

Terms and Conditions of Website Use These Terms and Conditions of Website Use are current as of March 25, 2022.

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**PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING THIS SITE**

Welcome to [www.onyxfitness.ca](http://www.onyxfitness.ca) (the “Site”), owned and operated by Onyx Fitness Solutions Ltd. doing business as ONYX and/or ONYX Fitness (“ONYX”, “we” or “us”). We make this Site available to you subject to the following terms and conditions of website use (the “Terms of Use”) and our privacy policy (the “Privacy Policy”) (collectively, the Terms of Use and the Privacy Policy are the “Terms and Conditions”).

**1. Member Identity and Legal Capacity**

1.1 For the purposes of these Terms of Use, the word “you” means the individual accessing the Site, and, if applicable, includes any other legal entity on behalf of which an individual is accessing the Site. As an individual, you agree not to access the Site on behalf of any other legal entity unless you have the authority to bind that legal entity to these Terms of Use.

1.2 You represent and warrant that: (i) you have the capacity to enter into a legal agreement in the province, state, territory or country in which you reside; and (ii) your use of the Site will not violate any applicable law or regulation in the province, state, territory or country from which you are accessing the Site.<sup>1</sup>

1.3 If you do not have the capacity to enter into a legal agreement in the province, state, territory or country in which you reside, do not access, browse or use the Site.

**2. Acceptance of Terms**

2.1 By accessing, browsing or using this Site, and/or registering for any purpose, you agree to be bound by and to comply with the Terms and Conditions. If you do not agree to be bound by or to comply with the Terms and Conditions, you must immediately cease accessing, browsing or using the Site. By accessing, browsing or using this Site, you will become a user of the Site (a "User").

2.2 Before being allowed to access certain features of the Site or participate in certain activities being run on or through the Site, you may be required to: (i) register as a user of the Site; and (ii) confirm your acceptance of the Terms and Conditions by placing a checkmark in the "I AGREE" box on the registration page. If you disagree with any term or condition of the Terms and Conditions, do NOT place a checkmark in the "I AGREE" box and promptly discontinue using the Site.

2.3 Certain services and activities available through the Site may require you to agree to further terms and conditions. Unless such terms and conditions expressly set out otherwise, if there is any inconsistency between those terms and conditions and the Terms and Conditions, the Terms and Conditions shall prevail.

2.4 ONYX suggests that you print or save a local copy of the Terms and Conditions for your future reference.

2.5 If we provide you with a translation of these Terms of Use or the Privacy Policy, and there is any inconsistency between the English version and the translated version, the English version shall prevail.

### **3. Signing Up For Certain Features or Activities**

3.1 When signing up to access certain features of the Site or participate in certain activities run on or through the Site, you represent and warrant that any information you provide about yourself is true and that you will maintain and promptly update such information to keep it true and current.

3.2 If you are given a username and/or a password for the purpose of accessing certain features of the Site or participating in certain activities run on or through the Site, you are responsible for all activities conducted under that username or password, and you will take all necessary steps to ensure that no one other than you uses that username or password and that that password is kept confidential. If you have any reason to believe that any password assigned to you has become known to or been used by any other person, you will inform us immediately.

3.3 You may be asked to suggest one or more usernames when you register with the Site. Please note that the assignment of a username to you is in our sole discretion. As well, we may, at any time, change any username or password assigned by us to you. We will notify you when we do so.

### **4. Intellectual Property Rights, Submitting Content, and Restrictions on Use of Content**

4.1 The contents of the Site, including but not limited to, any and all software, text, data, sound, video, tools, postings, product names, trademarks, logos, trade names, programming, visual images, graphics, site design and other materials contained on or in the Site, including the selection, organization, functionality, performance and arrangement of the foregoing on the Site, is collectively the "Content".

The Content includes materials contributed to the Site by or on behalf of ONYX (the “ONYX Content”) and materials contributed to the Site by Users of the Site (the “User-generated Content”).

4.2 You acknowledge that this Site contains Content that is protected by copyright, trademark and other intellectual and proprietary rights of ONYX or third parties. All Content on this Site is copyrighted both separately and as a collective work of ONYX pursuant to applicable copyright law. You agree to comply with any additional copyright notices, information, or restrictions contained in any Content available on or accessed through this Site. You may access, use and print a copy of any Content forming part of the Site solely for your own personal use, provided any copy of the Content that you make shall retain all copyright and other proprietary notices in the same form and manner as on the original. Any video materials not produced by ONYX have been made available to Site visitors with permission.

