

## **Breathe™ User Agreement. Terms and Conditions.**

The *Breathe™* mobile application (hereinafter sometimes referred to as merely “*Breathe™*” or as the “Application”) is a product of *Mindful Projects, LLC*, an Indiana limited liability company. In these Terms and Conditions (“Terms”), it is understood the word “User” or “you” refers to you as the user of *Breathe™* provided by Mindful Projects, and that the word “Company” refers to *Mindful Projects, LLC*. These Terms constitute an understanding between you and the Company. By using *Mindful Projects* services and products, including *Breathe™*, you are agreeing to all of the terms and conditions set forth below.

### **A. Scope and Definition of Breathe™**

*Breathe™* is a smart device application that uses software to track dietary information input from the User, while also collecting exercise data from a smart watch or other device worn by the User. The Application is executed on a mobile platform or web-based platform.

*Breathe™* is not a medical device. The intended use of the application is for conveniently displaying approximate diet and exercise data by the user. *Breathe™* is also neither an instrument nor a machine. The User understands that *Breathe™* is definitively not to be used for the diagnosis of disease or any other condition, nor it is to be used for the cure, mitigation, treatment, or prevention of disease. *Breathe™* does not affect the structure or any function of the human body. You acknowledge and agree that *Breathe™* is not intended to be a medical device, as defined in Section 201(h) of the federal FD&C Act.

*Breathe™* does not represent an extension of one or more medical devices, nor should it be used to connect to such devices for the purposes of controlling the device(s), or for use in active patient monitoring or analyzing medical device

data. The User understands that *Breathe*<sup>™</sup> is a helpful mobile application only, and not an accessory to other connected medical devices.

As a simple, general-purpose tool, *Breathe*<sup>™</sup> should be used only to provide contextually relevant information to you. Although custom to the User, *Breathe*<sup>™</sup> is intended to merely increase user awareness and education in an effort to promote user-centered health care. *Breathe*<sup>™</sup> should not be used for clinical decision-making under any circumstances, by the User or any other person.

*Breathe*<sup>™</sup> should also not be used to calculate dosage or create a dosage plan for any situation. This includes, but is not limited to, the diagnosis and treatment of diabetes by the administration of insulin.

*Breathe*<sup>™</sup> provides users with simple tools to organize and track their health information and is intended to be used primarily to track general daily activities. As such, *Breathe*<sup>™</sup> provides easy access to basic health information and is intended to help develop better eating habits and/or increase physical activity. The Application provides dietary logs, macronutrient and micronutrient counters, and calorie counters. *Breathe*<sup>™</sup> may also be used to facilitate meal planning and recipes. Estimates of insulin index or insulin load are only approximate.

*Breathe*<sup>™</sup> does not, however, provide specific treatment or treatment suggestions. The User understands that under no circumstances whatsoever should *Breathe*<sup>™</sup> be used in place of the professional advice from a trained medical doctor, dietician, nutritionist, registered nurse, or any other medical professional(s). You expressly agree that the Company is not providing any medical advice. Any content provided in the course of using *Breathe*<sup>™</sup> is not intended to be and should not be construed in any way as the advice of a physician or other medical professional. If you have any health-related questions or medical issues, please contact your healthcare professional. If you are

experiencing a medical emergency, you should call your local emergency number immediately.

You should consult with your healthcare professional before using *Breathe*™ in connection with any physical activity, wellness or fitness program, or any dietary program or guidance. By using *Breathe*™, you represent and warrant that you have consulted with your physician before making any dietary or nutritional changes or changes to your exercise routine based upon information available by using *Breathe*™. If you choose to make any such changes, you acknowledge that you ultimately have done so on your own volition, and knowingly and voluntarily assume all risks associated with any such change(s).

#### **B. Authorized Users**

You may use the *Breathe*™ Application only if you are 18 years of age or older. If you are under the age of 18, you may use *Breathe*™ only with the approval and under the supervision of a parent(s) or guardian(s).

#### **C. Unauthorized Use of *Breathe*™**

The Company may suspend or terminate your access to use *Breathe*™ if the Company determines, in its sole discretion, that: (i) you have violated any provisions of these Terms; (ii) you have used *Breathe*™ in an illegal manner, or in any manner that creates any risk of harm to you, any other person, or property; (iii) such suspension or termination is required by law; (iv) due to unforeseen technical issues; or (v) for any other reason.

#### **D. Intellectual Property and Content**

The Company hereby grants you, solely in connection with your personal use of *Breathe*™, a limited, non-exclusive, royalty-free, non-transferable, non-

sublicensable, revocable (in accordance with the Terms hereof) license to use all of the Company's intellectual property associated with *Breathe*™, including all images, illustrations, audio works, software, graphics, data, copyrights, trademarks, patents, branding, logos, and other similar assets (the "Application IP"). You acknowledge and agree that the Application IP is and will remain at all times the sole and exclusive property of the Company or its third-party licensors, and that you will not duplicate, publish, display, distribute, or modify any portion of the Application IP, or create derivative works based on any portion of the Application IP.

To the extent that you provide or submit data to Company in the course of your use of *Breathe*™ ("User Data"), you hereby grant Company a non-exclusive, royalty-free, worldwide, perpetual right to use and modify such User Data in connection with Company's management and improvement of the Application or in connection with the Company's development of new products or services; provided, further, that you also grant Company a non-exclusive, royalty-free, worldwide, transferable, sublicensable, perpetual right to use and modify any User Data that does not consist of personally identifiable information ("PII") (as well as de-identified User Data) for any purpose.

