

## Terms and Conditions of Use

### Introduction

These Terms and Conditions of Use (the “Terms”) are a binding contract between you and Gympass US, LLC, a Delaware limited liability company, with a registered address at 30 Irving Place, 8th Fl, New York, NY 10003, USA (“Gympass US”) unless you live in Brazil. If you live in Brazil, this contract is between you and GPBR PARTICIPAÇÕES LTDA. (“GPBR”), CNPJ 15.664.649/0001-84, headquartered at Avenida Engenheiro Luís Carlos Berrini, nº 716, 10th floor, Cidade Monções, CEP 04571-926, São Paulo - SP. We collectively refer to Gympass US, LLC and all of its subsidiaries and affiliates, including GPBR, as “Gympass.”

These Terms set out your rights and responsibilities when you use our websites (for example, Gympass.com), our mobile apps, and the other services provided by Gympass (collectively, our “Services”). The Services are made available solely for your personal, noncommercial use, and the Terms apply whether you access our Services through the web or our app (collectively, the Gympass “Platform”). BY ACCESSING OR USING ANY OF OUR SERVICES (INCLUDING BROWSING OUR WEBSITE), YOU ARE AGREEING TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD NOT USE OR ACCESS THE SERVICES.

As provided in greater detail in these Terms (and without limiting the express language of these Terms), you acknowledge the following:

- THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER WHERE ALLOWED UNDER APPLICABLE LAW. Disputes arising between you and Gympass will be resolved by binding arbitration, as more specifically set forth in the arbitration agreement included below, to the maximum extent permitted by law. By accepting these Terms, as provided in greater detail below, you and Gympass are each waiving the right to a trial by jury or to participate in a class action to the maximum extent permitted under applicable law.
- Our [Privacy Policy](#) is expressly incorporated into these Terms, and by using our Services you agree that Gympass can process your information in the ways set out in the Privacy Policy.
- You consent to the automatic renewal of your Subscription (defined below) until you cancel your Subscription through the Platform.
- The use of the Services may be subject to third-party terms of service, including the terms of service of Third Party Providers (defined below). Gympass is not responsible or liable for third-party materials included within or linked to the Services.
- Your use of the Services is at your sole risk, and you should consult with a physician or other healthcare professional before commencing physical or wellness activities through the Services.

### Will these Terms ever change?

We are constantly improving our Services, and we may introduce new features, make changes to existing features, or suspend or discontinue certain features, so these Terms may need to change from time to time. As a result, we reserve the right to change the Terms as may be required. We will inform you of any material changes.

Any use or access of the Services after the effective date of the change will constitute your acceptance of such revised Terms. Changes will be effective upon the posting of the changes unless otherwise specified. If you find any change to these Terms or the Services unacceptable, then your sole remedy is to stop using or accessing the Services.

## **How do I register for and access the Services?**

*Age limit.* You must be at least 16 years of age or the age of legal majority in your jurisdiction (if different than 16) to register for Gympass as a primary account holder and become a Gympass Member. While individuals under the age of 16 may utilize the service as a Family Member (as defined below) in some circumstances, they may do so only with the involvement, supervision, and approval of a parent or legal guardian as the primary account holder.

*The Services.* The Services consist of mobile applications and websites that enable you to access and schedule fitness and wellness sessions, and other related services that are delivered by a network of third-party gyms, studios and fitness/wellness websites and applications, personal trainers and exercise professionals, and other providers that have entered into partnership agreements with Gympass (“Third Party Providers”). Offerings provided by Third Party Providers may be delivered at a physical location, through apps run by third parties (the “Third Party Apps”), through streaming by Third Party Providers, and/ or through other means. Not all Third Party Providers provide offerings or classes in all geographies, and offerings vary by the Subscription Plan that you select. Access to Third Party Providers and/or their classes/offerings is subject to change at any time without notice.

*Registration and Enrollment.* You cannot enroll in a Gympass Subscription to access the Gympass Services as a primary account holder unless you are provided access through a participating organization such as, for example, your employer, a partner of your employer, or some other organization with which you are affiliated. If you wish to use the Services as a primary account holder, you will be required to register for a Gympass membership by creating a unique username and password (becoming a Gympass “Member”). You are then able to review the Gympass plans available to you and enroll in a Gympass Subscription (making you a Gympass “Subscriber”). To access the offerings provided by Third Party Apps, you may need to register for a separate account using the email address that you provided during your Gympass registration and agree to that Third Party Provider’s terms of use.

