadcast, license, sell, translate, and otherwise use User Content, in whole or in part, including, without limitation, in connection with the operation, promotion, marketing, and advertising of the business, products, programs, events and services of Phoenix Fitness & Yoga, L.L.C., including the exploitation thereof, in each case in any media formats and through any means or methods whether now known or hereafter discovered.

You agree that Phoenix Fitness & Yoga, L.L.C. may so exploit your User Content without compensation or credit to you, including by sublicensing any third party to do any of the foregoing. To the extent permitted by applicable laws, you also give up any claim that any use by Phoenix Fitness & Yoga, L.L.C. and/or its third party providers or

sublicensees of any User Content violates any of your rights, including but not limited to moral rights, privacy rights, rights to publicity, proprietary, statutory or other rights, and/or rights to credit for the material or ideas set forth therein. You agree that Phoenix Fitness & Yoga, L.L.C. may publish or otherwise disclose your name, age and other information provided by you in connection with your Phoenix Fitness & Yoga, L.L.C. ID or event registration User Content.

You are in the best position to know if the User Content you submit to this Service is legally allowed. You agree that you shall not upload or otherwise transmit on or through the Service any Content that is subject to any third-party rights. By posting User Content on this Service, you warrant and represent that you own the rights to the User Content or are otherwise authorized to post, upload, distribute, display, perform, transmit, or otherwise use User Content, and to license and permit Phoenix Fitness & Yoga, L.L.C. to exploit the User Content as described above, and that Phoenix Fitness & Yoga, L.L.C.'s exploitation of the User Content as described above will not violate any rights of or require any compensation to any third party.

You are solely responsible for the User Content, and any other content, material or data that you upload, publish or display on or through this Service, or transmit to or share with others. You may not post, transmit, or distribute User Content that you did not create or that you do not have permission to post. You understand and agree that Phoenix Fitness & Yoga, L.L.C. may, but is not obligated to, review this Service and may delete, edit, refuse to post or remove (without notice) any Service content or User Content in its sole discretion, for any reason or no reason, including User Content that Phoenix Fitness & Yoga, L.L.C. believes violates these Terms of Use. Phoenix Fitness & Yoga, L.L.C. has no backup or storage obligations regarding User Content.

Phoenix Fitness & Yoga, L.L.C. does not verify the accuracy or authenticity of any User Content, and makes no representations or warranties with respect to any User Content. Phoenix Fitness & Yoga, L.L.C. makes no representations concerning and is under no obligation to prevent, the downloading, distribution, linking to, or re-posting of your User Content by third parties, including by or through search engines. You expressly waive any and all claims you may have against Phoenix Fitness & Yoga, L.L.C. and release Phoenix Fitness & Yoga, L.L.C. from any and all liability arising from or related to the User Content, including any exploitation of the User Content by a third party, whether or not authorized by Phoenix Fitness & Yoga, L.L.C..

### **IX. Copyright and Content**

The contents of this Service are protected by copyright under United States and foreign laws. Title to the content of this Service remains with Phoenix Fitness & Yoga, L.L.C. or its licensors. Any use of such content not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws. Content and features are subject to change or termination without notice in the editorial discretion of Phoenix Fitness & Yoga, L.L.C.. All rights not expressly granted herein are reserved to Phoenix Fitness & Yoga, L.L.C. and its licensors.

### **X. Use of Public Forums and Inappropriate Content**

Phoenix Fitness & Yoga, L.L.C. may offer and maintain certain discussion boards, user forums and other places where the Phoenix Fitness & Yoga, L.L.C. user community can post questions and share information, ideas, workouts, comments or advice. You agree that you will not upload or transmit any User Content of any type to any Public Forums of this Service (including, without limitation, message boards, blogs, vlogs, bulletin boards, list serves, wiki's or other open forums made available through our Service) (a "Public Forum") that infringe or violate any rights of any party.

By submitting any User Content to the Public Forums, you agree that such User Content is non-confidential for all purposes. If you use a Public Forum on this Service, you are solely responsible for your own communications, the consequences of posting those communications, and your reliance on any communications found on our Service.

Phoenix Fitness & Yoga, L.L.C. and any party involved in creating, producing, delivering or maintaining this Service are not responsible for the consequences of any communications in the Public Forums. We expressly disclaim responsibility for and liabilities resulting from, any information or communications from and between users of the Public Forums. In cases where you feel threatened or believe someone else is in danger, you should contact your local law enforcement agency and Phoenix Fitness & Yoga, L.L.C. immediately.

