

# CYCLONE FITNESS Terms of Service

LAST UPDATED: MARCH 14, 2014

PLEASE READ THIS DOCUMENT CAREFULLY. Cyclone Fitness, LLC ("Cyclone," "we," or "us") is an online fitness and nutrition community located at [cyclonefitness.com](http://cyclonefitness.com) (the "Cyclone Site") with related mobile applications and desktop applications, (collectively, the "Cyclone Service"). By registering as a member or by using the Cyclone Service in any way, you accept these Terms of Service ("Agreement"), which forms a binding agreement between you and Cyclone. If you do not wish to be bound by this Agreement, do not use the Cyclone Service.

## Content

1. Who May Use the Cyclone Service 2. License to Use the Cyclone Service 3. Privacy 4. Membership Requirements 5. Membership Structure 6. Term and Termination; Account Deletion 7. Content Restrictions 8. Code of Conduct 9. Submissions 10. Your Representations and Warranties 11. Indemnification 12. Third Party Links and Content 13. Disclaimers 14. Limitation of Liability 15. Professional Advice Disclaimer / Medical Disclaimer 16. Intellectual Property 17. Copyright / DMCA Policy 18. General Provisions

## 1. Who May Use the Cyclone Service

**AGE REQUIREMENT:** You must be at least 18 years old to use the Cyclone Service.

**NOTICE TO PARENTS AND GUARDIANS:** You are responsible for monitoring and supervising your child's use of the Cyclone Service. If your child is using the Cyclone Service is under 18, please contact us immediately so that we can disable his or her access. If you have questions about Cyclone, please contact us at [info@cyclonefit.com](mailto:info@cyclonefit.com) (mailto: info@cyclonefit.com).

## 2. License to Use the Cyclone Service

**LICENSE:** Cyclone grants you a limited, non-exclusive license to access and use the Cyclone Service for your own personal, non-commercial purposes. This includes the right to view content available on the Cyclone Service. This license is personal to you and may not be assigned or sublicensed to anyone else.

**RESTRICTIONS:** Except as expressly permitted by Cyclone in writing, you will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer, or disassemble the Cyclone Service. Nor will you take any measures to interfere with or damage the Cyclone Service. All rights not expressly granted by Cyclone are reserved.

**MOBILE APP:** Your use of the Cyclone Service through one of our mobile applications is also subject to our Mobile App Addendum.

## 3. Privacy

Your privacy rights are set forth in our Privacy Policy ([/web\\_privacy](#)), which forms a part of this Agreement. Please review the Privacy Policy to learn about:

- What information we may collect about you;
- What we use that information for; and
- With whom we share that information.

## 4. Membership Requirements

**REGISTRATION:** To fully use the Cyclone Service, you must register as a member by providing a user name, password, and valid email address. You must provide complete and accurate registration information to Cyclone and notify us if your information changes.

**USER NAME:** You may not use someone else's name, a name that violates any third party right, or a name that is obscene or otherwise objectionable.

**ACCOUNT SECURITY:** You are responsible for all activity that occurs under your account, including any activity by unauthorized users. You must not allow others to use your account. You must safeguard the confidentiality of your password. If you are using a computer that others have access to, you must log out of your account after using the Cyclone Service. If you become aware of an unauthorized access to your account, you must change your password and notify us immediately at [info@cyclonefit.com](mailto:info@cyclonefit.com) (mailto: info@cyclonefit.com).

## 5. Membership Structure

**OPTIONS:** During its Beta phase, Cyclone is offering free basic memberships to the Cyclone Services. Cyclone reserves the right to charge for its services at any time. Features and prices are subject to change.

## 6. Term and Termination; Account Deletion

**TERM:** This Agreement begins on the date you first use the Cyclone Service and continues as long as you have an account with us.

**ACCOUNT DELETION:** You may delete your account at any time. Basic accounts may be deleted from the Cyclone Service if they remain inactive (i.e., the user fails to log in) for a continuous period of at least six (6) months.