*Delivery of Services.* You acknowledge that Gympass is responsible only for delivering electronically a proof of Membership and/or Subscription with Gympass as required in order to provide access to a Third Party Provider’s services. You also acknowledge and agree that each Third Party Provider is solely responsible for the delivery, quality, integrity and regulatory compliance of the services provided, as well as the accuracy of the description of such services listed on the Gympass Platform.

By accessing the offerings of Third Party Providers, you acknowledge that you have executed an agreement directly with each Third Party Provider, and that Gympass is not responsible for the performance of any Third Party Providers.

*Service limitations or modifications.* Gympass will make reasonable efforts to keep the Services operational. However, certain technical difficulties or updates required to reflect changes in relevant laws, regulations, and contractual requirements may on occasion result in temporary interruptions in

service. Gympass reserves the right, periodically and at any time, to modify or discontinue any function or features of the Gympass Services except as expressly prohibited by law. Gympass will make reasonable efforts to provide you with advance notice where possible of any material interruption, discontinuation or modification in Services. You understand, agree, and accept that Gympass has no obligation to maintain, support, or update the Services, or to provide any specific Content (defined below) through the Services.

*Accuracy of information.* You are solely responsible for any activity on your account. You are responsible for providing us with accurate and complete registration and enrollment data, and to update it as necessary. Gympass reserves the right to validate the data that you provide us at any time, and we may request any additional information that we deem relevant in order to verify the information that you have provided. You must select a name for your Gympass User ID that you have the legal right to use; you may not use the name or other information of another person and you may not impersonate another person in any way on our Platform or in using our Services. You may not transfer, sell or rent your username or account to any other person or any other organization. In the event that Gympass determines in its sole discretion that any data that you provided is incorrect, or that you have otherwise violated these Terms, Gympass reserves the right to suspend or terminate your account without compensation or reimbursement, or take other measures as may be necessary and appropriate.

### **What are the fees for subscribing?**

*Subscription.* You may access our website and create a Gympass account without charge. To make use of the facilities or other Services offered through Third Party Providers, you must select a plan and enroll in a subscription plan to the Services (“Subscription Plan” or “Subscription”) through the Gympass Platform. Service offerings vary based on the Subscription that you select. You may upgrade or downgrade your Subscription level at any time by accessing your account settings within the Platform. By purchasing a Subscription, you will get full access within your plan level to book Services as long as your Subscription remains valid. Any special conditions related to a specific Third Party Provider are stated on the Platform. Gympass reserves the right to add and remove Third Party Providers from particular Subscription Plans and Services at any time in our sole discretion without prior notice.

*Free Trial or Promotion.* We sometimes offer trials or other promotions, which are subject to these Terms except as otherwise stated in the promotional offer. By providing your payment details when enrolling in the free trial, you agree that Gympass may charge the Subscription Fee (as defined below) to your designated payment method upon conclusion of the free trial period. Gympass reserves the right, in its sole discretion, to determine your eligibility for a free trial or promotion.

WE WILL BILL YOUR DESIGNATED PAYMENT METHOD FOR THE SUBSCRIPTION FEE AT THE END OF THE FREE TRIAL PERIOD UNLESS YOU CANCEL 48 HOURS BEFORE THE END OF THE TRIAL PERIOD OR WITHIN THE TIME PERIOD SPECIFIED IN YOUR PROMOTIONAL OFFER. You may cancel by logging into the platform and following the prompts under the “subscription” settings.

*Subscription Fee.* The fee for a Gympass Subscription is set forth during the enrollment process or otherwise provided in the Gympass Platform (the “Subscription Fee”). The Gympass Subscription

Fee is non-refundable except as expressly outlined in these Terms or as required under applicable law. There are no partial refunds unless otherwise allowed by Gympass in its sole discretion.

Gympass may change the price for any Subscription Plan, including recurring Subscription Fees, late fees, and no-show fees from time to time, and will communicate any such changes to you in advance if there is an increase in payment due from you. Subject to applicable law, you accept the new price by not canceling your Subscription after the price change takes effect. If you do not agree with a price change, you have the right to reject the change by unsubscribing to the Services prior to the price change going into effect.