You agree not to (including not facilitating or assisting), directly or indirectly, upload, download, link, stream, display, perform, promote, advertise, transmit, or otherwise distribute any content that: (a) is libelous, defamatory, obscene, pornographic, abusive, threatening, unlawful, fraudulent, harmful, harassing, tortious, vulgar, that may be invasive or in violation of another's right of privacy or publicity, hateful, racially, ethnically or otherwise objectionable as determined by us in our sole discretion; (b) advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, provincial, national or foreign law or regulation; (c) advertises or otherwise solicits funds or is a solicitation for goods or services; (d) distributes or facilitates the distribution of viruses, corrupted data, trojan horses, bots, keystroke loggers, worms, time bombs, cancelbots or other computer programming routines or computer code that are intended to and/or actually damage, detrimentally interfere with, surreptitiously intercept or mine, obtain unauthorized access to, scrape or expropriate any system, software, data or personal information; (e) adversely affects the availability of Service resources to other users (e.g., excessive shouting (use of all caps), flooding (continuous posting of repetitive text) or excessively large embedded images); (f) solicits or disseminates surveys (other than any such functionality expressly provided for by the Public Forum that otherwise complies with these Terms of Use), contests, pyramid schemes, chain letters, junk mail, spam, or unsolicited messages; (g) creates a false identity for the purpose of misleading others, to be determined in our sole discretion; (h) transmits or facilitates the transmission of any content to an e-mail address, messenger-feature address or other location that is not yours or to which you do not have the expressly authorized right to use without securing the prior authorization of the owner or licensor of such other address or other location; and (i) transmits or facilitates the transmission of any User Content that infringes any patent, trademark, trade secret, copyright, privacy, publicity or other proprietary, statutory, common law or other rights of any party.

Phoenix Fitness & Yoga, L.L.C. reserves the right to terminate your receipt, transmission, or other distribution of any such material using this Service, and, if applicable, to delete any such material from its servers as well as to take any other action required or permitted under any applicable laws. Phoenix Fitness & Yoga, L.L.C. intends to cooperate fully with any law enforcement officials or agencies in the investigation of any violation of these Terms of Use or any applicable laws.

## **XI. Other Prohibited Uses**

You are prohibited from violating or attempting to violate, and agree not to violate or attempt to violate, any security features of this Service, including, without limitation: (a) accessing or attempting to access any content or data not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of this Service, or any associated system or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with service to any user, host or network; (d) using this Service to send unsolicited e-mail or other communications, including, without limitation, promotions or advertisements for products or services; (e) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to human-perceivable form any of the source code used by Phoenix Fitness & Yoga, L.L.C. in providing this Service; and (f) imposing (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers')

infrastructure. Any violation of system or network security may subject you to civil and/or criminal liability.

## **XII. Alleged Violations (Termination)**

We reserve the right to suspend or terminate your use of this Service. To ensure that Phoenix Fitness & Yoga, L.L.C. provides a high quality experience for you and other users of this Service, you agree that Phoenix Fitness & Yoga, L.L.C. or its representatives may access your account and records on a case-by-case basis to investigate complaints or allegations of abuse, infringement of third party rights, or other unauthorized uses of this Service. We do not intend to disclose the existence or occurrence of such an investigation unless required by law, but we reserve the right to suspend or terminate your account or your access to this Service immediately, with or without notice to you, and without liability to you, if we believe that you have violated any of the Terms of Use, furnished Phoenix Fitness & Yoga, L.L.C. with false or misleading information, or interfered with the use of this Service by others.

## **XIII. No Warranties**

PHOENIX FITNESS & YOGA, L.L.C. AND ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING ANY CONTENT, SOFTWARE OR SERVICES CONTAINED ON THE SERVICE, AND ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, STAFF, REPRESENTATIVES, CONTRACTORS OR AGENTS (COLLECTIVELY, THE "PHOENIX FITNESS & YOGA, L.L.C. PARTIES") HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS.

THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES ARE MAKING THIS SERVICE (INCLUDING WITHOUT LIMITATION, THIS SERVICE'S CONTENT AND ANY SOFTWARE) AVAILABLE "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. YOU ASSUME THE RISK OF ANY AND ALL DAMAGE OR LOSS FROM USE OF, OR INABILITY TO USE, THIS SERVICE, INCLUDING, WITHOUT LIMITATION, PHYSICAL INJURY OR DEATH AS WELL AS DAMAGES TO PERSONAL PROPERTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW,

THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, REGARDING THIS SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES DO NOT WARRANT THAT THIS SERVICE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THIS SERVICE WILL BE UNINTERRUPTED, SECURE, BUG-FREE OR ERROR-FREE; NOR DO THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE OR AS TO THE ACCURACY, RELIABILITY, QUALITY OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE. SUBJECT TO ANY APPLICABLE LAWS WHICH PROHIBIT THE FOLLOWING LIMITATIONS AND EXCLUSIONS, THE DISCLAIMERS OF LIABILITY CONTAINED IN THIS "NO WARRANTIES" SECTION APPLY TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF THIS SERVICE, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION.



PHOENIX FITNESS & YOGA, L.L.C.'S FAILURE TO ENFORCE ANY TERM OF PHOENIX FITNESS & YOGA, L.L.C.'S RULES SHALL NOT CONSTITUTE A WAIVER OF THAT PROVISION.

THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES DO NOT ENDORSE AND ARE NOT RESPONSIBLE FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE OR STATEMENT, NOR FOR ANY LIBELOUS, DEFAMATORY, OBSCENE, PORNOGRAPHIC, ABUSIVE, THREATENING, UNLAWFUL, FRAUDULENT, HARMFUL, HARASSING, TORTIOUS, VULGAR, HATEFUL, RACIALLY, ETHNICALLY OR OTHERWISE OBJECTIONABLE OR OFFENSIVE POSTING OR CONDUCT, ON THIS SERVICE BY ANYONE OTHER THAN AUTHORIZED PHOENIX FITNESS & YOGA, L.L.C. EMPLOYEES WHILE ACTING IN THEIR OFFICIAL CAPACITIES. UNDER NO CIRCUMSTANCES WILL THE PHOENIX FITNESS & YOGA, L.L.C. PARTIES BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED ON OR THROUGH THIS SERVICE. IT IS YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THIS SERVICE. PLEASE SEEK THE ADVICE OF PROFESSIONALS, AS APPROPRIATE, REGARDING THE EVALUATION OF ANY SPECIFIC INFORMATION, OPINION, ADVICE OR OTHER CONTENT.

PHOENIX FITNESS & YOGA, L.L.C. DOES NOT ENDORSE, WARRANT OR GUARANTY ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH THIS SERVICE AND PHOENIX FITNESS & YOGA, L.L.C. WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

#### **XIV. Accuracy & Completeness**

Due to constant advances in technology, strength and conditioning programs, and medicine, the possibility of typographical error, unexpected scheduling changes of meetings, events, certificate courses, seminars, contests, demonstrations and educational opportunities posted on this Service, and the wide variety of authors contributing to this Service, readers are encouraged to confirm the information contained herein with other sources. Corrections and additions will be made only as allowed by the availability of time and resources. The accuracy and timeliness of the information on this Service cannot be guaranteed.

YOU ACKNOWLEDGE AND AGREE THAT PHOENIX FITNESS & YOGA, L.L.C. DOES NOT, AS A PRACTICE, MONITOR THE ACCURACY OR RELIABILITY OF CONTENT ON THIS SERVICE, NOR WILL WE HAVE ANY OBLIGATION OR LIABILITY TO DO SO. ALTHOUGH CARE HAS BEEN TAKEN IN PREPARING THE CONTENT, ALL INFORMATION, SERVICES AND CONTENT THAT IS PROVIDED HERE OR COULD BE REACHED BY USING THIS SERVICE AS A STARTING POINT IS PROVIDED TO YOU "AS-IS", "WITH ALL FAULTS" AND "AS AVAILABLE". YOU AGREE THAT ACCESS TO AND USE OF THIS SERVICE AND THE INFORMATION, SERVICES AND CONTENT AVAILABLE THEREON IS AT YOUR OWN RISK. NEITHER PHOENIX FITNESS & YOGA, L.L.C. NOR ANY AUTHOR OR SUPPLIER CONTRIBUTING TO THIS SERVICE IS RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN ANY INFORMATION PROVIDED OR THE RESULTS OBTAINED FROM THE USE OF SUCH INFORMATION, SERVICES OR CONTENT.