Unauthorized use of any content therein is strictly prohibited without express written permission from ONYX. Names, phrases, words, titles, logos, icons, graphics, images or designs, used throughout the Site and the Content may be trade names, registered or unregistered trademarks or services marks (the “Marks”) of ONYX, its subsidiaries, affiliates or licensors, or other entities and individuals. Any use of any of the Marks without the prior express written consent of the owner of the Mark is strictly prohibited.

4.3 You shall not modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of the Content, in whole or in part, except as expressly permitted in these Terms of Use. Modification of the Content or use of the Content for any purpose other than one expressly permitted in these Terms of Use (including use of any such material on any other website or networked computer environment) is a violation of ONYX’s or its licensor’s intellectual property rights and other proprietary rights. Any use or modification of the Content in whole or in part for any other purpose is strictly prohibited. Unauthorized attempts to upload information or change information on this Site are strictly prohibited.

4.4 By submitting or sending content to ONYX or otherwise making it available for display on or through the Site, you acknowledge that the content is your User-generated Content and you grant ONYX the royalty-free, unrestricted, world-wide, perpetual, irrevocable, non-exclusive and fully sub-licensable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User-generated Content (in whole or part) and to incorporate it in other works (in each case irrespective of the form, media, or technology used) for the purpose of allowing ONYX to administer, operate, display, distribute and promote the Site including but not limited to allowing other sites to link to Content on the Site. You acknowledge that ONYX may need to do the following in order to operate, display or distribute the Site and agree that ONYX may do so: (i) transmit User-generated Content over various networks; and (ii) reformat User-generated Content.

4.5 You represent and warrant to and covenant with ONYX that: (i) you have now and that you will continue to have all necessary rights and authority to grant the licenses set out in section 4.3; and (ii) the User-generated Content that you contribute to the Site will not infringe any proprietary right of any third party. You also represent and warrant to ONYX that any “moral rights” in any User-generated Content that you contribute to the Site have been waived and that ONYX, and its successor and assigns may rely on those waivers. With the exception of any User-generated Content that includes personal information, you agree that all User-generated Content that you contribute will not be considered confidential.

4.6 You should maintain a back-up copy of any User-generated Content that you contribute to the Site. In any event, ONYX will not provide a copy of that User-generated Content to you. Additionally, ONYX is not responsible for User-generated Content that is lost or destroyed for any reason.

4.7 You agree that you will not post or upload to the Site or otherwise make accessible or transmit on or through the Site any User-generated Content or links to content that: (a) is illegal, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, invasive of privacy or publicity rights, hateful (racially, sexually, ethnically or otherwise) or victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of race, ethnicity, gender, religion, sexual orientation, age or disability; (b) solicits from other users any passwords or personal information for commercial or unlawful purposes; (c) contains software viruses or any other computer code, files or programs designed to or which may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or any other similarly destructive activity; (d) promotes illegal activity including without limitation the provision of instructions for any illegal activity; (e) you do not have a right to transmit under any law or regulation or under contractual or fiduciary relationships (such as insider information, or proprietary and confidential information learned or disclosed as part of employment relationships or under a non-disclosure agreement); or (f) infringes or contributes to the infringement of any intellectual property, industrial or other proprietary rights, protected or protectable, under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, all copyrights, moral rights (including rights of attribution and rights of integrity), trademarks, service marks, trade names, logos, brand names and other identifiers, and trade secrets of any party.

4.8 ONYX assumes no obligation to update the Content. ONYX reserves the right to change any and all Content at any time without notice. ONYX, its licensors and suppliers are not responsible for any Content other than the ONYX Content.

4.9 With respect to Content, the person who contributes the Content to the Site is responsible for the Content. Consequently, ONYX does not provide any representations, warranties or guarantees with respect to User-generated Content, its quality or its accuracy. Before using or relying on any User-generated Content, you should take reasonable steps to verify its accuracy, completeness or usefulness: you are using it at your own risk. Additionally, views and opinions expressed in information or materials forming part of the User-generated Content do not necessarily represent the views or opinions of ONYX, its licensors, suppliers or representatives.

4.10 The Content is not intended to be a substitute for professional advice. Always seek the advice of a qualified practitioner with any questions you may have regarding health, diet or nutrition. Reliance on any information appearing on the Site is strictly at your own risk.