We reserve the right to correct any material error, inaccuracy or omission that is made when an offer for a particular Subscription is shown to you. If we determine that an error requiring correction results in a material disadvantage to you, we will notify you and provide you with the corrected information before charging you.

*Additional Fees/ Cancellation Policy.* If you cancel a booking or session, we may charge you a fee. The booking and class cancellation policies may vary by Third Party Provider and/or location. There is no penalty for early cancellation of a class booking if you comply with the stated cancellation policy.

Late cancellation is cancellation of a class or session after the stated cancellation period. No show is a failure to appear for a booked class or session. Both late cancellation and no show may forfeit your check-in with any Third Party Provider for that day. FEES MAY BE CHARGED FOR LATE CANCELLATION OR FAILURE TO SHOW. FEES VARY, BUT WILL BE DISCLOSED TO YOU BEFORE YOU ARE CHARGED.

*Gympass Credits and Promotional Codes.* From time to time, we may offer you a credit based on past purchases or based on another offer. Gympass may offer promotions with varying features and rates that are redeemable for Gympass credits. Any such promotion is only valid until its stated expiration date in accordance with applicable law. You may only redeem credits after they are applied to your Gympass account. Gympass reserves the right to change the terms on any outstanding credits at any time without notice, and to end any offer of credit at any time to the full extent allowable under applicable law. Any such changes may affect your ability to use the credits that you have accumulated.

Credits may only be used with the Services, and you must have a valid Gympass account and an active Subscription in order to use credits. If you cancel your Gympass Subscription, then any outstanding credits associated with your account will immediately expire. If you believe that there is a discrepancy regarding your credit balance, please contact us through the Help Center in the app or website. All decisions regarding your credit balance will be determined by us in our sole discretion and are final.

*Billing.* You will be billed through either payroll deduction, by credit card, or by another payment method that is enabled in the Gympass Platform (your "Payment Method"). We may use a third-party payment processor (the "Payment Processor") to bill you through a payment account linked to your Gympass account (your "Billing Account"). The processing of such payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to these Terms. We are not responsible for errors by the Payment Processor.

By choosing to purchase a Subscription, you agree to pay all charges at the prices then in effect for any such Subscription in accordance with the applicable payment terms and you authorize us to charge your chosen Payment Method. We reserve the right to correct any errors or mistakes made in the billing process even if the payment has already been requested or received. If Gympass does not receive payment from you, you agree to pay all amounts due on your Billing Account upon demand. Gympass is not responsible for any taxes that may apply to the purchase of Subscriptions or on the goods and services provided by Third Party Providers. YOU MUST PROVIDE UPDATED CURRENT, COMPLETE AND ACCURATE DATA FOR YOUR BILLING ACCOUNT. Changes to such data can be made in your account settings through the Platform.

*Automatic Recurring Billing.* By purchasing a Subscription, you agree that, upon expiration of the initial Subscription term, your Subscription will automatically renew for successive periods of the same duration as the initial Subscription term unless and until you cancel your Subscription. YOU AUTHORIZE GYPASS TO CHARGE YOUR ACCOUNT USING A PAYMENT METHOD ON FILE FOR YOU TO PAY FOR ANY RENEWAL SUBSCRIPTION. You will be billed for the same Subscription (or the most similar Subscription, if your prior plan is no longer available) at the then-current applicable Subscription Fee plus any applicable taxes. We will process payment for any renewal Subscription using the same billing cycle as your current Subscription. Additional terms and conditions may apply upon renewal, and Subscription Fees may change at any time, to the fullest extent permitted under applicable law.

*Subscription Cancellation.* You may cancel your Subscription at any time by following the directions provided in the Gympass Platform, after which Gympass will stop automatically renewing your Subscription. You must cancel at least 3 business days in advance of your billing date in order to avoid being charged for the next month. Your plan will remain active until your next billing date, but you will not be eligible for a prorated refund of any portion of the Subscription Fee paid for that Subscription period unless required under applicable law. PLEASE NOTE THAT NO REFUNDS WILL BE ISSUED UPON CANCELLATION.

If you have canceled your account or modified any data on your account by mistake, contact us immediately. We will try to help, but unfortunately, we cannot promise that we can recover or restore anything and shall not be liable to you for such accidental cancellations or modifications.

