

## **Bastion Fitness Terms of Service**

**©2023 Bastion. All rights reserved.**

*Effective: June 8, 2022*

**1. Acceptance of Terms; Modifications.** These Terms of Service (the “**Terms**”) are a binding legal agreement between you and Bastion, LLC., a company incorporated under the laws of Kansas with a registered office at 935 N. Carter, Wichita, KS, 67206. (“**Bastion**,” “**we**,” “**us**” and “**our**”). The Terms govern your use of our software applications, resources and services for you and fitness/ nutrition coaches to find each other, communicate with each other, and arrange for the provision of fitness/nutrition services (collectively, our “**Bastion Service**”). The Terms govern all use of the Bastion Service, whether you access it from our website at <https://www.bastionfit.com> (or any localized version) (the “**Site**”), our mobile applications and mobile websites, our Facebook application, our online or phone support offerings, or any other access point we make available to you. Our Bastion Guarantee Terms, Reservation Protection Policy, and other Policies applicable to your use of the Bastion Service are incorporated by reference into these Terms of Service. BY AGREEING TO THESE TERMS DURING THE ACCOUNT SIGN-UP PROCESS OR ACCESSING OR USING THE BASTION SERVICE WITHOUT AN ACCOUNT, YOU ACCEPT THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, YOU SHOULD NOT ACCEPT THEM, IN WHICH CASE YOU DO NOT HAVE THE RIGHT TO USE THE BASTION SERVICE.

You understand and agree that we may change the Terms from time to time, and that any such changes will be effective (except as otherwise described in Section 17.10 below) when we post the modified Terms on the Bastion Service, unless otherwise required by applicable law. Your continued access and use of the Bastion Service after we post the modified Terms will constitute your consent to be bound by the modified Terms.

## **2. Bastion Service.**

2.1 Nature of the Bastion Service. The Bastion Service consists of a desktop Web application, mobile applications, and other related tools, support and services that you and fitness/nutrition coaches (“Coaches”) can use to find, communicate with and interact with each other. The Bastion Service includes our emergency support services, educational materials for Coaches, and other services. We charge fees for some aspects of the Bastion Service, as described below in Section 9.

2.2 Bastion does not provide Coaching Services. Bastion is a neutral venue for Coaches and individuals seeking their services. Bastion is not a Coach and, except for emergency phone support and other resources and support specifically described in the Bastion Service, does not provide coaching services. We make no representations or warranties about the quality of training, advice, equipment, programs, plans, advice, or other services provided by Coaches, or about your interactions and dealings with users. ***Coaches listed on Bastion are not under the direction or control of Bastion; are not employees of Bastion; and Coaches determine in their own discretion how to provide Fitness/Nutrition Services.*** Though we provide general guidance on our Site to Coaches about safety and service and to individuals seeking their service about selecting and engaging Coaches, Bastion does not employ, recommend, or endorse Coaches, and, to the maximum extent permitted by applicable law, we will not be responsible or liable for the performance or conduct of Coaches or individuals seeking their services, whether online or offline. We conduct an initial review of Coaches profiles and we facilitate Background Checks or Identification Verifications (each as described in Section 10, below) on Coaches conducted by a third party, but, except where explicitly specified in the Bastion Service (and then only to the extent specified), do not otherwise screen Coaches or individuals seeking

their service. You should exercise caution and use your independent judgment before engaging a Coach, providing fitness/ nutrition service, or otherwise interacting with users via the Bastion Service. You and Coaches are solely responsible for making decisions that are in the best interests of yourselves. For example, each Coach of the Bastion Service is responsible for keeping current his or her own fitness/ nutrition certifications and we will have no liability for a Coach's failure to keep current their certifications. Additionally, individuals seeking the services of Coaches will be sure to first talk to their physician before beginning a fitness, exercise, or nutrition regimen. Bastion will not be held liable for failure to consult with a physician prior to beginning a fitness, exercise, or nutrition regimen from a Coach.

**2.3 Release. Subject to Section 16 below, Bastion has no liability for any claims, injuries, loss, harm and/or damages arising from and/or in any way related to your interactions or dealings with other users and the acts and/or omissions of Coaches and individuals seeking their service, whether online or offline. You acknowledge and agree that, to the maximum extent permitted by the applicable law, YOUR USE AND/OR PROVISION OF FITNESS/ NUTRITION COACHING SERVICES IS AT YOUR SOLE AND EXCLUSIVE RISK. (Any financial obligations Bastion may have to its users in connection with user conduct are limited to the reimbursement obligations set forth in the Bastion Guarantee.)**

2.4 Transactions are between Coaches and Individuals seeking their Services. The Bastion Service may be used to find and offer Fitness/Nutrition Coaching and to facilitate payment, but all transactions conducted via the Bastion Service are between Coaches and Individuals seeking their services. Except for the limited refunds and "Reservation Protection" specified in Section 9.6 and the Bastion Guarantee, you agree that Bastion has no liability for damages associated with Fitness/ Nutrition (which may include bodily injury or

death) or resulting from any other transactions between users of the Bastion Service.

