

Wellbeats Terms and Conditions

By using any of the Wellbeats™ products, services or content, you agree to these Terms and Conditions, as well as terms on any associated Order Form (“Terms”).

1. CONTENT LICENSE. In connection with the services and products provided to you by us, Wellbeats (“we,” “us” or “our”) grants to you a limited, non-exclusive, non-transferrable license to access our proprietary Wellbeats™ software, fitness video content and any other content provided as described in the Order Form with us (the “Content Services”). Additional fitness video packages, including content provided by third parties, may be available from us for additional license fees. If applicable, hardware or other Wellbeats equipment will be purchased from our distributor, as described in Section 10 (“Equipment”). If the Order Form includes user streaming to the Content Services through an application (“App”) or HTML5 portal (“Website”), you or your end users will be able to access Content Services via PC, tablet or other mobile device or smartphone, and if applicable, the kiosk (collectively “Mobile Access”). The Equipment together with the Content Services and Mobile Access is referred to as the “System.” Only our produced content or our approved third-party content can be used with the System, unless otherwise approved in writing by us. If you enroll in Mobile Access to Content Services, Mobile Access may only be used by the specified end user (i.e., gym member, resident, or employee) (“User”), and may not be broadcast or otherwise used commercially.

2. ACCESSING CONTENT SERVICES. To access the Content Services, Equipment or mobile devices must be connected to the internet as specified by us and for Equipment access to the Content Services, require an effective line bandwidth of at least 5 Mbps. Failure to maintain the specified internet connection requirements may result in your inability to access the Content Services. If you fail to maintain an internet connection, the quality and availability of the Content Services will be affected. Any suspension, interruption, or unavailability of your internet service will not reduce your monthly fee for Content Services. You are responsible for all costs and any other charges or expenses charged by your internet service provider. We reserve all rights to modify, remove or otherwise change any of the Content provided through the Content Services. Depending on the subscription level of Content Services purchased, we may, from time to time, update classes or packages available through the Content Services. We, in our sole discretion and at any time, may discontinue certain classes or third party providers of classes available through the Content Services.

3. PAYMENT TERMS AND CONTENT SUSPENSION. All payments for the Content Services must be made as described in the Order Form. Content Services can be purchased either pre-paid or charged as a monthly payment. Overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If you are outside the U.S., you must use a credit card for all payments and are responsible for all changes in exchange rates. Upon 10 days’ written notice to you for failure to make a payment, we may suspend all Content Services until payment is made. We will not reimburse or provide a pro-rated amount for any suspended time during the month for failure to pay for Content Services or any other lapse in Content Services. You may be charged a fee of up to \$50 to reinstate Content Services after a suspension. If we are required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, are payable by you. After the initial term (as described in the Order Form), we may increase fees for Content Services, maintenance, support services or administrative fees upon 30 days’ written notice to you. All deposits and payments for hardware are nonrefundable.

4. USAGE RESTRICTIONS. You shall not (and shall not authorize or permit your employees or third parties to) do any of the following: (a) translate, disassemble, decompile, decode, reverse engineer, or cause or allow discovery of the source code of the System; (b) remove, obscure, or alter the titles, copyright notices, trademarks, logos, trademark notices, patent notices or other proprietary or restricted rights, notices, affixed to or contained in the System; (c) make any claim or representation of ownership or deny or challenge our ownership of the Content Services; (d) use the System in any manner that violates any local, state, federal or international law, rule, regulation or ordinance; (e) use, copy, modify, or prepare derivative works of our software or content, or any part thereof, except as expressly authorized; or (f) disclose, demonstrate, distribute, sell, lease, sublicense, lend, give, share, transfer, assign or otherwise make all or any portion of our software or content available to any natural person, corporation, or other entity, except as expressly authorized.

5. TAXES AND OTHER CHARGES. You are responsible to pay any and all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future that we may be required to collect or pay upon the services performed or materials provided, not including taxes based on our income, unless otherwise specified on the Order Form. If applicable, we may invoice appropriate amounts for any taxes related to the Content Services or any other products or services we provide to you, unless you provide a valid tax exemption certificate authorized by the appropriate taxing authority.

6. TERM AND TERMINATION. The minimum initial license term is 12 months. After the initial license term, Content Services will automatically renew on an annual or month-to-month basis as specified on the Order Form, unless you provide written notice of termination to us 30 days in advance of the expiration of the then-current term (“Termination Date”). Upon termination, all Content Services will be removed from the equipment and we will discontinue all support and other services for the System. Following termination, you may use the Equipment for non-Wellbeats purposes, provided that the software and content is deleted completely and any of our trademarks are removed or obscured, as approved by us in writing. Content Services may be changed at any time and will not affect the license term.