*Pausing your Subscription.* Gympass permits you to put your Subscription on hold (a "Pause"). If you wish to Pause your Subscription, you must do so through the Gympass Platform. You will not be charged for the time during which your Subscription is Paused. Unless otherwise allowed by Gympass in its sole discretion, you may Pause your Subscription only once in any applicable period and there may be a maximum amount of time that you may Pause. Specific terms relating to the Pause are provided in the Platform.

After the Pause period, automatic Subscription renewals will resume as laid out in the settings of the Platform. You can reactivate your Subscription during a Pause at any time prior to the set date by contacting us. You may choose to cancel your Subscription at any time while your Subscription is paused, but you will not be reimbursed for any outstanding amount unless required by applicable law.

*End of Subscription and Loss of Access to Third Party Apps.* When your Gympass Subscription ends, you will lose access to any Third Party Apps or other online services.

## **How do I access the services of Third Party Providers?**

After purchasing a Subscription, you can access the services from any Third Party Provider, including any Third Party App or online services, included in your Subscription. You must follow the procedures, policies and usage rules made available to you by the Third Party Provider. The following may apply:

- Classes or sessions have a specific duration and often need to be booked in advance
- Operating hours and available services for physical facilities may vary
- Acceptance of additional terms, including a waiver of liability, may be required
- Third Party Apps or websites may request additional information

We recommend that you review the rules and/ or terms from each Third Party Provider before your first time enjoying their services. You can also learn more about specific Third Party Providers by reviewing the information provided in the Platform.

*Booking classes.* In many cases you need to book your classes directly at the Third Party Provider's website, but in some cases, as indicated on the Third Party Provider page on the Gympass Platform, you can book a class directly through the Platform.

*Checking in.* When you are ready to access the offerings of Third Party Providers, you may need to check in through the Gympass Platform. If you do not check-in before a class or session when required, you may be charged an additional no-show fee as described in these Terms. Depending on your Subscription Plan, there may be additional requirements that apply. We recommend that you review the specific terms for your Subscription Plan in the Gympass Platform for more details.

*Substitution Policy.* Although Gympass takes every reasonable measure to have sufficient classes and sessions to fill your requests, availability of offerings may change without notice. Gympass is not responsible for the unavailability of a particular Third Party Provider, or a particular class, session, or location. Nor is Gympass responsible for removal of any Third Party Provider's Services from the Platform.

## **Can I invite my Family Members to join Gympass?**

If you have an active Membership, you can add a qualifying Family Member (your spouse/life partner, child, parent, or other household member) if allowed under the provisions of the agreement between Gympass and the entity that sponsors your Gympass Membership. A qualifying Family Member must also create a Gympass account with a unique username and password. You are financially responsible for the payment of any Subscription or other fees that are owed in a Family Member's account. Gympass reserves the right to request proof of the Family Member's qualification. Any other terms that apply to a Family Member account are as stated in the Platform when you provide your Family Member's information or specified during the Family Member's enrollment process.

Any Family Member under 18 is only permitted to use our Services through an account controlled by a parent or legal guardian with their appropriate permission and under their direct supervision. The primary account holder is responsible for any and all activity conducted by a Family Member who is

a minor. All financial information on a Family Member account, such as a credit card, must be that of a parent or legal guardian.

### **What restrictions do I have in using the Services?**

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, submissions by you (“User Submissions”)(all of the foregoing, the “Content”) are protected by copyright and/or other intellectual property laws.

You represent, warrant, and agree that you will not contribute any Content or User Submission or otherwise use the Services or interact with the Services in a manner that:

- Infringes or violates the intellectual property rights or any other rights of any third party or Gympass;
- Violates any law or regulation;
- Is abusive, fraudulent, deceptive, threatening, defamatory, obscene, hateful, inaccurate, libelous, pornographic, or otherwise objectionable as determined by Gympass in its sole discretion (collectively, “Objectionable Content”);
- Jeopardizes the security of any Gympass account (such as allowing someone else to use your login credentials to access the Services), violates the security of any computer network or cracks any password or security encryption code;
- Runs Mail-list, Listserv, any form of auto-responder or “spam” on the Services, or that otherwise interferes with the proper working of the Services (including by placing an unreasonable load on the Services’ infrastructure);
- “Crawls,” “scrapes,” or “spiders” or otherwise collects any page, data, or portion of the Services or Content (whether through manual or automated means);
- Copies or stores any portion of the Content;
- Decompiles, reverse engineers or otherwise attempt to obtain the source code or underlying ideas or data of or relating to the Services.