4.11 Except as expressly noted otherwise, ONYX does not recommend or endorse any specific products, services, organizations, opinions or other information that may be described on or through the Site or any third party website to which you can link from the Site.

4.12 You will not: (a) use the Site or any service or tool provided on the Site for a commercial purpose; (b) seek to gain access to any portions of the Site that you are not authorized by ONYX to access; (c) use the Site to impersonate or falsely state or otherwise misrepresent your affiliation with any person or entity including but not limited to ONYX; (d) when posting any materials to the Site, forge headers or otherwise manipulate other identifiers in order to create the impression that another person posted the

materials; (e) use the Site to either directly or indirectly interfere with, disrupt or damage the Site, the server(s) on which it hosted, the networks connected to them or any other user's access to the Site; (f) access the Site through any automated means (for example, bots or web crawlers); (g) access services or tool made available on the Site using an interface other than the one made available on the Site by ONYX; (h) adapt, translate, modify, decompile, disassemble, or reverse engineer any aspect of: (i) the Site; or (ii) any software or technology used in connection with the Site or downloaded from the Site; (i) violate any applicable local, provincial, state, national or international law or regulation (including any laws relating to the export of data or software); or (j) collect or store personally identifying information about other users of the Site for any purposes unrelated to the Site or that are illegal or unlawful.

4.13 You may not be able to access all of the Content made available on the Site. Some Content may be made available to certain registered Users only. As well, when a User posts Content to the Site, he or she may be able to further restrict who may view that Content.

## **5. Screening and Responsibility for Content and Monitoring**

5.1 ONYX may but is not obliged to review any Content. Even if ONYX did so, the review may not be to your satisfaction. You acknowledge and accept that Content accessible on or through the Site may include materials that are offensive or otherwise objectionable to you.

5.2 ONYX is not obliged but reserves the right to monitor some, all, or no areas of the Site from time to time: (i) to verify adherence to these Terms of Use or any other rules, codes of conduct or guidelines posted by ONYX; or (ii) as required by law.

5.3 ONYX reserves the right, in its sole discretion, to reject, refuse to post, remove or block access to any Content that is available on or through the Site at any time, without notice and without liability.

5.4 ONYX reserves the right, in its sole discretion, to set limits on the amount of User-generated Content that you may contribute.

## **6. Access to the Site**

6.1 ONYX reserves the right to refuse service to any visitor of the Site. ONYX reserves the right, in its sole discretion, to restrict, suspend or terminate your access to all or any part of this Site at any time for any reason without prior notice to you and without any liability to you for doing so. Should you violate these Terms and Conditions or any other rights of ONYX, ONYX reserves the right to pursue any and all legal and equitable remedies against you, including, without limitation, restricting, suspending or terminating your access to all or any part of the Site.

## **7. Confidentiality**

7.1 Except as expressly set out in the Terms and Conditions, ONYX cannot ensure the privacy, security or authenticity of any information, instructions or communications you send to us or that we send to you. ONYX will not be responsible for any damages or loss, of any kind, that you may incur if you

communicate confidential information to us or if we communicate such information to you at your request.

## **8. Canada's Anti-Spam Legislation**

8.1 ONYX uses reasonable commercial efforts to comply with its obligations under Canada's Anti-Spam Legislation (CASL). If you become aware of any violation, or potential violation, of CASL by ONYX, you agree to promptly alert ONYX so corrective action can be taken by ONYX. ONYX's applicable contact information is set out in section 12.3 below.

## **9. Disclaimer**

9.1 Products, materials, information and services, including and without limitation, all Content, are provided on an "as is" and "as available" basis and without representations, conditions or warranties of any kind, either express or implied, including (without limitation) any warranties concerning the availability, accuracy, appropriateness, reliability, timeliness, usefulness of the Site or the Content or any warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, title, or non-infringement of proprietary rights.

9.2 ONYX assumes no responsibility for damage or loss to your computer or computer system as a result of use of the Site.

9.3 ONYX is not responsible for, and expressly disclaims all liability for, damages of any kind arising out of the use, reference to or reliance on any information contained within this Site or obtained in response to questions asked through this Site. You expressly agree that the entire risk as to the use, quality and performance of the functions on this Site and the accuracy or completeness of the Content is assumed solely by you.

