

LIVEO Terms of Service

LAST UPDATED: SEPTEMBER 22, 2011

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

Content

1. Who May Use the Liveo Service 2. License to Use the Liveo 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 Liveo Service

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

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

2. License to Use the Liveo Service

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

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

MOBILE APP: Your use of the Liveo 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](#), 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 Liveo 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 Liveo 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 Liveo Service. If you become aware of an unauthorized access to your account, you must change your password and notify us immediately at support@Liveo.com.

5. Membership Structure

OPTIONS: During its Beta phase, Liveo is offering free basic memberships to the Liveo Services. Liveo 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 Liveo 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 Liveo 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: Liveo may suspend, disable, or delete your account (or any part thereof) or block or remove any content you submitted if Liveo determines that you have violated any provision of this Agreement or that your conduct or content would tend to damage Liveo's reputation and goodwill. If Liveo deletes your account for the foregoing reasons, you may not re-register for the Liveo Service. Liveo may block your email address and Internet protocol address to prevent further registration.

EFFECT OF TERMINATION/ACCOUNT DELETION: Upon termination, all licenses granted by Liveo 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. Liveo 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 Liveo 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 Liveo Site.

Liveo has the right, but not the obligation, to monitor all conduct on and content submitted to the Liveo Service. Liveo 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 Liveo, you own all content that you submit to the Liveo Service. You grant Liveo 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 Liveo Service permission to view your content for their personal, non-commercial purposes. If you make suggestions to Liveo on improving or adding new features to the Liveo Service, Liveo 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 Liveo and grant the licenses set forth above; (ii) Liveo 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 Liveo 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 Liveo Service; (ii) assert a violation by you of any term of this Agreement; or (iii) assert that any content you submitted to Liveo 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 Liveo Sites and/or the Liveo Service will let you leave the particular Liveo Site or Liveo Service you are accessing in order to access a linked site (the "Linked Sites"). Liveo neither controls nor endorses these linked sites, nor has Liveo reviewed or approved the content which appears on the linked sites. Liveo 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 Liveo 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 Liveo 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 Liveo 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

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

Liveo provides the Liveo Service on an "as is" and "as available" basis. You therefore use the Liveo Service at your own risk. Liveo 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, Liveo makes no representations or warranties:

- That the Liveo Service will be permitted in your jurisdiction;
- That the Liveo 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 Liveo Service will meet your personal or professional needs;
- That Liveo will continue to support any particular feature of the Liveo Service.
- Concerning sites and resources outside of the Liveo Service, even if linked to from the Liveo Service.

To the extent that a secondary party may have access to or view Liveo 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 Liveo Service, and no warranties shall apply after such period.

14. Limitation of Liability

To the fullest extent permitted by law: (i) Liveo 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) Liveo's total liability to you shall not exceed the amounts paid by you to Liveo over the twelve (12) months preceding your claim(s).

15. Professional Advice Disclaimer / Medical Disclaimer

Professional Advice Disclaimer.

The LIVEO 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 LIVEO SITE. THE USE OF ANY INFORMATION PROVIDED ON THE LIVEO SITE IS SOLELY AT YOUR OWN RISK.

NOTHING STATED OR POSTED ON THE LIVEO SITE OR AVAILABLE THROUGH ANY LIVEO 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 LIVEO SITE IS CONTINUALLY UNDER DEVELOPMENT AND LIVEO 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 LIVEO SITE WILL ALWAYS INCLUDE THE MOST RECENT FINDINGS OR DEVELOPMENTS WITH RESPECT TO THE PARTICULAR MATERIAL.

Medical Disclaimer.

In becoming a Member of Liveo with the intent of using the Liveo 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 Liveo.

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

Liveo, Inc. 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 Liveo 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 Liveo-generated Content and Content provided to Liveo by its partners and licensors is copyrighted individually and/or as a collective work under the U.S. copyright laws; further, Liveo owns a copyright in the selection, coordination, arrangement and enhancement of all Content in the Liveo 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 Liveo name, logos and affiliated properties, are the exclusive property of Liveo, 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 Policy

Liveo 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 Liveo Site do not infringe any third party copyright.

Liveo will promptly remove materials from the Liveo Site in accordance with the Digital Millennium Copyright Act ("DMCA") if properly notified that the materials infringe a third party's copyright. In addition, Liveo 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 Liveo Site the material that you claim is infringing may be found, sufficient for Liveo 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: copyright@Liveo.com
- Offline: Liveo's Copyright Agent (see contact information below)

Filing a DMCA Counter-notification to Restore Removed Content—for Liveo Users

If you believe that your material has been removed by mistake or misidentification, please provide Liveo 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 Liveo 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 Liveo may be found (which includes the United States District Court for the Southern District of New York), 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: copyright@Liveo.com
- Offline: Liveo'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.**

Liveo 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.