You understand that Gympass owns the Services. You shall not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services. Gympass hereby grants you a personal, limited, revocable, non-transferable license to access and use the Services solely for your personal, non-commercial use. Gympass reserves all rights not expressly granted to you.

For the Content displayed or performed or available on or through the Services, you promise to abide by all copyright notices, trademark rules, data regulations, and restrictions contained in any Content you access through the Services, and you agree not to use, copy, reproduce, record, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Gympass’) rights.

You may use the Services only for personal, noncommercial purposes. Our delivery of access to Third Party Apps, Live Stream classes, Personal Training, and any other online content does not transfer any commercial or promotional use rights to you, and does not constitute a grant or waiver

of any rights of the copyright owners. Gympass reserves all rights in the Services not expressly granted to you.

Gympass is free to terminate (or suspend access to) your use of the Services and/ or your account for any reason, in its discretion, to the fullest extent permitted under applicable law, including your breach of these Terms or a violation of any of the foregoing.

*Third Party App licenses.* App licenses are provided to you by the Third Party App's developer. Gympass acts as an agent or intermediary for Third Party App providers in providing the Services and is not a party to any user agreement between you and the Third Party App. Any App that you access is governed by the Third Party App's separate terms or end user license agreement. The Third-Party App's providers are solely responsible for its content, warranties, and any claims that you may have related to that Third Party App. Providers of Third Party Apps are responsible for providing maintenance and support for those apps. Apps made available to you through our Services are licensed, not sold, to you.

*No solicitation of personal information.* You agree that you will treat Third Party Providers, including but not limited to online instructors, gym personnel, and personal trainers, with respect. You agree not to use our Services and information offered on our website or app to recruit, solicit, or contact in any way the staff of Third Party Providers for employment or contracting for a business not affiliated with Gympass without our advance written permission to the extent allowed under applicable law.

### **Who is responsible for what I see and do on the Services?**

Any data or content publicly posted or privately transmitted by you or any user through the Services is the sole responsibility of the person from whom such content originated, and you access all such data and content at your own risk. Gympass cannot guarantee the identity of any users you may interact with through the Services. Gympass is not liable for any errors or omissions in such content, misrepresentations by other users, or for any damages or loss you might suffer in connection with such content or interactions.

When you access a Third Party App through a link on a Gympass site or app, you are leaving the Gympass environment and accessing a Third-Party site that Gympass does not control. Your rights and obligations when accessing and using these Third-Party Apps are not governed by these Terms (or our [Privacy Policy](#)) and will instead be governed by the terms and policies of those Third-Party Apps, and we encourage you to carefully read those terms and policies of these Third-Party Apps, as their practices may differ from ours. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GYPASS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THIRD-PARTY APPS AND HAS NO RESPONSIBILITY FOR SUCH THIRD-PARTY APPS OR THE CONTENTS, FEATURES OR OPERATION OF SUCH THIRD-PARTY APPS. YOU ACKNOWLEDGE AND AGREE THAT YOUR DECISION TO ACCESS AND USE ANY THIRD-PARTY APP IS AT YOUR SOLE RISK, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GYPASS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF OR RELIANCE ON ANY THIRD-PARTY SITES.

As part of your Subscription, you may access virtual classes or sessions through live stream. Gympass makes no representation or warranty about the quality of your viewing experience on your display, which may vary based on factors such as customer equipment, network connection, the bandwidth available, and/ or your Internet connection. You are responsible for all Internet access charges. The service and any content viewed through our service are for your personal use only, and you agree not to use the service for public performances.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You agree that Gympass shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

The provisions set-forth in this section do not intend to limit the liability of Gympass in circumstances in which the applicable law of a User's home country or state prevents Gympass from limiting such liability.

