

KINEMA FITNESS

TERMS OF USE

Welcome to Kinema Fitness! We design, operate and manage premier fitness centers for high end hospitality, Fortune 500 companies, and Class A commercial real estate buildings. Our fitness centers feature classes, holistic wellness guidance, and personal training services.

These Terms of Use govern your use of Kinema Fitness (“the Company,” “we,” “our,” or “us”), which includes our website and all related widgets, tools, data, software, and other services provided by us (the “Services”).

This document, together with our Privacy Policy and any other terms specifically referred to therein, constitute a legally binding agreement (the “Agreement”) between you and the Company in relation to your use of our Services.

Changes to Terms of Use

We reserve the right to change, alter, replace or otherwise modify (collectively “Changes”) these Terms of Use at any time. The date of last modification is stated in the footer of these Terms of Use.

When we make any updates to these Terms of Use, we will highlight this fact on the website or online platform. In addition, if you register an account and these Terms of Use are subsequently changed in any material respect (for example, for security, legal, or regulatory reasons), we will notify you in advance by sending an email to the email address that you have provided to us. You will have no obligation to continue using the Services following any such notification, but if you do not terminate your account as described in the Termination section below, your continued use of the Services will constitute your acceptance of the revised Terms of Use.

Your Use of the Services

Subject to your strict compliance with these Terms of Use, the Company grants you a limited, personal, non-exclusive, revocable, non-assignable, and non-transferable right and license to use the Services in order to generate text, place and manage your account and orders (collectively “Content”).

The above licenses are conditional upon your strict compliance with these Terms of Use including, without limitation, the following:

(i) You must not copy, rip or capture, or attempt to copy, rip or capture, any Content from the Services or any part of the Services, other than by means of download or sharing in circumstances where we have elected to permit downloads and sharing of the relevant Content.

(ii) You must not employ scraping or similar techniques to aggregate, repurpose, republish or otherwise make use of any Content.

(iii) You must not alter or remove, attempt to alter or remove, any trademark, copyright or other proprietary or legal notices contained in, or appearing on, the Services or any Content appearing on the Services (other than your Content).

(iv) You must not, and must not permit any third party to, copy or adapt the object code of the website, mobile application or any of the Services, or reverse engineer, reverse assemble, decompile, modify or attempt to discover any source or object code of any part of the Services, or circumvent or attempt to circumvent or copy any copy protection mechanism or access any rights management information pertaining to Content other than your Content.

You agree to comply with the above conditions and acknowledge and agree that Kinema Fitness has the right, in its sole discretion, to terminate your account or take such other action as we see fit if you breach any of the above conditions or any of the other terms of these Terms of Use. This may include taking court action and/or reporting offending users to the relevant authorities.

User License Grant to Kinema Fitness

Subject to the obligation to maintain the confidentiality of Personal Information about a user as identified in the Privacy Policy, You, as a user of the Services grant Kinema Fitness a non-exclusive, fully paid-up, royalty-free, perpetual, and irrevocable license, throughout the universe, to use, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, communicate to the public, and otherwise utilize and exploit your de-identified (anonymized) Personal Information and Content on the Services to:

- improve the Service or the functionality of Kinema Fitness;
- to respond to user inquiries or technological issues or problems;

- for external and internal marketing purposes;
- to comply with applicable laws; for example, to respond to regulatory authorities responsible for oversight of government benefit programs or our operations; to parties or courts in the course of judicial or administrative proceedings; to law enforcement officials during an investigation

Intellectual Property Rights

The Services and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by the Company, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

All related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs, and slogans on these Services are the trademarks of their respective owners.

Third Party Websites and Services

The Services may provide you with access to and/or integration with third party websites, databases, networks, servers, information, software, programs, systems, directories, applications, products or services (hereinafter “External Services”).

We utilize Mindbody and Twin Oaks software to allow you to view, register and pay for our Services. Your use of Mindbody and Twin Oak’s software is subject to their Terms of Use and Privacy Policy. Learn more about Mindbody at their website, www.mindbodyonline.com, and Twin Oaks at www.healthclubsoftware.com.

The Company does not have or maintain any control over External Services, and is not and cannot be responsible for their content, operation or use. By linking or otherwise providing access to any External Services, the Company does not give any representation, warranty, or endorsement, express or implied, with respect to the legality, accuracy, quality or authenticity of content, information or services provided by such External Services.