7. COLLECTION OF USER DATA. If you subscribe to Mobile Access for Users, Wellbeats will collect certain information from Users to provide customized Content Services, including, but not limited to a User’s first name, last name, email address, user name and password (to set up a registered account for the Content Services), age, gender, fitness level, fitness goals, and through the continued use of the Mobile Access, Wellbeats will collect information on Users’ use of Content, Services, User preferences, activities and log any additional information input by each User (collectively “User Data”). All information collected from Users will be collected in compliance with Wellbeats’ Privacy Policy at www.wellbeats.com/privacy and these Terms.

8. TECHNOLOGY SECURITY AND BACKUP. If you subscribe to Mobile Access, all Mobile Access will be provided through a cloud-based server that has received certification at least as restrictive as ISO27001 Certification and generally monitors access and the ongoing integrity of the Mobile Access platform. All Mobile Access and collection of User Data will be transmitted with SSL encryption and all User Data will be encrypted within the Mobile Access database. When feasible, full backups of the Content Services and User Data through the Mobile Access are performed daily, with incremental backups throughout the day. Backups are transferred in real time to an offsite storage facility with SSL encryption to a third party storage provider.

9. USE OF USER DATA. Wellbeats will process and use the User Data for the sole and exclusive purpose of providing the Content Services. We will: (a) keep and maintain User Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in these Terms and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose User Data solely and exclusively for the purpose of providing the Mobile Access and Content Services, such use and disclosure being in accordance with these Terms, and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available User Data for our own purposes. Wellbeats may use User Data in aggregate, non-identifiable form, to evaluate, improve, or otherwise modify the Mobile Access or Content Services. We use a combination of databases to ensure that the data is not combined to constitute personal health information and that User Data cannot be extracted by a third party in its entirety. All information collected from Users will be used in compliance with Wellbeats' Privacy Policy at www.wellbeats.com/privacy and these Terms.

10. HARDWARE. All Equipment related to the Content Services can be purchased from our distributor or self-provided, as described on the Order Form. Delivery terms, installation and setup will be supplied by our third party providers. Installations performed by our third party providers have a 30-day warranty on the installation. All Equipment purchased from us (including the kiosk and audio / video components) is provided with the manufacturer's warranty, if any, for repair and replacement. Once accepted, any limited warranty provided with the Equipment will be non-transferrable and will be void upon transfer of ownership to a third party. Any equipment purchased through a third party will not be supported by Wellbeats and you assume all risks associated with unapproved third party equipment. You are responsible for any and all costs associated with de-installation of the Equipment or the System.

11. PROPRIETARY RIGHTS. You acknowledge that we own all proprietary rights and copyrights to the System and all artwork, graphics, advertising, trademarks, video feed, copyrights and names used in conjunction therewith. Nothing provided herein shall be construed as an assignment or grant by us of any of our proprietary rights or copyrights to you. All trademarks, trade names, designs and logos and all associated goodwill existing and arising in the future shall be and remain our property or the property of third party we licensed with to provide it to you. We hereby grant to you a non-exclusive right to use such trademarks, trade names, designs and logos for the System use solely in connection with promotion of the System at your location(s). You shall not adopt or use any other marks that would be misleading or confusingly similar to our trademarks, trade names, designs, and logos. Your right to use these trademarks, trade names, designs and logos shall terminate immediately upon termination or expiration of the Content Services term. We may include advertising, including third-party advertising, in connection with the System. We retain all rights in data collected by and through the System as permitted by applicable law.

12. WARRANTIES AND WARRANTY DISCLAIMERS. We represent and warrant that (a) we will comply with all applicable state or federal laws and regulations regarding the use of the Content Services; and (b) the Content Services will not knowingly contain any viruses, worms, Trojan horses, or other malicious code specifically designed to permit unauthorized access to devices or Equipment. WE DO NOT WARRANT THAT THE CONTENT SERVICES OR THE SYSTEM WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN THESE TERMS, WE DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