9.4 Your correspondence or business dealings with, or participation in promotions of, advertisers or other third parties accessible on or through the Site, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser or other third parties. You agree that ONYX will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers or other third parties on the Site. If you provide any information to a third party (e.g., your contact information or credit card information), such information is collected by the third party and not by ONYX, even if you made a purchase from a third party website that was linked from or framed within the Site.

## **10. Limitation of Liability**

10.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ONYX OR ITS OFFICERS, DIRECTORS, OWNERS, AGENTS, EMPLOYEES, REPRESENTATIVES AND LICENSORS (COLLECTIVELY, THE "ONYX PARTIES") BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO

REALIZE EXPECTED SAVINGS, INTERRUPTION OF ACTIVITIES, OR ANY OTHER PECUNIARY OR ECONOMIC LOSS) ARISING FROM OR RELATING TO THE SITE, ANY CONTENT OR THESE TERMS OF USE, EVEN IF ANY OF THE ONYX PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD REASONABLY FORESEE SUCH DAMAGES OCCURRING.

10.2 IN NO EVENT WILL ANY OF THE ONYX PARTIES BE LIABLE TO YOU OR ANY PERSON WITH RESPECT TO DAMAGES OR LOSSES INCURRED BY REASON OF ANY PRODUCTS OR SERVICES RECEIVED ON OR THROUGH, OR DESCRIBED OR ADVERTISED ON OR THROUGH, OR RECEIVED THROUGH ANY LINKS PROVIDED ON, THE SITE. FURTHERMORE, THE ONYX PARTIES EXPRESSLY DISCLAIM ANY AND ALL LIABILITY FO THE ACTS, OMISSIONS OR CONDUCT OF ANY THIRD-PARTY USER OF THE SITE OR ANY SPONSOR OR ADVERTISER OF THE SITE.

10.3 WITHOUT LIMITING SECTION 10.1 AND 10.2, THE TOTAL CUMULATIVE LIABILITY OF THE ONYX PARTIES TO YOU OR ANY PERSON FOR ANY CLAIMS ARISING FROM OR RELATING TO THE SITE, ANY CONTENT OR THESE TERMS OF USE, WILL NOT EXCEED \$100.00.

10.4 The limitations in section 10.1, 10.2 and 10.3 will apply regardless of the causes or circumstances giving rise to the claim, even if such claim is based on breach of contract, negligence or other tort, and will survive a fundamental breach or failure of essential purpose of any limited remedy or these Terms of Use.

10.5 Some jurisdictions do not allow the exclusion of incidental, special or consequential damages. If any jurisdiction having applicability to these Terms of Use does not permit any such exclusion or limitation, the ONYX Parties' total liability to you in connection with any incidental, special or consequential damages will be limited by section 10.3.

10.6 You acknowledge and agree that, regardless of any statute or law to the contrary, any claim or cause of action you may have arising from or relating to the Site, any Content, or these Terms of Use must be filed within one year after such claim or cause of action arises or be permanently barred.

## **11. Indemnity**

11.1 You agree to indemnify and defend the ONYX Parties, and hold them harmless, from any and all claims, demands, actions, liability, losses, costs and expenses (including legal fees) arising from or relating to: (i) any User-generated Content that you contribute to the Site; (ii) your use or misuse of the Site or any Content; (iii) any person's use of any account or password provided to you in relation to the Site, regardless of whether such use was authorized by you; (iv) any breach by you of any of these Terms of Use; (v) any breach by you of any law or regulation or any rights of any third party. Without affecting ONYX's rights, or your obligations, under this section, ONYX reserves the right to assume the exclusive defense and control of any claims, demands or actions arising from or relating to this indemnity and you agree to cooperate with ONYX's defense of these claims, demands and actions.

## **12. Intellectual Property Infringement**

12.1 It is the policy of ONYX to investigate and respond to claims of intellectual property infringement.

12.2 To the extent that any jurisdiction applicable to these Terms of Use has a notice and takedown scheme like the one set out in the United States' Digital Millennium Copyright Act, upon receipt of any notice alleging infringement that complies with such a scheme, ONYX will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. ONYX may attempt to contact the person who has posted such material in order to give that person an opportunity to respond to the notification, although ONYX makes no promise to do so. Any and all counter notifications submitted by that person will be furnished to the complaining party. In all circumstances, ONYX will give the complaining party an opportunity to seek judicial relief in accordance with any applicable laws before ONYX replaces or restores access to any material as a result of any counter notification.