### **Do I need to grant any licenses to Gympass or other users?**

Anything you post, upload, share, store, or otherwise provide on or through the Services (including, but not limited to pictures, ratings, reviews and other content to be shown on the Gympass Platform) is "User Content." While you retain ownership of any rights you may have in your User Content, you hereby grant Gympass an unrestricted, royalty-free license to reproduce, distribute, publicly display, communicate to the public, make available, create derivative works from, and otherwise exploit and use (collectively, "Use") all or any part of all User Content for the purposes of (i) advertising, marketing, and promoting Gympass and the Services; (ii) displaying and sharing your User Content to other users of the Services; and (iii) providing the Services. You further grant Gympass a royalty-free license to use your user name, image, voice, and likeness to identify you as the source of any of your User Content to the extent allowed under applicable law.

You represent and warrant that: (i) you own the User Content or otherwise have the right to grant the license set forth herein; (ii) the use of your User Content by you on or through the Services does not violate the applicable law, privacy rights, publicity rights, copyrights, contract rights, intellectual property rights, or any other rights of any person, including, but not limited to, the rights of any person visible in any of your User Content; (iii) the posting of your User Content on the Services will not require us to obtain any further licenses from or pay any royalties, fees, compensation, or other amounts or provide any attribution to any third parties; and (iv) the posting of your User Content by you on or through the Services does not result in a breach of contract between you and a third party. You agree to pay all monies owing to any person as a result of your posting your User Content on the Services.

### **Copyright Infringement**

*Repeat Infringer Policy.* Our intellectual property policy is to (i) remove or disable access to material that we believe in good faith, upon notice from an intellectual property owner or his or her agent, is infringing the intellectual property of a third party by being made available through the Services; and

(ii) remove any User Content uploaded to the Services by repeat infringers. We consider a “repeat infringer” to be any user that has uploaded User Content to or through the Services and for whom we have received more than two takedown notices compliant within the provisions of applicable law with respect to such User Content (for example, 17 U.S.C. § 512 in the U.S.). We have discretion, however, to terminate the account of any user after receipt of a single notification of claimed infringement or upon our sole determination.

*Procedure for Reporting Claimed Infringement.* If you believe that any content made available on or through the Service has been used or exploited in a manner that infringes an intellectual property right you own or control, then please promptly send a “Notification of Claimed Infringement” containing the following information to the Designated Agent identified below. Your Notification of Claimed Infringement may be shared by us with the user alleged to have infringed a right you own or control, and you hereby consent to us making such disclosure. Your communication must include substantially the following: (i) A physical or electronic signature of a person authorized to act on behalf of the owner of the work(s) that has/have been allegedly infringed; (ii) Identification of works or materials being infringed, or, if multiple works are covered by a single notification, then a representative list of such works; (iii) Identification of the specific material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted; (v) A statement that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

*Designated Agent Contact Information.* Our designated agent for receipt of Notifications of Claimed Infringement (the “ Designated Agent”) can be contacted at: the Gympass Help Center or by mailing a notification to our registered address with “ATTN: Legal”.

*Counter Notification.* If you receive a notification from us that material made available by you on or through the Services has been the subject of a Notification of Claimed Infringement, then you will have the right to provide us with what is called a “Counter Notification.” To be effective, a Counter Notification must be in writing, provided to our Designated Agent through one of the methods identified above and include substantially the following information: (i) a physical or electronic signature of the subscriber; (ii) identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled; (iii) a statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and (iv) the subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber’s address is outside of the United States, then for any judicial district in which we may be found, and that the subscriber will accept service of process from the person who provided notification as outlined above or an agent of such person.

*Reposting of Content Subject to a Counter Notification.* If you submit a Counter Notification to us in response to a Notification of Claimed Infringement, then we will promptly provide the person who

provided the Notification of Claimed Infringement with a copy of your Counter Notification and inform that person that we will replace the removed User Content or cease disabling access to it in 10 business days, and we will replace the removed User Content and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the Counter Notification, unless our Designated Agent receives notice from the party that submitted the Notification of Claimed Infringement that such person has filed an action seeking a court order to restrain the user from engaging in infringing activity relating to the material on our system or network.

*False Notifications of Claimed Infringement or Counter Notifications.* The Copyright Act provides that:

*[a]ny person who knowingly materially misrepresents under [Section 512 of the Copyright Act (17 U.S.C. § 512)] (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, will be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of [Gympass] relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it. 17 U.S.C. § 512(f).*

We reserve the right to seek damages from any party that submits a Notification of Claimed Infringement or Counter Notification in violation of the law.