2.5 Bookings. Coaches and Individuals seeking their service transact with each other on the Bastion Service when they both agree to a “booking” that specifies the fees, time period, cancellation policy, and other terms for provision of Fitness/Nutrition coaching services via the booking mechanism provided on the Bastion Service (a “Booking”). A Booking may be initiated by either a Coach or an Individual seeking their service by selecting the type(s) of Fitness/Nutrition Services to be provided and then following the prompts that appear on-screen. If you are an Individual seeking Fitness/Nutrition services and you initiate a Booking, you agree to pay for the Services described in the Booking when you click “Request & Pay.” If you are an Individual Seeking Fitness/Nutrition Services and a Coach initiates a Booking, you agree to pay for their Services described in the Booking when you click “Pay Now.” All requests are subject to acceptance by the receiving party. The receiving party is not obligated to accept your (or any) request and may, at their discretion, decline for any reason. You acknowledge that, once you complete a Booking, you agree to honor the price and other terms of that Booking, as acknowledged in the Booking confirmation.

2.6 Individuals seeking Fitness/Nutrition coaching are Solely Responsible for Evaluating Coaches. Individuals seeking Fitness/Nutrition coaching are solely responsible for evaluating the suitability of Coaches for the services they offer to provide. Please visit the Help Center for guidance about making informed decisions about engaging a Coach. Though Bastion performs a limited review of Coaches profiles and facilitates Coaches’ Background Checks or Identity Verifications conducted by a third party, any such screening is limited, and Bastion does not warrant that any such screen is accurate, complete, conclusive or up-to-date. Similarly, Bastion does

not endorse reviews of Coaches by other Individuals seeking their services that may be available via the Bastion Service, and Bastion makes no commitments that such reviews are accurate or legitimate.

2.7 Emergencies. We recommend that Individuals seeking Fitness/Nutrition coaching give their Coach contact information where they can be reached in the event medical care becomes necessary. We recommend that Individuals seeking the services of a Coach provide the Coach with up to date medical records along with a detailed history of athletic background, injuries, aches and pains, medication, goals, and other pertinent information that a Coach would need in order to develop a fitness or nutrition plan. If your Coach reaches out to you with a request for medical records/history and you refuse, you release the Coach and Bastion from any injury, damage, death or liability that arises from your fitness/nutrition program. Likewise, if at any point your Coach requests that you to seek medical care for an injury, ache/pain, or other medical condition, and you refuse, you release the Coach and Bastion from any injury, damage, death, or liability that arises from your fitness/nutrition program. Bastion recommends that all users have adequate insurance to cover the costs of medical care.

2.8 Consultation Services. Bastion may offer Individuals seeking fitness/nutrition coaching and Coaches phone, chat, or email consultation services from a third party to provide an educational resource for decisions you make about your fitness/nutrition plan. These consultation services are provided by a third party, and are not a part of the Bastion Service. You agree to resort solely to the applicable third party consultation service in the event of any claims arising from their services.

**3. Certification of Compliance with Applicable Law.** By accessing and using the Bastion Service, you certify that you: (1) are at least 18

years of age or the age of majority in your jurisdiction, whichever is higher, (2) are the parent or legal guardian of the individual seeking fitness/nutrition services, and (3) will comply with all laws and regulations applicable to your activities conducted through, or related to, the Bastion Service.

- For Individuals seeking Fitness/Nutrition Services, this means, among other things, that you will ensure that you are medically cleared by your physician and healthy to perform the services offered by your coach. You also certify that you have obtained and will maintain any mandatory health insurance policies.

- For Coaches, this means, among other things, that you certify that you are legally eligible to provide Fitness/Nutrition services in the jurisdiction where you provide such Services (by way of a certification or degree from an accredited institute); that you have complied and will comply with all laws and regulations that are applicable to you; that you have obtained all business licenses, business tax registrations, and permits necessary to legally provide Fitness/Nutrition Services; that you are covered by your own liability insurance; and that, when providing Fitness/Nutrition Services, you will consider the health and wellbeing of the individual seeking your service.

You acknowledge that Bastion is entitled to rely on these certifications from you, is not responsible to ensure that all users have complied with applicable laws and regulations, and will not be liable for a user's failure to do so.

#### **4. Use of the Bastion Service; Suspension.**

4.1 Your Conduct on the Bastion Service. When you use the Bastion Service, you agree:

- To use the Bastion Service only in a lawful manner and only for its intended purpose.

- Not to submit viruses or other malicious code to or through the Bastion Service.

- Not to use the Bastion Service, or engage with other users of the Bastion Service, for purposes that violate the law.

- Not to use the Bastion Service to arrange for the provision and purchase of services with another user, then complete transactions for those services outside of the Bastion Service.

- Not to use the Bastion Service for purposes of competing with Bastion or to promote other products or services.

- Not to post reviews about Coaches that aren't based on your personal experience, that are intentionally inaccurate or misleading, or that violate these Terms.

- Not to post content or materials that are pornographic, threatening, harassing, abusive, or defamatory, or that contain nudity or graphic violence, incite violence, violate intellectual property rights, or violate the law or the legal rights (for example, privacy rights) of others.

- Not to post “spam” or other unauthorized commercial communications.

- To use the Bastion Service only for your own purposes, and not to impersonate any other person.

- Not to transfer or authorize the use of your account for the Bastion Service by any other person, or to engage in fraudulent transactions.

- Not to provide false information in your profile on, or registration for, the Bastion Service, or to create multiple or duplicate accounts.