13. LIABILITY FOR SYSTEM. Except for gross negligence or willful misconduct by us, neither we nor any of our affiliates or agents shall have any liability whatsoever for any damage, loss, or destruction to the System as a result of the installation, self-installation, use, inspection, maintenance, repair and removal. In the event of gross negligence or willful misconduct by us, we shall pay for the repair or replacement of the damaged parts up to a maximum of the purchase price paid, as the sole remedy. When you use certain features of the System, such as online features, you may require special software, applications and/or access to the Internet. It is your sole responsibility to take appropriate precautions to protect any computer and other hardware of yours from damage to your software, files, and data as a result of any such virus or other harmful feature. You are responsible for any failure to properly update the System and Content Services. If we decide, in our sole discretion, to install or run virus check software on your computers, we make no representation or warranty that the virus check software will detect or correct any or all viruses. We do not represent, warrant, or covenant that the installation of special software or applications or access to our web portal will not cause the loss of files or disrupt the normal operations of any equipment, including but not limited to your computers. For these and other reasons, you acknowledge and understand the importance of backing up all files to another storage mechanism prior to such activities. You understand and accept the risks if you decide not to back up files.

14. INDEMNIFICATION. We will indemnify and defend you from claims, losses or damages relating to or arising out of third-party claims that the Content Services infringe a third party's intellectual property rights and from our breach of these Terms. You will indemnify and defend us from third-party claims, losses or damages relating to or arising out of your breach of these Terms, the use or misuse of the Content Services, System by you, and any misrepresentation made to end users regarding the Content Services or System, or the violation of any applicable law.

15. LIMITATIONS OF LIABILITY. WE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS OR OTHER CAUSE. NO PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES OR DEATH). WE SHALL HAVE NO LIABILITY TO YOU OR ANY OTHER PERSON FOR DIRECT DAMAGES ARISING FROM OR RELATED TO YOUR INSTALLATION OR MAINTENANCE OF THE EQUIPMENT, DELAYS IN OPERATION OR TRANSMISSION OF THE CONTENT SERVICES, OR LOSS OF INFORMATION OR DATA. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT IN AN AGGREGATE AMOUNT EXCEEDING THE AMOUNTS ACTUALLY PAID TO US BY YOU.

16. SOLE REMEDIES. Your sole and exclusive remedies are as expressly set forth in these Terms. Certain of the above exclusions may not apply if your state does not allow for the exclusion or limitation of implied warranties or does not allow for limitation or exclusion of incidental or consequential damages. In those states, the liability of us and our affiliates and agents is limited to the maximum extent permitted by law.

17. MISCELLANEOUS.

a. Relationship of the Parties. These Terms do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

b. Promotion. By using the Content Services, you consent to our use of your company's name, trademark and logo to identify your company as one of our representative clients, on our website, social media pages and other electronic or printed promotional materials. You agree to only use approved Wellbeats advertising materials to promote the Content Services and make no representations to end users regarding their use or access to the Content Services.

c. No Waiver. The failure or delay of ours at any time to require performance of any provision of these Terms or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by us of any breach of any provision of these terms or of any right provided for herein, shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under these Terms.

d. Severability. If any provision of these Terms is held by a court of competent jurisdiction from which no appeal can be or is taken to be contrary to law, or invalid for any other reason, the provision shall be modified by the court so as to accomplish the intent and objectives of the parties to the fullest extent permitted by law and the remaining provisions of these Terms shall remain in effect. If the court is not able to craft such an alternative provision, then the remainder of these Terms shall be construed in a way that most closely reflects the original intent of the parties.

e. Assignment. These Terms govern the System; if the Equipment or Content Services are transferred to another party, these Terms are binding on all successors and assigns.

f. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Minnesota and where applicable, the United States of America without regard to the principles of conflicts of law. The parties hereby consent to the jurisdiction of and venue in the Supreme Court of the State of Minnesota, State of Minnesota District Court, Hennepin County, or the United States District Court of the District of Minnesota. Furthermore, both parties hereby consent to have any claim litigated in such court and waive any and all defenses as to jurisdiction and venue. You hereby irrevocably waive to the fullest extent permitted by law any and all rights to trial by jury in any legal proceeding arising out of or relating to these Terms or the transactions contemplated hereunder.

g. Force Majeure. Neither party shall be liable or deemed in default for any delay or failure in performance or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, riots, acts of terror, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements or any other cause beyond our reasonable control.

h. Survival of Limitations. All representations, warranties, indemnifications, and limitations of liability shall survive termination; any other obligations or the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination. All obligations to pay any amounts owed prior to the effective date of termination will survive termination.

i. Entire Agreement. These Terms and the Order Form contain the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, negotiations and agreements, whether oral or written between the parties with respect to such subject matter. No modification, amendment or waiver of any provision of this agreement shall be effective unless included in a written document signed by a representative duly authorized by us.