**TERMINATION FOR BREACH:** Cyclone may suspend, disable, or delete your account (or any part thereof) or block or remove any content you submitted if Cyclone determines that you have violated any provision of this Agreement or that your conduct or content would tend to damage Cyclone's reputation and goodwill. If Cyclone deletes your account for the foregoing reasons, you may not re-register for the Cyclone Service. Cyclone may block your email address and Internet protocol address to prevent further registration.

**EFFECT OF TERMINATION/ACCOUNT DELETION:** Upon termination, all licenses granted by Cyclone will terminate. Sections 6 and 11 through 18 shall survive termination. In the event of account deletion for any reason, content that you submitted may no longer be available. Cyclone shall not be responsible for the loss of such content.

## 7. Content Restrictions

You may not upload, post, or transmit (collectively, "submit") any video, image, text, audio recording, or other work (collectively, "content") that:

- Infringes any third party's copyrights or other rights (e.g., trademark, privacy rights, etc.);
- Contains sexually explicit content or pornography (provided, however, that non-sexual nudity is permitted);
- Contains hateful, defamatory, or discriminatory content or incites hatred against any individual or group;
- Exploits minors;
- Depicts unlawful acts or extreme violence;
- Depicts animal cruelty or extreme violence towards animals;
- Promotes fraudulent schemes, multi level marketing (MLM) schemes, get rich quick schemes, online gaming and gambling, cash gifting, work from home businesses, or any other dubious money-making ventures; or
- Violates any law.

## 8. Code of Conduct

In using the Cyclone Service, you must behave in a civil and respectful manner at all times. Further, you will not:

- Act in a deceptive manner by, among other things, impersonating any person;
- Harass or stalk any other person;
- Harm or exploit minors;
- Distribute "spam";
- Collect information about others; or
- Advertise or solicit others to purchase any product or service within the Cyclone Site.

Cyclone has the right, but not the obligation, to monitor all conduct on and content submitted to the Cyclone Service. Cyclone reserves the right to alter, edit, remove, or refuse to post any content, in whole or in part in its sole discretion or to satisfy or comply with applicable laws, regulations and/or legal processes.

## 9. Submissions

As between you and Cyclone, you own all content that you submit to the Cyclone Service. You grant Cyclone and its affiliates a worldwide, perpetual, irrevocable, non-exclusive, sub-licensable (through multiple tiers) royalty-free license and right to use, copy, transmit, distribute, publicly perform and display (through all media now known or hereafter created), and make derivative works from your content (including without limitation, your name and likeness, photographs and testimonials) for any purpose whatsoever commercial or otherwise without compensation to you. In addition, you waive any so-called "moral rights" in your content. You further grant all users of the Cyclone Service permission to view your content for their personal, non-commercial purposes. If you make suggestions to Cyclone on improving or adding new features to the Cyclone Service, Cyclone shall have the right to use your suggestions without any compensation to you.

## 10. Your Representations and Warranties

For each piece of content that you submit, you represent and warrant that: (i) you have the right to submit the content to Cyclone and grant the licenses set forth above; (ii) Cyclone will not need to obtain licenses from any third party or pay

royalties to any third party; (iii) the content does not infringe any third party's rights, including intellectual property rights and privacy rights; and (iv) the content complies with this Agreement and all applicable laws.

## 11. Indemnification

You agree to indemnify, defend, and hold harmless Cyclone and its affiliates, directors, officers, employees, and agents, from and against all claims, damages, losses and costs that: (i) arise from your activities on the Cyclone Service; (ii) assert a violation by you of any term of this Agreement; or (iii) assert that any content you submitted to Cyclone violates any law or infringes any third party right, including any intellectual property or privacy right.

## 12. Third Party Links and Content

The links on the Cyclone Sites and/or the Cyclone Service will let you leave the particular Cyclone Site or Cyclone Service you are accessing in order to access a linked site (the "Linked Sites"). Cyclone neither controls nor endorses these linked sites, nor has Cyclone reviewed or approved the content which appears on the linked sites. Cyclone is not responsible for the legality, accuracy or inappropriate nature of any content, advertising, products or other materials on or available from any linked sites. You acknowledge and agree that Cyclone shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of any of the links, content, goods or services available on or through the linked sites.