### **Will Gympass contact me?**

When you open an account or provide your information to us, you agree that Gympass may contact you via email, direct mail, telephone, messaging app, text message or other available means at any of the addresses or phone numbers you provide, including for marketing. You may opt-out of marketing emails or communications by following the unsubscribe link or other directions provided in the communication, or by contacting us through the Help Center in the app or on our website.

### **Health and Safety Warnings**

Gympass does not provide health care, medical services, or physical training services. The information that you obtain through using the Gympass Services including without limitation any advice, information, workouts, exercises, regimens, nutritional plans, recipes, counseling or other materials (collectively, the "Fitness and Wellness Information"), are provided for general informational, educational, and entertainment purposes only, and do not constitute medical advice. Gympass Services are not intended to be relied upon for determining the state of your health or in the diagnosis of any medical conditions and are not, and should not be used as, a substitute for a professional medical evaluation. Gympass advises you to consult your physician prior to engaging in any fitness plan, nutrition regimen, or other wellness program.

By using our Services, you acknowledge and understand that you may receive Fitness and Wellness Information on physical activities, wellness advice, or other exercises or services, which may potentially be dangerous activities based on your personal physical, mental or emotional condition. You should consult with your physician prior to using our Services or any Fitness and Wellness

Information. If you choose to use our Services, you should be in good health and have no disability, impairment, injury, disease or ailment preventing you from engaging in active or passive exercise or which would cause increased risk or injury or adverse health consequences as a result of using such Services, and you hereby assume all risks associated with using such Services.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, GYMPASS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FITNESS AND WELLNESS INFORMATION AND IS NOT RESPONSIBLE FOR YOUR USE OF OR RELIANCE ON ANY SUCH FITNESS AND WELLNESS INFORMATION. YOU ACKNOWLEDGE AND AGREE THAT YOUR DECISION TO RELY ON AND/OR USE ANY FITNESS AND WELLNESS INFORMATION IS AT YOUR SOLE RISK, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GYMPASS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, INCLUDING PERSONAL INJURY AND DEATH, ARISING OUT OF OR IN CONNECTION WITH YOUR RELIANCE ON OR USE OF ANY FITNESS AND WELLNESS INFORMATION.

### **What else do I need to know?**

*Warranty Disclaimer.* To the fullest extent allowed by applicable law, neither Gympass nor its licensors, suppliers, or Third-Party Providers make any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. We make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. THE SERVICES AND CONTENT ARE PROVIDED BY GYMPASS ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME COUNTRIES AND STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

*Waiver and Release.* YOU UNDERSTAND AND ACKNOWLEDGE THAT GYMPASS INTERMEDIATES SERVICES WITH THIRD-PARTY PROVIDERS, AND GYMPASS ITSELF IS NOT A FITNESS OR WELLNESS PROVIDER AND DOES NOT OWN OR MANAGE ANY FITNESS OR WELLNESS PROVIDER. GYMPASS DOES NOT ASSESS THE SUITABILITY, COMPLIANCE WITH ANY APPLICABLE RULES OR REGULATIONS OR QUALITY OF ANY FACILITY, CLASS OR SESSION PROVIDED BY ANY THIRD PARTY PROVIDER AND YOU EXPRESSLY WAIVE AND RELEASE THE COMPANY FROM ANY AND ALL LIABILITY, CLAIMS, OR DAMAGES ARISING FROM, OR IN ANY WAY RELATED TO, YOUR USE OF GYMPASS SERVICES AND THE SERVICES PROVIDED BY ANY THIRD PARTY PROVIDER. GYMPASS WILL NOT BE A PARTY TO DISPUTES OR NEGOTIATIONS OF DISPUTES BETWEEN YOU AND A THIRD PARTY PROVIDER. YOU ACKNOWLEDGE THAT ON BEHALF OF YOURSELF, YOUR HEIRS, PERSONAL REPRESENTATIVES, AND/ OR ASSIGNS, THAT THERE ARE INHERENT RISKS AND DANGERS IN EXERCISE AND WELLNESS ACTIVITIES. BY BOOKING, ATTENDING AND PARTICIPATING IN THE SERVICES OF THIRD PARTY PROVIDERS, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE AWARE OF THE RISKS WHICH INCLUDE, BUT ARE NOT LIMITED TO,

PROPERTY DAMAGE, LOSS AND BODILY INJURY OR DEATH. YOU ACKNOWLEDGE THAT SOME OF THESE RISKS CANNOT BE ELIMINATED AND YOU SPECIFICALLY ASSUME THE RISK OF INJURY OR HARM.