- Not to interfere with our provision of, or any other user's use of, the Bastion Service.

- Not to solicit another user's username and password for the Bastion Service or any other sensitive personal information, including bank details.

**4.2 Suspension and Termination.** You understand and agree that we have no obligation to provide the Bastion Service in any specific location or territory, nor to continue providing it once we have begun. We reserve the right to suspend or terminate your access to the Bastion Service: (1) if, in our discretion, your conduct on the Site or Bastion Service is inappropriate, unsafe, dishonest, or in breach of these terms; or (2) if necessary, in our discretion, to protect Bastion,

its users, or the public. You may suspend or terminate your use of the Bastion Service at any time and for any reason. If you wish to deactivate your account, please contact Bastion. Note that if you have any outstanding payment obligations, those will survive suspension or termination of your account.

**5. Registration; Account Security.** In order to use some aspects of the Bastion Service, you will be required to create a username, password, and user profile. If you elect to use the Bastion Service, you agree to provide accurate information about yourself and keep this information up-to-date. You agree not to impersonate anyone else and not to maintain more than one account (or, if Bastion suspends or terminates your account, not to create additional accounts). You are responsible for maintaining the confidentiality of your username and password for the Bastion Service and are responsible for all activity under your account. You agree to notify us promptly of any unauthorized use of your account.

**6. Privacy.** Our collection and use of your personal information on the Bastion Service is described in our Privacy Statement. By accessing or using the Bastion Service, you acknowledge that you have read and understand the Privacy Statement.

## **7. Your Content.**

7.1 Your Content. We may require or allow you (or someone else on your behalf) to submit or upload text, photographs, images, videos, reviews, information and materials to your profile on the Bastion Service or otherwise in connection with using the Bastion Service and/or participating in promotional campaigns we conduct on the Site (collectively, “Your Content”). For example, Coaches are invited to create a profile page with a photograph and other information including their degrees, certifications, and experiences. Coaches may also (with permission of the Individual seeking their services) transmit a photo of individuals seeking their services while

Individuals seeking Fitness/Nutrition Services may submit reviews of Coaches.

7.2 License. Except for the limitations on our use and disclosure of personal information described in our Privacy Statement, to the maximum extent and duration permitted under any applicable law, you grant Bastion an irrevocable, perpetual, non-exclusive, fully paid worldwide license to use, copy, perform, publicly display, reproduce, adapt, modify, transmit, broadcast, prepare derivative works of, and/or distribute Your Content in connection with providing and/or promoting the Bastion Service, and to sublicense these rights to third parties.

7.3 Release. If your name, voice, image, persona, likeness, or performance is included in any of Your Content, you hereby waive, and release Bastion and its users from, any claim or cause of action, whether known or unknown, for defamation, copyright infringement, invasion of the rights of privacy, publicity, or personality, or any similar claim arising out of the use of Your Content in accordance with the license in Section 7.2 and the other provisions of these Terms.

7.4 Your Representations and Warranties about Your Content. You represent and warrant that (1) you are the owner or licensor of Your Content, and that you have all rights, consents and permissions necessary to grant the license in Section 7.2 and make the release in Section 7.3 with respect to Your Content, (2) that you have any necessary consents and releases from individuals who appear in Your Content; and (3) Your Content does not violate the law or these Terms.

7.5 Right to Remove or Screen Your Content. Though we are not obligated to do so, we reserve the right to monitor, screen, edit and/or remove Your Content on the Bastion Service. Our enforcement of these Terms with respect to Your Content is at our

discretion, and failure to enforce the Terms in one instance does not create a waiver of our right to enforce them in another instance. We have no obligation to retain or provide you with copies of Your Content, nor will we have any liability to you for any deletion, disclosure, loss or modification to Your Content. It is your sole responsibility to maintain backup copies of Your Content.

7.6 Reviews. The Bastion Service may provide the ability to leave public and/or private reviews of users. You acknowledge that even private reviews may be shared with third parties in accordance with applicable law and our Privacy Statement and that Bastion has no obligation to preserve or indefinitely store any reviews. If you are a Coach, we have no obligation to provide you with the content of any reviews about you submitted by other users of the Bastion Service, whether before or after termination of your account for the Bastion Service. We will have no liability to you for any deletion, disclosure, loss or modification of these reviews. We reserve the right to screen, edit or remove these reviews from the Bastion Service at any time.

## **8. Phone, Text and Mobile Communications.**

8.1 Consent to Autodialized Text Messages. You consent to Bastion communicating with you about the Bastion Service by SMS, text message, email and other electronic means, including autodialed text messages containing service information and/or marketing messages, even if your phone number is on the do-not-call list. Your carrier's normal messaging, data and other rates and fees will apply to these communications. You are not required to provide this consent to receive marketing messages as a condition of purchasing anything or using the Bastion Service, and you may opt-out of receiving these messages at any time as described in our Privacy Statement (though you may continue to receive messages while Bastion processes your request).

8.2 Phone Number Changes. In the event you deactivate a mobile phone number provided to us, you agree to update your Bastion account information promptly to ensure that messages are not sent to the person who acquires your old number.

## **9. Fees & Payment.**

9.1 Currency. All fees, deductible amounts and other payments referenced on, or charged through, the Bastion Service are listed and payable in local currency.