External Services may have their own terms of use and/or privacy policy, and may have different practices and requirements to those operated by the Company with respect to the Services. You are solely responsible for reviewing any terms of use, privacy policy, or other terms governing your use of these External Services, which you use at your own risk. You are advised to make reasonable inquiries and investigations before entering into any transaction, financial or otherwise, and whether online or offline, with any third party related to any External Services.

You are solely responsible for taking the precautions necessary to protect yourself from fraud when using External Services, and to protect your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content and material that may be included on or may emanate from any External Services.

The Company disclaims any and all responsibility or liability for any harm resulting from your use of External Services, and you hereby irrevocably waive any claim against the Company with respect to the content or operation of any External Services.

Disclaimer

THE SERVICES, INCLUDING, WITHOUT LIMITATION, THE WEBSITE AND ONLINE PLATFORM AND ALL CONTENT AND SERVICES ACCESSED THROUGH OR VIA THE WEBSITE OR OTHERWISE, ARE PROVIDED “AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS.”

YOU AGREE AND ACKNOWLEDGE THAT YOU ASSUME FULL, EXCLUSIVE, AND SOLE RESPONSIBILITY FOR THE USE OF AND RELIANCE ON THE SERVICES, AND YOU FURTHER AGREE AND ACKNOWLEDGE THAT YOUR USE OF OR RELIANCE ON THE SERVICES IS MADE ENTIRELY AT YOUR OWN RISK. YOU FURTHER ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO COMPLY WITH ALL APPLICABLE LAWS WHILE USING THE SERVICE.

WHILE THE COMPANY USES REASONABLE ENDEAVOURS TO CORRECT ANY ERRORS OR OMISSIONS IN THE SERVICES AS SOON AS PRACTICABLE ONCE THEY HAVE BEEN BROUGHT TO THE COMPANY’S ATTENTION, THE COMPANY MAKES NO PROMISES, GUARANTEES, REPRESENTATIONS, OR WARRANTIES OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) REGARDING THE SERVICES, OR ANY PART OR PARTS THEREOF, ANY CONTENT, OR ANY LINKED SERVICES OR OTHER EXTERNAL SERVICES. THE COMPANY DOES NOT WARRANT THAT YOUR USE OF THE SERVICES WILL BE ACCURATE

OR RELIABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICES OR ANY PART OR PARTS THEREOF, THE CONTENT, OR THE SERVERS ON WHICH THE SERVICES OPERATES ARE OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE COMPANY DOES NOT WARRANT THAT ANY TRANSMISSION OF CONTENT UPLOADED TO THE SERVICES WILL BE SECURE OR THAT ANY ELEMENTS OF THE SERVICES DESIGNED TO PREVENT UNAUTHORISED ACCESS, SHARING OR DOWNLOAD OF CONTENT WILL BE EFFECTIVE IN ANY AND ALL CASES, AND DOES NOT WARRANT THAT YOUR USE OF THE SERVICES IS LAWFUL IN ANY PARTICULAR JURISDICTION.

THE COMPANY AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND SHAREHOLDERS, SPECIFICALLY DISCLAIM ALL OF THE FOREGOING WARRANTIES AND ANY OTHER WARRANTIES NOT EXPRESSLY SET OUT HEREIN TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES REGARDING NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

WHERE THE LAW OF ANY JURISDICTION LIMITS OR PROHIBITS THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES AS SET OUT ABOVE, THE ABOVE DISCLAIMERS SHALL NOT APPLY TO THE EXTENT THAT THE LAW OF SUCH JURISDICTION APPLIES TO THIS AGREEMENT.

Health Disclaimer

This Website may provide sports training, wellness, physical training, fitness, nutrition and other related information, applications, and content. If so, then it is intended only to assist users in their personal training, wellness, physical fitness, nutrition and sports efforts. Company is not a medical organization and cannot – and does not – give you medical advice or a medical diagnosis. Nothing contained in this Website should be construed as medical advice or a medical diagnosis. Any information and reports generated by Company should not be interpreted as a substitute for physician consultation, evaluation, treatment, or good sense and personal judgment about one's own condition.