*Limitation of Liability.* TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL GYMPASS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO GYMPASS IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (C) ANY MATTER BEYOND OUR REASONABLE CONTROL. Some states and countries do not allow the exclusion or limitation of certain damages, so the above limitation and exclusions may not apply to you.

*Indemnity.* To the extent permitted by applicable law, you agree to indemnify and hold Gympass, its affiliates, officers, agents, and employees, harmless from and against any and all claims, liabilities, damages (actual and consequential), losses, and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms.

*Assignment.* You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Gympass' prior written consent. We may transfer, assign, or delegate these Terms and any, or all, of our rights and obligations under these Terms without your consent, provided that you may rescind the assignment if you object to the transfer unless the assignment is due to a merger or acquisition of Gympass.

*Survival.* Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay or indemnify us, any limitations on our liability, any terms regarding ownership of intellectual property rights, and any terms regarding disputes between us, including without limitation the Arbitration Agreement (as defined below).

*Severability.* If any term, clause, or provision of these Terms is held invalid or unenforceable, then that term, clause or provision will be severable from these Terms and will not affect the validity or enforceability of any remaining part of that term, clause or provision, or any other term, clause or provision of these Terms.

*Force Majeure.* Neither Gympass nor you shall be liable for any failure or delay in performance under these terms (other than for delay in the payment of money due and payable in accordance with these terms) for causes beyond the party's reasonable control and not caused by that party's fault, or negligence, including, but not limited to, "acts of God", acts of government, pandemic, flood, fire, civil unrest, acts of terror, strikes or other labor problems, computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility, but in each case, only if and to the extent that the non-performing party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by

reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means.

*Choice of Law.* If you reside in the United States,, you agree that the law of New York, without regard to principles of conflict of laws, will govern these Terms and any claim or dispute that has arisen or may arise between you and Gympass.

If you reside outside of the United States, the laws and courts of your country of residence will apply to any disputes arising out of or relating to these Terms or Gympass' Services, and you can bring legal proceedings to your local courts. The Vienna Convention on the International Sale of Goods of 1980 (CISG) shall not apply.

For users in the European Economic Area or the United Kingdom, you have the right to withdraw from your Subscription within 14 days after your purchase without giving any reason. We will refund your full payment (if made), as long as you have not used any Third Party Provider services during those 14 days. To meet the withdrawal deadline, you must send us your cancellation request before the withdrawal period has expired.

## **ARBITRATION AGREEMENT FOR USERS IN THE UNITED STATES**

Please read the following ARBITRATION AGREEMENT carefully because it requires you to arbitrate certain disputes and claims with Gympass and limits the manner in which you can seek relief from us. Both you and Gympass acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Gympass' officers, directors, employees and independent contractors ("Personnel") are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third party beneficiary hereof.

*(a) Arbitration Rules; Applicability of Arbitration Agreement.* Any dispute arising out of or relating to the subject matter of these Terms shall be finally settled by binding arbitration in New York County, New York. The arbitration will proceed in the English language, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction.

*(b) Small Claims Court.* Furthermore, either you or Gympass may assert claims, if they qualify, in small claims court in New York County, New York or any United States county where you live or work.

*(c) Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated

actions is deemed invalid or unenforceable, neither you nor we are entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth below.

*(d) Opt-out.* You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: [help.me@gympass.com](mailto:help.me@gympass.com) postmarked within 30 days of first accepting these Terms. You must include (i) your name and residence address; (ii) the email address and/or telephone number associated with your account; and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.

*(e) Exclusive Venue.* If you send the opt-out notice in (d), and/or in any circumstances where the foregoing arbitration agreement permits either you or Gympass to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party and both you and Gympass agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, New York County, New York, and you and Gympass consent to personal jurisdiction in those courts.

## **Contact Us**

For questions about these Terms, contact [help.me@gympass.com](mailto:help.me@gympass.com) or visit our [Help Center](#).

**Effective Date: Dec 16, 2022**