9.2 Fees for Individuals Seeking Training/Nutrition Services. Individuals seeking Training/Nutrition Services may purchase these Services from a Coach by completing a Booking as described in Section 2.5. If you are an Individual seeking Training/Nutrition Service, you enter into a transaction with the Coach when you accept a Booking, and you agree to pay the total fees indicated in the Booking. As described in Sections 9.3 and 9.4, the total amount Individuals seeking Fitness/Nutrition Services are charged for a Booking may also include a service fee payable to Bastion. Where required by law, the amount charged will also be inclusive of applicable taxes. ***The Coach, not Bastion, is responsible for performing the Fitness/Nutrition Services.***

9.3 Fees for Coaches. Coaches may agree to provide Fitness/Nutrition Services to an Individual seeking their services by agreeing to a Booking as described in Section 2.5. If you are a Coach, you must confirm the Booking before it expires or the Individual seeking your services will have no obligation to complete the transaction. Once the Booking is completed by both parties, you agree to honor the price set forth in your Booking. The purchase of Fitness/Nutrition Services is a transaction between the Coach and the Individual seeking Fitness/Nutrition Services. ***Bastion's role is to facilitate the transaction.*** We will (either directly or indirectly through an authorized third party) collect payment from the Individual seeking

Fitness/Nutrition Services at the time of Booking and (except to the extent of any payment hold pursuant to Section 9.7) initiate payment to the Coach's account 48 hours after completion of the service period indicated in the Booking. Coaches are charged a service fee as described in Section 9.4. Where required by law, the amount charged will also be inclusive of applicable taxes.

**9.4 Service Fees.** We charge service fees for some aspects of the Bastion Service. If you are a Coach, except where otherwise specified via the Bastion Service, our service fee is calculated as a percentage of the fees an Individual seeking your services agrees to pay to you in a Booking and is collected from each Booking. Our service fees are described on the Fee Page.

#### 9.5 Cancellations & Refunds.

- **Cancellations by Coach.** If a Coach cancels a Booking prior to or during the service period identified in the Booking, we will refund the fees paid by the Individual seeking Fitness/ Nutrition Services for Services not provided, as well as any service charge paid to Bastion. If you are a Coach, you can appoint a substitute Coach (as agreed by the Individual seeking Fitness/Nutrition Services and so long as the substitute has an active account on the Bastion Service and has agreed in writing to accept a Booking) by contacting Bastion to modify the Booking. If you do not find a substitute and repeatedly cancel accepted Bookings without justification, Bastion may terminate your account.

- **Cancellations by Individuals seeking Fitness/Nutrition Services.** If an Individual seeking Fitness/Nutrition Service cancels a

Booking prior to or during the service period specified in a Booking, we will refund fees in accordance with the cancellation policy selected by the Coach on the Bastion Service. All Coaches are required to select a cancellation policy prior to completing a Booking so that Individuals seeking their services are aware of the cancellation policy prior to Booking. For more information about cancellation policies, please visit the Help Center.

- Force Majeure. The cancellation policies described herein may not apply in the event of certain emergency situations beyond the control of Coaches and/or Individuals seeking their services that make it impossible or impractical to perform agreed Bookings, such as evacuations resulting from earthquake, hurricane, wildfire, flood, war, riots or other similar disaster. In such cases Bastion may, in its reasonable discretion, issue refunds under terms that vary from a Coach's selected cancellation policy.
- Refunds for Failure to Perform. If we determine in our reasonable discretion that a Coach has failed to provide Fitness/Nutrition Services as agreed with the Individual seeking their service or is otherwise in breach of these Terms, then we may, in our reasonable discretion, cancel a Booking and/or issue a full or partial refund to the Individual seeking Fitness/Nutrition Service.

- General Terms for Cancellations. If you wish to cancel a Booking, you should use the mechanisms available through the Bastion Service to do so. For purposes of the policies and terms in this Section 9.5, the date of cancellation is the date that a user cancels through the Bastion Service, regardless of any separate communications between users outside of the Bastion Service.

- Payment Disputes; Payment Outside of the Bastion Service. Bastion initiates payments to Coaches 48 hours after completion of a Booking. Once these amounts have been disbursed, any further payment disputes are between the Individual seeking Fitness/Nutrition Service and the Coach, and Bastion has no obligation to mediate or facilitate any resolution.  
***Further, Bastion has no responsibility or liability with respect to any tips, bonuses, or other payments made outside of the Bastion Service.***

9.6 Payment Holds. If you are a Coach, Bastion reserves the right to issue a hold on amounts otherwise payable to you pursuant to Section 9.3 if there is a reasonable suspicion of fraudulent activity involving your account(s) or for other similarly compelling reason involving protection of Bastion, the Bastion community or third party rights. We may also recommend that third party payment service providers restrict your access to funds in your account under the same circumstances.