### Dealings with Third Parties.

Your participation, correspondence or business dealings with any third party found on or through the Cyclone Sites and Service, regarding payment and delivery of specific goods and services, and any other terms, conditions, representations or warranties associated with such dealings, are solely between you and such third party. You agree that Cyclone shall not be responsible or liable for any loss, damage, or other matters of any sort incurred as the result of such dealings.

## 13. Disclaimers

Cyclone reserves the right to modify the Cyclone Service. You are responsible for providing your own access (e.g., computer, mobile device, Internet connection, etc.) to the Cyclone Service. Cyclone has no obligation to screen or monitor any content and does not guarantee that any content available on the Cyclone Service complies with this Agreement or is suitable for all users.

Cyclone provides the Cyclone Service on an "as is" and "as available" basis. You therefore use the Cyclone Service at your own risk. Cyclone expressly disclaims any and all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any other warranty that might arise under any law. Without limiting the foregoing, Cyclone makes no representations or warranties:

- That the Cyclone Service will be permitted in your jurisdiction;
- That the Cyclone Service will be uninterrupted or error-free;
- Concerning any content submitted by any member;
- Concerning any third party's use of content that you submit;
- That the Cyclone Service will meet your personal or professional needs;
- That Cyclone will continue to support any particular feature of the Cyclone Service.
- Concerning sites and resources outside of the Cyclone Service, even if linked to from the Cyclone Service.
- To the extent that a secondary party may have access to or view Cyclone content on your computer or mobile device, you are solely responsible for informing such party of all disclaimers and warnings in this Agreement.

To the extent any disclaimer or limitation of liability does not apply, all applicable express, implied, and statutory warranties will be limited in duration to a period of thirty (30) days after the date on which you first used the Cyclone Service, and no warranties shall apply after such period.

### 14. Limitation of Liability

To the fullest extent permitted by law: (i) Cyclone shall not be liable for any direct, indirect, incidental, special, consequential, or exemplary damages, including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses; and (ii) Cyclone's total liability to you shall not exceed the amounts paid by you to Cyclone over the twelve (12) months preceding your claim(s).

## 15. Professional Advice Disclaimer / Medical Disclaimer

### Professional Advice Disclaimer.

THE CYCLONE SITE OFFERS HEALTH, FITNESS AND NUTRITIONAL INFORMATION AND IS DESIGNED FOR EDUCATIONAL PURPOSES ONLY. YOU SHOULD CONSULT YOUR PHYSICIAN BEFORE BEGINNING A NEW FITNESS OR NUTRITIONAL 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 OR

OTHER HEALTH-CARE PROFESSIONAL. DO NOT DISREGARD, AVOID OR DELAY OBTAINING MEDICAL OR HEALTH RELATED ADVICE FROM YOUR HEALTH-CARE PROFESSIONAL BECAUSE OF SOMETHING YOU MAY HAVE READ ON THE CYCLONE SITE. THE USE OF ANY INFORMATION PROVIDED ON THE CYCLONE SITE IS SOLELY AT YOUR OWN RISK.

NOTHING STATED OR POSTED ON THE CYCLONE SITE OR AVAILABLE THROUGH ANY CYCLONE SERVICES ARE INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICAL OR COUNSELING CARE. FOR PURPOSES OF THIS AGREEMENT, THE PRACTICE OF MEDICINE AND COUNSELING INCLUDES, WITHOUT LIMITATION, PSYCHIATRY, PSYCHOLOGY, PSYCHOTHERAPY, OR PROVIDING HEALTH CARE TREATMENT, INSTRUCTIONS, DIAGNOSIS, PROGNOSIS OR ADVICE.

THE CYCLONE SITE IS CONTINUALLY UNDER DEVELOPMENT AND CYCLONE 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 CYCLONE SITE WILL ALWAYS INCLUDE THE MOST RECENT FINDINGS OR DEVELOPMENTS WITH RESPECT TO THE PARTICULAR MATERIAL.