#### **E. Third-Party Products and Services**

While you may use third-party products or services (such as wearable devices or wireless telecommunication services) to access and use *Breathe*™, or may be able to access third-party links, applications, content, or services in the course of using *Breathe*™, you acknowledge and agree the Company has no control over such third-party products, links, applications, content, or services, and, therefore, shall have no responsibility or liability to you in connection with your use of the same.

## **F. Fees**

*Breathe*™ is provided to you in exchange for your payment of a monthly fee, which the Company will specify to you when you sign up to use *Breathe*™. In the event you do not pay the monthly fee in a timely manner, the Company may take reasonable steps to notify you of non-payment and allow you to resolve the issue. The Company however is not obligated to provide any such courtesy notice of non-payment, and expressly reserves the right to suspend or terminate your access and use of *Breathe*™ without such notice.

The Company does not issue refunds for termination of subscriptions to *Breathe*™. If you no longer wish to subscribe to *Breathe*™, it is your responsibility to cancel your subscription. The Company may change the monthly fee, and implement new fees, for use of *Breathe*™ at any time. The Company will endeavor to provide you with reasonable advance notice of any changes in pricing (which notice may be by email, posting on our website, or other reasonable means).

## **G. No Warranties; Limitation of Liability**

THE COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND IN RELATION TO *BREATHE*™ AND THE CONTENT CONTAINED THEREIN, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. *BREATHE*™ IS PROVIDED ON AN “AS-IS, WHERE-IS, AND AS-AVAILABLE” BASIS, WITH ALL FAULTS.

To the fullest extent permitted by law, and notwithstanding any other provision of these Terms to the contrary, the total liability, in the aggregate, of the Company and its members, managers, officers, directors, partners, and employees for any

and all claims, losses, costs and damages, including attorneys' fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to your use of *Breathe*™, from any cause or causes shall not exceed the total monthly fees received by Company from you. In no event will Company, or its members, managers, officers, directors, partners, or employees be liable for consequential, incidental, indirect, punitive or special damages, or loss of profits, data, or goodwill, regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, or otherwise, and even if the Company is advised of the likelihood of such damages.

#### **H. Indemnification**

You shall indemnify, defend, and hold harmless the Company and its members, managers, officers, directors, partners, and employees, from and against any liabilities, expenses, losses, costs, fines, penalties, or damages of any kind or nature (including reasonable attorneys' fees) arising out of or relating to, directly or indirectly: (i) your use of *Breathe*™; (ii) your breach of any of the provisions of these Terms; (iii) your negligence or willful misconduct; or (iv) your violation of any law or regulation.

#### **I. Governing Law; Arbitration**

These terms shall be governed by, and construed in accordance with, the laws of the State of Indiana, without regard to the conflicts of laws principles of such state.

ANY CONTROVERSY OR CLAIM BETWEEN THE COMPANY AND YOU ARISING OUT OF OR RELATING TO THESE TERMS OR *BREATHE*™, SHALL BE SETTLED BY ARBITRATION (ON AN INDIVIDUAL BASIS AND NOT IN A CLASS ACTION) BY THE AMERICAN ARBITRATION ASSOCIATION IN

ACCORDANCE WITH ITS CONSUMER ARBITRATION RULES. The arbitration shall be held in Indianapolis, Indiana, or such other place as is mutually agreeable, before a single arbitrator. The arbitrator shall have the discretion to award its costs to the prevailing party. Judgment on the award rendered in the arbitration may be entered in any court having jurisdiction thereof.

## **J. Miscellaneous**

Nothing contained in these Terms shall create a relationship between you and the Company other than that of an independent contractor. These Terms shall not be deemed to make either you or the Company in any way or for any purpose a partner, joint venturer or employer or in any other relationship with the other.

You may not assign or delegate your rights or obligations under these Terms without the written consent of the Company. The Company may, without notice or consent, assign or delegate its rights or obligations under these Terms, including by delegating its responsibilities to contractors or subcontractors.

The failure of the Company to enforce at any time any of the provisions of these Terms, to exercise any right or option contained in these Terms, or to require at any time performance of any of the provisions of these Terms by you, shall not be construed to be a waiver of such provisions and shall not affect the validity of these Terms or any of their provisions, or the right of the Company thereafter to enforce each provision of these Terms. No course of dealing shall operate as a waiver or modification of any provision of this Agreement or otherwise prejudice the Company's rights, powers, or remedies.

Company reserves the right, as noted above, to modify these Terms by providing you with reasonable advance notice of any such modifications (which may be by email, posting on Company's website, or other reasonable means). Any notice to you via email, regular mail, or notices on Company's website constitutes

acceptable notice to you under these Terms. Notice will be deemed given within one (1) business day after it is sent by email, regular mail, or posted on the Company's website.

The provisions of the sections of these Terms titled "Intellectual Property and Content," "Third-Party Products and Services," "No Warranties; Limitation of Liability," "Indemnification," "Governing Law; Arbitration," and "Miscellaneous" shall survive the termination or expiration of these Terms or your cessation of using the *Breathe*™ Mobile Application.

These Terms embody the entire agreement and understanding of you and the Company related to their subject matter, and supersede all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to subject matter of these Terms, except as otherwise provided herein. No representation, promise, inducement or statement of intention has been made by you or the Company that has not been embodied in this Agreement.

We greatly appreciate your belief in our *Breathe*™ Mobile Application and hope you find its use beneficial and supportive of your general well-being.