9.7 Authorization to Charge. When you pay for Fitness/Nutrition Services or for other services on the Bastion Service, you will be required to provide us with valid, up-to-date credit card or other payment information and to maintain that payment information (or

an acceptable alternative payment method) on file with your account so long as you have any outstanding, confirmed Bookings. Bastion's role is to facilitate payments from Individuals seeking Fitness/Nutrition Service to Coaches as limited payment agent for the Coach. You authorize us to charge your credit card or other payment method for fees you incur on the Bastion Service as they become due and payable, and to charge any alternative payment method Bastion has on record for you in the event your primary payment method is expired, invalid, or otherwise not able to be charged. You are responsible for maintaining up-to-date payment information. If we cannot charge you for fees when due because your payment information is no longer valid, or if we do not receive your payment when due, then you understand that neither Bastion nor the Coach will be responsible for any failure to provide services associated with those fees. Except as expressly provided in these Terms, all fees paid via the Bastion Service are non-refundable once paid.

9.8 Taxes. Except for taxes on Bastion's income and gross receipts or where Bastion is otherwise required to collect taxes, you acknowledge that you are solely responsible to pay any applicable taxes that arise as a result of your purchase, provision, or use of Fitness/Nutrition Services via the Bastion Service. This includes, without limitation, any form of sales tax, VAT, or income tax on fees paid or received by you through the Bastion Service.

9.9 Payment Processing. Payment processing services are provided by Stripe and subject to the Stripe Services Agreement (available at <https://stripe.com/us/legal>), and, if you are receiving payments via the Bastion Service, the Stripe Connected Account Agreement (available at <https://stripe.com/us/connect-account/legal>) (collectively, the "Stripe Terms"). By using the Bastion Service to receive payment, you will be asked to set up a Stripe account and accept the Stripe Terms. You authorize Bastion to obtain all necessary access to, and perform

all necessary activity on (including requesting refunds where appropriate), your Stripe Connected Account to facilitate payment related to Fitness/Nutrition Services you purchase or provide. You further agree to provide accurate and complete information about you and your business, and authorize Bastion to share it and transaction information with Stripe for the purposes of facilitating the payment processing services provided by Stripe. Bastion reserves the right to switch payment processing vendors or use alternate or backup vendors in its discretion.

## **10. Background Checks and Identity Verifications.**

Bastion may provide Coaches with access to third party consumer reporting agencies that perform, among other things, personal identification verification services (“Identity Verification”) or criminal records checks, sex offender registry checks, motor vehicle records checks, certification or educational degree verification, and/or identification verifications (collectively, “Background Checks”). We do not provide, and are not responsible or liable in any manner for, the Background Checks, and we do not endorse or make any representations or warranties regarding the reliability of such Background Checks or the accuracy, timeliness or completeness of any information in the Background Checks. We do not independently verify information in the Background Checks.

If you undergo a Background Check via the Bastion Service, you hereby consent to the collection, use and disclosure of the information in the Background Check, and you agree to provide complete and accurate information for your Background Check. You understand and agree that Bastion may, in its sole discretion, review and rely on the information in the Background Check in deciding whether to suspend or terminate or investigate a complaint about a Coach, but also that we are not obligated to do so, and are not responsible or liable in any way in the event that any information in

any Background Check is not accurate, timely or complete. If you are the subject of a Background Check, you may contact the applicable third-party consumer reporting agency to dispute the accuracy, timeliness or completeness of such information. You agree that Bastion's rights and obligations under the Arbitration Agreement inure to the benefit of the consumer reporting agency used for Background Checks in respect to any claim that would be subject to the Arbitration Agreement if brought against us. Bastion reserves the right to suspend or terminate your access to the Bastion Service based on information in the Background Check or for any other reason, or no reason, in our sole discretion.

Individuals seeking Fitness/Nutrition Service remain fully responsible to evaluate and investigate their Coach. **Be aware of the following limitations in Background Checks: Except as otherwise expressly provided in these Terms or through the Service, Bastion does not automatically run Background Checks on any Users. Background Checks may vary by type, breadth and depth. Records not available to third-party Background Check agencies will not be included in the results. Not all arrest logs and records, conviction and correction records, sex offender registries and motor vehicle records are available in all jurisdictions. In many jurisdictions there is a delay before arrest logs and records, conviction and correction records, sex offender registries and motor vehicle records are included in Background Checks. Juvenile records and offenses for minors may not appear in the public record and are therefore not included in the results. Dismissed cases, arrests not resulting in convictions, arrests or convictions in foreign countries and nolle prosequi (abandonment of prosecution) may not be reported. Traffic violations are not included unless a jurisdiction reports them as criminal offenses. In the jurisdictions where traffic violations are reported as criminal offenses, such traffic violations may be included in the results as misdemeanors or felonies.**

## **11. Copyright Infringement.**

**Bastion follows the procedures of the Digital Millennium Copyright Act. We will respond to claims of copyright infringement that are reported in accordance with this Section. It is our policy, in appropriate circumstances, to deactivate or terminate the access of users who repeatedly infringe or are repeatedly charged with infringing upon others' copyrights or other intellectual property rights.**

If you believe in good faith that your copyrighted work has been infringed upon by content posted on the Bastion Service, please provide our designated copyright agent with a written notice that includes all of the following information:

- A description of the copyrighted work you believe to have been infringed upon;

- A description of the URL or other location on our Site of the material you believe to be infringing upon;

- Your name, mailing address, telephone number and email address;

- A statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;

- A statement by you, which you make under penalty of perjury, that the above information in your notice is accurate, and that you are the copyright owner or authorized to act on the copyright owner's behalf; and

- An electronic or physical signature of the person authorized to act on behalf of the copyright owner.