#### **Medical Disclaimer.**

In becoming a Member of Cyclone with the intent of using the Cyclone Service, you affirm that either (A) all of the following statements are true: (i) no physician has ever informed you that you have a heart condition or that you should only do physical activities recommended by a physician; (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 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 has specifically approved of your use of Cyclone.

If applicable, You further affirm that (A) you are not pregnant, breastfeeding or lactating or (B) your physician has specifically approved your use of Cyclone.

Cyclone Fitness, LLC. reserves the right to refuse or cancel your membership if we determine that you have certain medical conditions.

## **16. Intellectual Property**

You acknowledge that the Cyclone Site and Services contain software, graphics, photos, or other material (collectively, "Content") that are 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 Cyclone-generated Content and Content provided to Cyclone by its partners and licensors is copyrighted individually and/or as a collective work under the U.S. copyright laws; further, Cyclone owns a copyright in the selection, coordination, arrangement and enhancement of all Content in the Cyclone Site. Subject to your compliance with these Terms, and solely for so long as you are permitted by us to access and use the Services, you may download one copy of the application to any single computer for your personal, non-commercial home use only, provided you keep intact all copyright and other proprietary notices, and are in compliance with these Terms of Use. Unless otherwise specified, modification of the Content or use of the Content for any other purpose, including use of any such Content on any other Web site or networked computer environment is strictly prohibited.

The Cyclone name, logos and affiliated properties, are the exclusive property of Cyclone, Inc. All 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 which they make available through the Services. The trade names, trademarks and service marks owned by us, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. 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 service marks without our express prior written consent.

## **17. Copyright / DMCA Policy**

Cyclone respects the intellectual property of others, and we ask our users to do the same. Each user is responsible for ensuring that the materials they upload to the Cyclone Site do not infringe any third party copyright.

Cyclone will promptly remove materials from the Cyclone Site in accordance with the Digital Millennium Copyright Act ("DMCA") if properly notified that the materials infringe a third party's copyright. In addition, Cyclone may, in appropriate circumstances, terminate the accounts of repeat copyright infringers.

[Filing a DMCA Notice to Remove Copyrighted Content-for Copyright Holders](#)

If you believe that your work has been copied in a way that constitutes copyright infringement, please provide us with a written notice containing the following information:

1. Your name, address, telephone number, and email address (if any).
2. A description of the copyrighted work that you claim has been infringed.
3. A description of where on the Cyclone Site the material that you claim is infringing may be found, sufficient for Cyclone to locate the material (e.g., the URL).
4. A statement that you have a good faith belief that the use of the copyrighted work is not authorized by the copyright owner, its agent, or the law.
5. A statement by you UNDER PENALTY OF PERJURY that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.
6. Your electronic or physical signature.

You may submit this information via:

- Email: [info@cyclonefit.com](mailto:info@cyclonefit.com) (mailto: [info@cyclonefit.com](mailto:info@cyclonefit.com))
- Offline: Cyclone's Copyright Agent (see contact information below)

#### [Filing a DMCA Counter-notification to Restore Removed Content—for Cyclone Users](#)

If you believe that your material has been removed by mistake or misidentification, please provide Cyclone with a written counter-notification containing the following information:

1. Your name, address, and telephone number.
2. A description of the material that was removed and the location on the Cyclone Site (e.g., the URL) where it previously appeared.
3. A statement UNDER PENALTY OF PERJURY that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification.
4. A statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, any judicial district in which Cyclone may be found (which includes the United States District Court for the Southern District of California), and that you will accept service of process from the person who filed the original DMCA notice or an agent of that person.
5. Your electronic or physical signature.

You may submit this information via:

- Email: [info@cyclonefitness.com](mailto:info@cyclonefitness.com) (mailto: [info@cyclonefitness.com](mailto:info@cyclonefitness.com))
- Offline: Cyclone's Copyright Agent (see contact information below)

Please note that we will send any complete counter-notifications we receive to the person who submitted the original DMCA notice. That person may elect to file a lawsuit against you for copyright infringement. If we do not receive notice that a lawsuit has been filed within ten (10) business days after we provide notice of your counter-notification, we will restore the removed materials. Until that time, your materials will remain removed.