12.3 Notices of claimed infringement should be directed to:

ONYX Fitness Solutions Ltd.

35 Victoria Ave., Unit 3

Essex, Ontario

N8M 1M4

Attention: Ken Dennison

Please put "Notice of Infringement" in the subject line of all such notifications and include in each such notice a reasonably detailed description of the materials alleged to be infringing and the proprietary rights alleged to be infringed.

### **13. Changes to the Site**

13.1 ONYX may change, modify, suspend or discontinue all or any aspects of the Site at any time, including the availability of any feature, database, or Content, without prior notice to you and without any liability to you for doing so.

### **14. Privacy Policy**

14.1 ONYX's privacy policy is available at <http://www.onyxfitness.ca/privacy-policy/>.

### **15. Changes to the Terms and Conditions**

15.1 ONYX reserves the right, at any time, to modify, alter, or update the Terms and Conditions, and such changes, modifications, additions or deletions shall be effective immediately upon notice to you, which may be given by any means including, but not limited to, posting on the Site or by electronic or conventional mail. You agree to regularly review the Terms and Conditions posted on the Site and to be aware of such revisions. Your continued use of the Site or ordering of any products following any such change constitutes your agreement to follow and to be bound by the terms as changed. ONYX may, but is not obligated to, ask you to actively confirm your consent to revised Terms and Conditions. If at any time the Terms and Conditions are no longer acceptable to you, you should immediately cease all use of the Site.

## **16. Term and Termination**

16.1 The Terms of Use will continue in effect for as long as you use the Site, unless specifically terminated earlier by ONYX or you. You may terminate your agreement with the Terms of Use at any time by instructing ONYX in writing to disable any password for the Site assigned to you and by discontinuing all use of the Site. Your notice should be sent, in writing, to the address set out in section 12.3. In addition to any other termination rights that ONYX may have, ONYX may terminate its agreement with you if: (i) you breach any provision of the Terms of Use or clearly intend to do so; (ii) ONYX is required to do so by law; or (iii) ONYX is no longer making the Site available in the jurisdiction from which you access it.

16.2 Upon the termination or expiration of the Terms of Use, you will stop using the Site and all Content (except for your own User-generated Content).

16.3 Those sections which by their nature should survive the termination or expiration of the Terms of Use will survive termination or expiration, including but not limited to sections 4.2, 4.3, 4.4, 4.5, 9, 10, 11, 17.2, 17.3, and 17.6.

## **17. General Terms**

17.1 The Terms and Conditions and your use of this Site shall be construed in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to any choice of law or conflict of law principles.

17.2 Unless otherwise agreed by both parties, any disputes or claims arising out of or related to these Terms and Conditions or your use of this Site shall be resolved exclusively by binding arbitration pursuant to the Arbitration Act, 1991 (Ontario) or its successor legislation. Arbitration of all matters will be determined by a single independent arbitrator acceptable to both parties, acting reasonably, and all such arbitration proceedings shall be held exclusively in Toronto, Ontario.

17.3 If any provision of these Terms and Conditions shall be held to be invalid by a court of competent jurisdiction, then that provision will be enforceable to the extent permissible, and all other provisions will remain in effect and are enforceable by the parties.

17.4 These Terms and Conditions comprise the entire agreement between you and ONYX with respect to their subject matter, and supersede and replace any and all prior or contemporaneous discussions, understandings and agreements, written or oral, between the parties regarding the subject matter contained herein.

17.5 None of the Terms of Use will be deemed to be waived by reason of any previous failure to enforce any one or more terms. None of the Terms of Use may be waived except in a writing signed by the party waiving enforcement.

17.6 Except as expressly provided otherwise in the Terms and Conditions, ONYX will not be liable for any failure or delay in its performance under the Terms and Conditions due to any cause beyond its reasonable control.

17.7 Any notice or other significant communication required to be given to you pursuant to these Terms of Use will be in writing, addressed to any email address or address that you have provided to ONYX and sent to you by email or by a nationally recognized overnight courier as applicable. Any notice or other significant communication given to ONYX pursuant to these Terms of Use will be in writing and sent to ONYX at the address then listed on the Site in the contact section by fax or nationally recognized courier. Notices will be deemed to have been received one business day following: (i) email transmission by ONYX to you; (ii) deposit with a globally recognized overnight courier service, all delivery charges pre-paid; or (iii) transmission if sent by facsimile and receipt confirmed by the facsimile machine used.