Our designated agent for notice of copyright infringement can be reached at:

Bastion, Inc.

Attention: Copyright Notice

935 N. Carter, Witcha, KS, 67206

[service@bastionfit.com](mailto:service@bastionfit.com)@bastion.com

**12. Third Party Services, Links.** The Bastion Service may contain links to third party websites or resources. You acknowledge and agree that

we are not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement of such websites or resources, or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

**13. Indemnity.** TO THE MAXIMUM EXTENT PERMITTED UNDER ANY APPLICABLE LAW AND EXCEPT AS OTHERWISE PROHIBITED BY APPLICABLE LAW, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD BASTION HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, EXPENSES, DAMAGES AND/OR LIABILITIES, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS, THAT ARE IN ANY WAY RELATED TO YOUR: (1) transactions and interactions, online or offline, with other users of the Bastion Service; (2) breach of these Terms; (3) disputes with other users of the Bastion Service; (4) your misstatements, misrepresentations, or violation of applicable law; (5) injuries, health complications, ache/pains, or death associated with Fitness/Nutrition Services; (6) property damage or personal injury to third parties; (7) Your Content; or (8) your use of any Background Check or Identity Verification information in violation of any applicable law. YOU FURTHER AGREE THAT YOU WILL COOPERATE WITH US IN THE DEFENSE OF SUCH CLAIMS. WE RESERVE THE RIGHT TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION UNDER THIS SECTION, AND YOU WILL NOT SETTLE ANY SUCH CLAIM OR MATTER WITHOUT OUR ADVANCE WRITTEN CONSENT.

#### **14. Intellectual Property.**

14.1 Bastion Service. Bastion and its licensors retain all right, title and interest in and to the Bastion Service, the technology and software used to provide it, all electronic documentation and content available through the Bastion Service (other than Your Content), and all intellectual property and proprietary rights in the Bastion Service and such technology, software, documentation and content. Except for your rights to access and use the Bastion Service set forth in these Terms, nothing in these Terms licenses or conveys any of our intellectual property or proprietary rights to anyone, including you. You agree that we will have a perpetual right to use and incorporate into the Bastion Service any feedback or suggestions for improvement that you provide to us concerning the Bastion Service, without any obligation of compensation.

14.2 Bastion Trademarks. Bastion owns all rights in and to its trademarks, service marks, brand names and logos (the "Bastion Marks"). If you are a Coach, Bastion grants you, for so long as you are in good standing on the Bastion Service, a limited, revocable, non-exclusive, non-transferable license to use the Bastion Marks solely: (1) in the form incorporated into goods, including customizable marketing collateral (promo cards, signage etc.), made available for purchase via the Bastion Store and/or (2) in any other manner specifically authorized in writing via the Bastion Service. As a condition of exercising such license, you agree that (1) all goodwill associated with your use of the Bastion Marks inures solely to the benefit of Bastion, and (2) such license immediately terminates upon your ceasing to be a Coach in good standing, whether at your own option or because Bastion suspends or terminates your rights to use the Bastion Service.

**15. Warranty Disclaimer for the Bastion Service.** The information and materials found on the Bastion Service, including text, graphics, information, links or other items, are provided "as is" and "as available." Reviews, profiles, advice, opinions, statements, offers, or

other information or content made available through the Bastion Service, but not directly by Bastion, are those of their respective authors, who are solely responsible for such content. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BASTION DOES NOT: (1) WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF INFORMATION AND MATERIALS ON THE BASTION SERVICE; (2) ADOPT, ENDORSE OR ACCEPT RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE, OR STATEMENT MADE BY ANY PARTY OTHER THAN BASTION; (3) WARRANT THAT YOUR USE OF THE SERVICES WILL BE SECURE, FREE FROM COMPUTER VIRUSES, UNINTERRUPTED, ALWAYS AVAILABLE, ERROR-FREE OR WILL MEET YOUR REQUIREMENTS, OR THAT ANY DEFECTS IN THE BASTION SERVICE WILL BE CORRECTED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BASTION EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE BASTION SERVICE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY. IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE SUITABILITY OF ANY COACH THAT OFFERS FITNESS/NUTRITION SERVICES VIA THE BASTION SERVICE.

## **16. Limitation of Liability.**

16.1 Exclusion of Certain Types of Damages. To the maximum extent permitted under applicable law, in no event will Bastion be liable to you for any indirect, special, incidental, or consequential damages, or for any business losses, or loss of profit, revenue, contracts, data, goodwill or other similar losses or expenses that arise out of or relate to the use of or inability to use the Bastion Service, including without limitation damages related to any information received from the

Bastion Service, removal of your profile information or review (or other content) from the Bastion Service, any suspension or termination of your access to the Bastion Service, or any failure, error, omission, interruption, defect, delay in operation or transmission of the Bastion Service, even if we are aware of the possibility of any such damages, losses or expenses. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

16.2 Limit on Our Liability to You. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL BASTION'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY IN ANY MATTER ARISING FROM OR RELATING TO THE BASTION SERVICE OR THESE TERMS EXCEED THE AMOUNTS PAID BY YOU TO BASTION (SPECIFICALLY EXCLUDING AMOUNTS PAID TO COACHES) DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO LIABILITY OR, IF YOU HAVE NOT PAID BASTION FOR THE USE OF ANY SERVICES, THE AMOUNT OF \$100.00 USD (OR EQUIVALENT IN LOCAL CURRENCY). (Any financial obligations Bastion may have to its users in connection with user conduct are limited to the reimbursement obligations set forth in the Bastion Guarantee.)