#### [Warning](#)

In filing a DMCA notice or counter-notification, please make sure that you have complied with all of the above requirements. If we request additional information necessary to make your DMCA notice or counter-notification complete, please provide that information promptly. If you fail to comply with all of these requirements, your DMCA notice or counter-notification may not be processed further.

In addition, please make sure that all of the information you provide is accurate. **UNDER SECTION 512(f) OF THE COPYRIGHT ACT, 17 U.S.C. § 512(f), ANY PERSON WHO KNOWINGLY MATERIALLY MISREPRESENTS THAT MATERIAL OR ACTIVITY IS INFRINGING OR WAS REMOVED OR DISABLED BY MISTAKE OR MISIDENTIFICATION MAY BE SUBJECT TO LIABILITY.**

Cyclone may disclose any communications concerning DMCA notices or other intellectual property complaints with third parties, including the users who have posted the allegedly infringing material.

If you have questions about the legal requirements of a DMCA notice, please contact an attorney or see Section 512(c)(3) of the U.S. Copyright Act, 17 U.S.C. § 512(c)(3), for more information. If you have questions about the legal requirements of a DMCA counter-notification, please contact an attorney or see Section 512(g)(3) of the U.S. Copyright Act, 17 U.S.C. § 512(g)(3), for more information.

### Cyclone's Copyright Agent

You may send a DMCA notice, a DMCA counter-notification, or any inquiries concerning intellectual property to Cyclone's Copyright Agent:

[info@cyclonefitness.com](mailto:info@cyclonefitness.com) (mailto: info@cyclonefitness.com)  
Attn: Legal Dept. - Copyright Agent

## 18. General Provisions

**GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California, United States of America, without regard to principles of conflicts of law. The Uniform Commercial Code, the Uniform Computer Information Transaction Act, and the United Nations Convention of Controls for International Sale of Goods shall not apply.

**DISPUTES:** Any action arising out of or relating to this Agreement or your use of the Cyclone Service must be commenced in the state or federal courts located in San Diego County, San Diego, United States of America (and you consent to the jurisdiction of those courts). In any such action, Cyclone and you irrevocably waive any right to a trial by jury.

**INTERPRETATION; SEVERABILITY; WAIVER; REMEDIES:** Headings are for convenience only and shall not be used to construe the terms of this Agreement. If any term of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from this Agreement. No failure or delay by Cyclone in exercising any right hereunder will waive any further exercise of that right. Cyclone's rights and remedies hereunder are cumulative and not exclusive.

**SUCCESSORS; ASSIGNMENT; NO THIRD PARTY BENEFICIARIES:** This Agreement is binding upon and shall inure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives, and permitted assigns. You may not assign this Agreement without Cyclone's prior written consent. No third party shall have any rights hereunder.

**NOTICES:** You consent to receive all communications including notices, agreements, disclosures, or other information from Cyclone electronically. Cyclone may provide all such communications by email or by posting them on the Cyclone Service. For support-related inquiries, you may send an email to [info@cyclonefit.com](mailto:info@cyclonefit.com) (mailto: info@cyclonefit.com) or the following address:

[info@cyclonefitness.com](mailto:info@cyclonefitness.com) (mailto: info@cyclonefitness.com)  
Attention: Legal Department

Nothing herein shall limit Cyclone's right to object to subpoenas, claims, or other demands.

**MODIFICATION:** This Agreement may not be modified except by a revised Terms of Service posted by Cyclone Fitness on the Cyclone Fitness Site or a written amendment signed by an authorized representative of Cyclone. A revised Terms of Service will be effective as of the date it is posted on the Cyclone Site.

**ENTIRE AGREEMENT:** This Agreement incorporates the following documents by reference:

- Privacy Policy (</privacy-policy>)
- Mobile App Addendum ([/mobile\\_app\\_addendum](/mobile_app_addendum)) *for use when mobile app is active*

This Agreement constitutes the entire understanding between Cyclone and you concerning the subject matter hereof and supersedes all prior agreements and understandings regarding the same.

END OF DOCUMENT.