The risk of injury from participation in a fitness regimen and/or from the performance of any exercise is significant, including the potential for catastrophic injury or death. You should and must consult a medical professional before undertaking any fitness regimen or exercise program, including any exercises

or techniques set forth or described on this Website. Any text, pictures, and description set forth in this Website is for educational purposes only does not advise that you or any other particular Website user undertake or perform any particular technique or exercise.

The Website is not intended for use by minors, pregnant women, or individuals with any type of health condition and/or health problem. As are all users, such individuals are specifically warned to seek professional medical advice prior to initiating any form of sports training, physical training, or exercise regimen.

Limitation of Liability

THE COMPANY'S AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND SHAREHOLDERS, LIABILITY TO YOU IS LIMITED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE COMPANY BE LIABLE FOR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS, LOST DATA, LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY COST TO PROCURE SUBSTITUTE GOODS OR SERVICES, OR ANY INTANGIBLE LOSS, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE WEBSITE, OR ANY OTHER SERVICES PROVIDED TO YOU BY THE COMPANY.

This limitation shall apply regardless of whether the damages arise out of breach of contract, tort, any form of error, or breakdown in the function of the service, or any other legal theory or form of action.

ALTHOUGH NOT AN EXHAUSTIVE LIST AND WITHOUT LIMITING THE FOREGOING, THE COMPANY AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND SHAREHOLDERS, SHALL HAVE NO LIABILITY FOR:

1. ANY LOSS OR DAMAGE ARISING FROM:

(A) YOUR RELIANCE ON THE CONTENT OF THE SERVICES, INCLUDING WITHOUT LIMITATION, CONTENT ORIGINATING FROM THIRD PARTIES, OR FROM ANY COMMUNICATION WITH THE SERVICES;

(B) YOUR INABILITY TO ACCESS OR USE THE SERVICES OR ANY PART OR PARTS THEREOF, INCLUDING DELETION OR CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICE, OR YOUR ABILITY TO ACCESS ANY CONTENT OR ANY EXTERNAL SERVICES VIA THE SERVICES;

(C) ANY CHANGES THAT THE COMPANY MAY MAKE TO THE SERVICES OR ANY PART THEREOF, OR ANY TEMPORARY OR PERMANENT SUSPENSION OR CESSATION OF ACCESS TO THE SERVICES OR ANY CONTENT IN OR FROM ANY OR ALL TERRITORIES;

(D) ANY ACTION TAKEN AGAINST YOU BY THIRD PARTY RIGHTSHOLDERS WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF SUCH THIRD PARTY'S RIGHTS RELATING TO YOUR CONTENT OR YOUR USE OF THE SERVICES, OR ANY ACTION TAKEN AS PART OF AN INVESTIGATION BY THE COMPANY OR ANY RELEVANT LAW ENFORCEMENT AUTHORITY REGARDING YOUR USE OF THE SERVICES;

(E) ANY ERRORS OR OMISSIONS IN THE SERVICES'S TECHNICAL OPERATION, OR FROM ANY INACCURACY OR DEFECT IN ANY CONTENT OR ANY INFORMATION RELATING TO CONTENT;

(F) YOUR FAILURE TO PROVIDE THE COMPANY WITH ACCURATE OR COMPLETE INFORMATION, OR YOUR FAILURE TO KEEP YOUR ACCOUNT LOGIN INFORMATION SUITABLY CONFIDENTIAL;

(G) ANY LOSS OR DAMAGE TO ANY COMPUTER HARDWARE OR SOFTWARE, ANY LOSS OF DATA, OR ANY LOSS OR DAMAGE FROM ANY SECURITY BREACH;

(H) ANY LOSS OF PROFITS, INCLUDING THOSE CAUSED BY YOUR RELIANCE ON THE SERVICES, OR ANY LOSS YOU SUFFER WHETHER OR NOT IT IS FORESEEABLE.

(I) ANY BODILY HARM THAT RESULTS FROM YOUR USE OF OUR PRODUCTS OR SERVICES.

ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES MUST BE NOTIFIED TO THE COMPANY AS SOON AS POSSIBLE.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH CASES, YOU ACKNOWLEDGE AND

AGREE THAT SUCH LIMITATIONS AND EXCLUSIONS REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND THE COMPANY AND ARE FUNDAMENTAL ELEMENTS OF THE BARGAIN BETWEEN YOU AND THE COMPANY, AND THAT THE COMPANY'S LIABILITY WILL BE LIMITED ENTIRELY, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Indemnification

You hereby agree to indemnify, defend and hold harmless the Company, its successors, assigns, affiliates, agents, directors, officers, employees, and shareholders from and against any and all claims, obligations, damages, losses, expenses, and costs, including reasonable attorneys' fees, resulting from:

- (i) any violation by you of these Terms of Use or
- (ii) any activity related to your account, be it by you or by any other person accessing your account with or without your consent.

Data Protection, Privacy, and Cookies

All personal data that you provide to us in connection with your use of the Services is collected, stored, used, and disclosed by the Company in accordance with our Privacy Policy, which is in compliance with California privacy law and the European Union's General Data Protection Regulation (GDPR). In addition, in common with most websites, we use cookies, location data, and other user information to help us understand how people are using the Services, so that we can continue to improve the service we offer. The Privacy Policy, as may be updated by the Company from time to time in accordance with its terms, is hereby incorporated into these Terms of Use, and you hereby agree to the collection, use and disclose practices set forth therein.

Changes to the Services, Accounts, and Pricing

The Company reserves the right at any time and for any reason to suspend, discontinue, terminate or cease providing access to the Services or any part thereof, temporarily or permanently, and whether in its entirety or with respect to individual territories only. In the case of any temporary or permanent suspension, discontinuation, termination or cessation of access, we shall use its reasonable endeavors to notify registered users of such decision in advance.

You hereby agree that the Company and its subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers, and shareholders shall not be liable to you or to any third party for any changes or modifications to the Website, and/or any Services that we may wish to make from time to time, or for any decision to suspend, discontinue or terminate the Website, the Services or any part or parts thereof, or your possibility to use or access the same from or within any territory or territories.

We may change the features of any type of account, may withdraw or, or introduce new features, products or types of account at any time and for any reason, and may change the prices charged for any of its Services from time to time. In the event of any increase in the price or material reduction in the features of your Account, such change(s) will be communicated to you. We will provide notifications of the proposed changes by email to the then current email address that we have on record. You will have no obligation to continue using the Services following any such notification, but if you do not terminate your account, your continued use of your account will constitute your acceptance of the changes to your account.

Termination

You may terminate this Agreement at any time by deleting your account and thereafter by ceasing to use the Services. If you terminate this Agreement you no longer have access to any of your account information, including any Content you sent or received.

The Company may suspend your access to the Services and/or terminate this Agreement at any time.

Assignment to Third Parties

The Company may assign its rights and (where permissible by law) its obligations under this Agreement, in whole or in part, to any third party at any time without notice including without limitation, to any person or entity acquiring all or substantially all of the assets or business of the Company. You may not assign this Agreement or the rights and duties hereunder, in whole or in part, to any third party without the prior written consent of the Company.

Severability

Should one or more provisions of these Terms of Use be found to be unlawful, void or unenforceable, such provision(s) shall be deemed severable and will not affect the validity and/or enforceability of the

remaining provisions of the Terms of Use, which will remain in full force and effect.

Entire Agreement

These Terms of Use, together with the Privacy Policy, constitute the entire agreement between you and the Company with respect to your use of the Services and supersede any prior agreement between you and the Company. Any modifications to this Agreement must be made in writing.

Third Party Rights

These Terms of Use are not intended to give rights to anyone except you and the Company. This does not affect our right to transfer our rights or obligations to a third party.

Applicable Law and Jurisdiction

These Terms of Use shall be construed in accordance with and governed by the laws of the United States and the State of California, without reference to their rules regarding conflicts of law.

ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION OR VALIDITY THEREOF, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE DETERMINED BY ARBITRATION IN SAN FRANCISCO, CALIFORNIA BEFORE ARBITRATOR(S). THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES AND IN ACCORDANCE WITH THE EXPEDITED PROCEDURES IN THOSE RULES OR PURSUANT TO JAMS' STREAMLINED ARBITRATION RULES AND PROCEDURES. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION.

Disclosures

More information about Kinema Fitness is available by contacting us at info@kinemafitness.com.

ACKNOWLEDGEMENT

BY USING OR REGISTERING WITH THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS OF USE AND AGREE TO BE BOUND BY THEM.

Last Updated: November 30, 2020