16.3 No Liability for non-Bastion Actions. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BASTION BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, AND/OR CONSEQUENTIAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE BASTION SERVICE, INCLUDING WITHOUT LIMITATION, PROPERTY DAMAGE, THEFT, BODILY INJURY, DEATH, EMOTIONAL DISTRESS, AND/OR ANY OTHER DAMAGES RESULTING FROM RELIANCE ON INFORMATION OR CONTENT POSTED ON OR TRANSMITTED THROUGH THE BASTION SERVICE, OR FOR ANY INTERACTIONS

WITH OTHER USERS OF THE BASTION SERVICE, WHETHER ONLINE OR OFFLINE. THIS INCLUDES ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM THE CONDUCT OF USERS WHO ATTEMPT TO DEFRAUD OR HARM YOU.

IF YOU HAVE A DISPUTE WITH A COACH OR INDIVIDUAL SEEKING FITNESS/ NUTRITION SERVICES, YOU AGREE TO RELEASE BASTION FROM ALL CLAIMS, DEMANDS AND DAMAGES OF EVERY NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES, EXCEPT AS SPECIFICALLY SET FORTH IN THE BASTION GUARANTEE. IN NO EVENT WILL BASTION BE LIABLE FOR DIRECT OR INDIRECT CONSEQUENCES OF AN INDIVIDUAL SEEKING FITNESS/NUTRITION SERVICES OR COACH FAILING TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

## **17. Arbitration Agreement.**

**PLEASE READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH BASTION AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.**

17.1 Arbitration Agreement; Claims. This Section 17 is referred to as the "Arbitration Agreement" in these Terms. Unless you opt out of the Arbitration Agreement in accordance with the procedure described in Section 17.9 below, you and Bastion (together, the "Parties") agree that any and all disputes or claims that arise between you and Bastion relating to the Bastion Service, interactions with others on the Bastion Service, and/or these Terms (including any alleged breach of these Terms) (collectively, "Claims"), except for Excluded Claims (defined in the following sentence), will be resolved as set forth in this Arbitration Agreement. As used herein, "Excluded Claims" means (1) individual claims brought in small claims court (if your claims qualify), (2) claims arising out of or related to a violation of Section 4.1, above, (3) claims in which either party seeks injunctive

or other equitable relief for the alleged unlawful use of intellectual property (including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents), and (4) claims that, as a matter of applicable law, cannot be made subject to arbitration.

17.2 Agreement to Arbitrate. Unless you opt out of the Arbitration Agreement in accordance with the procedure described in Section 17.9 below, you agree that any and all Claims (other than Excluded Claims) will be resolved exclusively on an individual basis through final and binding arbitration, rather than in a court, in accordance with this Arbitration Agreement, and your rights in connection with all Claims (other than Excluded Claims) will be determined by a neutral arbitrator, not by a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To the extent that the Parties' dispute involves both timely filed Excluded Claims and other Claims subject to this Agreement, the Parties agree to bifurcate and stay for the duration of the arbitration proceedings any such Excluded Claims.

17.3 Prohibition of Class and Representative Actions and Non-Individualized Relief. **YOU AND BASTION AGREE THAT, UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT IN ACCORDANCE WITH SECTION 17.9 BELOW, EACH OF US MAY BRING CLAIMS (EXCEPT TO THE EXTENT THAT THE RIGHT TO BRING A CLAIM IN A PURPORTED CLASS OR REPRESENTATIVE ACTION CANNOT BE WAIVED AS A MATTER OF LAW) AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND BASTION AGREE OTHERWISE (OR TO THE EXTENT THAT THE RIGHT TO BRING A CLAIM IN A PURPORTED CLASS OR REPRESENTATIVE ACTION CANNOT BE WAIVED AS A MATTER OF LAW), THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT**

**OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER BASTION SERVICE USERS.**

17.4 Pre-Arbitration Dispute Resolution. Before you commence arbitration, we suggest that you contact us to explain your complaint. Our preference will always be to resolve complaints amicably and efficiently, without the need for arbitration. You may contact us via email at [service@bastion.com](mailto:service@bastion.com) or by mail at Bastion, LLC, Attn: Legal, 935 N. Carter, Wichita, KS, 67206. If the issue is not resolved and results in arbitration, we will need to mutually select and agree upon an arbitrator and the rules and procedures to govern the arbitration.