Liveo's Copyright Agent

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

Liveo, Inc. 555 West 18th Street New York, New York 10011 Attn: Legal Dept. - Copyright Agent copyright@Liveo.com

18. General Provisions

GOVERNING LAW: This Agreement shall be governed by the laws of the State of New York, 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 Liveo Service must be commenced in the state or federal courts located in New York County, New York, United States of America (and you consent to the jurisdiction of those courts). In any such action, Liveo 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 Liveo in exercising any right hereunder will waive any further exercise of that right. Liveo'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 Liveo'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 Liveo electronically. Liveo may provide all such communications by email or by posting them on the Liveo Service. For support-related inquiries, you may send an email to support@Liveo.com or the following address:

Liveo, Inc. Attention: Legal Department

Nothing herein shall limit Liveo'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 Liveo on the Liveo Site or a written amendment signed by an authorized representative of Liveo. A revised Terms of Service will be effective as of the date it is posted on the Liveo Site.

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

- [Privacy Policy](#)

- **Mobile App Addendum**

- This End User License Agreement ("Agreement") is between you and Liveo, Inc. ("Liveo") and governs your use of the Liveo application (the "Liveo App") made available through the Apple App Store. The Liveo App allows you to use certain aspects of Liveo's service, available at www.Liveo.com (the "Liveo Service").
- **1. Parties.** This Agreement is between you and Liveo only, and not Apple, Inc. ("Apple"). Liveo, not Apple, is solely responsible for the Liveo App and its content. Although Apple is not a party to this Agreement, Apple has the right to enforce this Agreement against you as a third party beneficiary.
- **2. Terms of Service.** To use the Liveo App, you must register to become a Liveo member. In doing so, you must accept Liveo's [Terms of Service](#), which are made a part of this Agreement. Please read the **Terms of Service** carefully as it explains what you may and may not use the Liveo Service for.
- **3. Privacy.** Liveo may collect and use your information as set forth in its [Privacy Policy](#), which are made a part of this Agreement. Liveo also makes the following App-specific privacy disclosure: Liveo's analytics service provider may collect the following information: your device's Unique Device Identifier (UDID), technical information about the App (such as version number), App session information, your preferred language, and your preferred time zone. After collecting such information, Liveo's analytics provider will assign a new unique number to replace the UDID and will delete the UDID. The information is then aggregated and used by Liveo to measure the use and performance of the App. Liveo may publicly disclose the aggregate information. Liveo will not share the UDID or any other individual App user data with third parties, except in the case of a court order, subpoena, or a lawful government demand.
- **4. Limited License.** Liveo grants you a limited, non-exclusive, non-transferable, revocable license to use the Liveo App for your personal, non-commercial purposes. You may only use the Liveo App on an iPhone®, iPod® Touch, iPad®, or other Apple device that you own or control and as permitted by the App Store [Terms of Service](#).
- **5. Warranty.** The Liveo App is provided for free on an "as is" basis. As such, Liveo disclaims all warranties about the Liveo App to the fullest extent permitted by law. To the extent any warranty exists under law that cannot be disclaimed, Liveo, not Apple, shall be solely responsible for such warranty.
- **6. Maintenance and Support.** Because the Liveo App is free, Liveo does not provide any maintenance or support for it. To the extent that any maintenance or support is required by applicable law, Liveo, not Apple, shall be obligated to furnish any such maintenance or support.
- **7. Third Party Intellectual Property Claims.** Liveo shall not be obligated to indemnify or defend you with respect to any third party claim arising out or relating to the Liveo App. To the extent Liveo is required to provide indemnification by applicable law, Liveo, not Apple, shall be solely responsible for the investigation, defense, settlement and discharge of any claim that the Liveo App or your use of it infringes any third party intellectual property right.
- **8. Product Claims.** Liveo, not Apple, is responsible for addressing any claims by you relating to the Liveo App or use of it, including, but not limited to: (i) any product liability claim; (ii) any claim that the Liveo App fails to conform to any applicable legal or regulatory requirement; and (iii) any claim arising under consumer protection or similar legislation. Nothing in this Agreement shall be deemed an admission that you may have such claims.
- **9. U.S. Legal Compliance.** You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- **10. Contact Information.** Should you have any questions, complaints, or claims relating to the Liveo App, please contact us at support@Liveoburn.com

This Agreement constitutes the entire understanding between Liveo and you concerning the subject

matter hereof and supersedes all prior agreements and understandings regarding the same.

DRAFT