#### **XV. Limited Liability**

NEITHER PHOENIX FITNESS & YOGA, L.L.C., NOR ANY PARTY INVOLVED IN CREATING, PRODUCING, DELIVERING OR MAINTAINING THIS SERVICE AND ANY CONTENT THEREON SHALL BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, ARISING OUT OF OR RELATING TO ACCESS TO (I) THE USE OF, OR

INABILITY TO USE THIS SERVICE OR ANY INFORMATION, SERVICES OR CONTENT AVAILABLE THEREON OR WHICH CAN BE REACHED BY USING THIS SERVICE AS A STARTING POINT, (II) THE BREACH OF ANY REPRESENTATION OR WARRANTY, (III) THE USE OR DOWNLOADING OF ANY SOFTWARE OR APPLICATION OWNED OR OPERATED BY PHOENIX FITNESS & YOGA, L.L.C. OR ANY THIRD PARTY, IN CONNECTION WITH THIS SERVICE, OR (IV) ANY ERRORS OR OMISSIONS IN THE INFORMATION, SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT PHOENIX FITNESS & YOGA, L.L.C., ANY PARTICIPATING ORGANIZATION OR ANY PARTY INVOLVED IN CREATING, PRODUCING, DELIVERING OR MAINTAINING THIS SERVICE OR ANY INFORMATION, SERVICES OR CONTENT THEREON IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION INCLUDES, BUT IS NOT LIMITED TO, PERSONAL INJURY, INCLUDING DEATH AND DISABILITY AS WELL AS DAMAGES TO PERSONAL PROPERTY. IN THE EVENT ANY CLAIM RELATING TO THE PERFORMANCE OR NONPERFORMANCE BY PHOENIX FITNESS & YOGA, L.L.C. PURSUANT TO THESE TERMS OF USE, OR IN ANY OTHER WAY CONCERNING THIS SERVICE, IS MADE BY YOU, THE ACTUAL DAMAGES TO WHICH YOU MAY BE ENTITLED SHALL BE LIMITED TO THE FEES, IF ANY, PAID BY YOU FOR USE OF THIS SERVICE.

#### **XVI. Indemnification**

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS PHOENIX FITNESS & YOGA, L.L.C. AND ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, DELIVERING OR MAINTAINING THIS SERVICE AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, STAFF, AGENTS, LICENSORS, LICENSEES, SUPPLIERS AND THIRD PARTY PARTNERS FROM AND AGAINST ALL LOSSES, EXPENSES, DAMAGES AND COSTS, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY AND ACCOUNTING FEES, RESULTING FROM (I) YOUR VIOLATION OF THESE TERMS OF USE, (II) YOUR VIOLATION OF ANY THIRD PARTY RIGHTS, INCLUDING WITHOUT LIMITATION, ANY COPYRIGHT, TRADEMARK, PROPERTY, PUBLICITY OR PRIVACY RIGHT, (III) ANY CLAIM THAT YOUR USER CONTENT CAUSED DAMAGE TO A THIRD PARTY, (IV) THE BREACH BY YOU OF ANY REPRESENTATIONS, WARRANTIES AND/OR COVENANTS CONTAINED HEREIN OR (V) YOUR USE OF THIS SERVICE.

#### **XVII. Modifications**

Phoenix Fitness & Yoga, L.L.C. may, in its sole discretion and without prior notice, (a) revise these Terms of Use; (b) modify this Service, including the Privacy Policy; or (c) discontinue this Service (in whole or in part) at any time. Phoenix Fitness & Yoga, L.L.C. shall post any revision to these Terms of Use to this Service, and the revision shall be effective immediately on such posting. You agree to review these Terms of Use and other online policies posted on this Service periodically to be aware of any revisions. You agree that, by continuing to use or access this Service following notice of any revision or the posting of any revision, you shall abide by any such revision. When we change the Terms of Use or Privacy Policy in a material manner, we will update the 'last modified' date at the bottom of this page.

#### **XVIII. Assignment**

We may assign these Terms of Use with or without notice to one or more third parties.

#### **XIX. Complete Agreement**

Except as expressly provided in any particular "legal notice" or end user software license agreement found on this Service, these Terms of Use and our Privacy Policy constitute the entire agreement between you and Phoenix Fitness & Yoga, L.L.C. with respect to the use of this Service.

For Additional Information If you have any questions about these Terms of Service, please contact Trish LaGrua at [trish@phoenixfitnessandyoga.com](mailto:trish@phoenixfitnessandyoga.com) or (540) 649-1671.