17.5 Arbitration Procedures. The Parties will try in good faith to mutually select and agree upon an arbitrator and rules and procedures to govern the arbitration. If we cannot agree, then the arbitration will be conducted in English by a neutral arbitrator in accordance with your choice of the JAMS Streamlined Arbitration Rules and Procedures (the "JAMS Rules") or the Rules of the International Center for Dispute Resolution (the "ICDR Rules"), as modified by this Arbitration Agreement. The rules that apply are those in effect when arbitration is demanded by either of the Parties. The JAMS Rules are available at <https://www.jamsadr.com/rules-streamlined-arbitration>, and the ICDR Rules are available at [https://www.icdr.org/rules\\_forms\\_fees](https://www.icdr.org/rules_forms_fees), and both Rules are incorporated in these Terms by reference. You either acknowledge and agree that you have read and understand the Rules or waive your opportunity to read the Rules and any claim

that the Rules are unfair or should not apply for any reason. If there is any inconsistency between the Rules and this Arbitration Agreement, the terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms as a court would, including without limitation, the limitation of liability provisions in Section 16. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms and applicable law. The arbitrator shall submit a decision in writing, specifying the findings of fact and the conclusions of law on which the decision is based. Decisions by the arbitrator are binding and enforceable in court and may be overturned by a court only for very limited reasons.

The arbitration will be held in Sedgwick County in the State of Kansas. If the value of the relief sought is \$10,000 USD or less, you or Bastion may elect to have the arbitration conducted by telephone or based solely on written submissions, which election will be binding on you and Bastion subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. Attendance at any in-person hearing may be made by telephone by you and/or Bastion, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of Kansas, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator will not be bound by rulings in prior arbitrations involving different Bastion users, but is bound by rulings in prior arbitrations involving the same Bastion user to the extent required by applicable law. As limited by applicable law, these Terms and the applicable JAMS Rules, the arbitrator will have (1) the exclusive authority and

jurisdiction to make all procedural and substantive decisions regarding a Claim, including the determination of whether a Claim is arbitrable, and (2) the authority to grant any remedy that would otherwise be available in court.

**17.6 Costs of Arbitration.** Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be shared equally by you and Bastion, except where prohibited by applicable law. In addition, (1) if you demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, Bastion will pay your portion of such fees, and (2) if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, Bastion will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Each party will be solely responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse Bastion for all fees associated with the arbitration paid by Bastion on your behalf that you otherwise would be obligated to pay under the JAMS or ICDR Rules.

**17.7 Confidentiality.** All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties.

**17.8 Severability.** If any term, clause or provision of this Section 17 is held invalid or unenforceable, it will be so held to the minimum extent required by law, and all other terms, clauses and provisions of this Section 17 will remain valid and enforceable.

**17.9 Opt-Out Procedure.** You can choose to reject this Arbitration Agreement by mailing us a written opt-out notice ("Opt-Out Notice")

in accordance with the terms of this Section 17.9. The Opt-Out Notice must be postmarked no later than 30 days after the date you accept these Terms for the first time. You must mail the Opt-Out Notice to Bastion, LLC., Attn: Legal, 935 N. Carter, Wichita, KS, 67206. The Opt-Out Notice must state that you do not agree to the Arbitration Agreement and must include your name, address, phone number, and the email address(es) used to register for the Bastion Service to which the opt-out applies. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Arbitration Agreement. If you opt out of the Arbitration Agreement, the entire Arbitration Agreement will not apply with respect to you, but the remainder of these Terms will continue to apply. Opting out of this Arbitration Agreement has no effect on any previous, other, or future arbitration agreements that you may have with us. By opting out of binding arbitration, you are agreeing to resolve Claims (including Excluded Claims) in accordance with Section 18.

**17.10 Future Changes to this Arbitration Agreement.** Notwithstanding any provision in these Terms to the contrary, you agree that if we make any change to this Arbitration Agreement (other than a change to any notice address or website link provided herein) in the future, that change will not apply to any claim that was filed in a legal proceeding against Bastion prior to the effective date of the change. Moreover, if we terminate this Arbitration Agreement by removing it from these Terms, such termination will not be effective until 30 days after the version of these Terms not containing the Arbitration Agreement is posted to the Site, and will not be effective as to any claim that was filed in a legal proceeding against Bastion prior to the effective date of removal.

**18. Governing Law and Jurisdiction.** These Terms, and any dispute between you and Bastion, will be governed by the laws of the State of Kansas, without regard to principles of conflicts of law, except that the Federal Arbitration Act will govern the interpretation and

enforcement of Section 17 (the Arbitration Agreement). Unless you and we agree otherwise, or except where prohibited by applicable law, in the event that the Arbitration Agreement is found not to apply to you or to a particular claim or dispute, you agree that any claim or dispute that arises between you and Bastion must be resolved exclusively by a state or federal court located in the State of Kansas. You and Bastion agree to submit to the personal jurisdiction of the courts located within Sedgwick County, Kansas for the purpose of litigating all such claims or disputes.

**19. Miscellaneous.** Nothing in these Terms will be construed as making either party the partner, joint venturer, agent, legal representative, employer, worker, or employee of the other. Neither party will have, or hold itself out to any third party as having, any authority to make any statements, representations or commitments of any kind, or to take any action, that will be binding on the other, except as provided for herein or authorized in writing by the party to be bound. These Terms are non-exclusive and do not prohibit Coaches from offering Fitness/Nutrition Services via other means or third parties. The invalidity, illegality or unenforceability of any term or provision of these Terms will in no way affect the validity, legality or enforceability of any other term or provision of these Terms. In the event a term or provision is determined to be invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and these Terms will be enforceable as so modified. To the maximum extent possible under applicable local law, this Agreement will be binding on and will inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

For questions or concerns about the Bastion Service or these Terms, please refer to the Bastion Help Center.

