

EFFECTIVE JULY 2016

WELCOME TO FITSCENE! THESE TERMS OF USE (“TERMS”) ARE A CONTRACT BETWEEN YOU AND FITSCENE (“FITSCENE” OR “WE”) AND GOVERN YOUR ACCESS TO AND USE OF ANY FITSCENE WEBSITE, MOBILE APPLICATION (SUCH AS FOR IPHONE OR ANDROID) OR CONTENT, OR PRODUCTS AND/OR SERVICES MADE AVAILABLE THROUGH FITSCENE (COLLECTIVELY, THE “SITE”).

PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING AND USING THE SITE. THESE TERMS CONTAIN AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT REQUIRE YOU TO ARBITRATE ALL DISPUTES YOU HAVE WITH CLASS PASS ON AN INDIVIDUAL BASIS. PLEASE SEE SECTION 21 FOR MORE INFORMATION ABOUT THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER.

FITSCENE TERMS OF USE

OBJECTIVES:

The web site ("Site") contains content that is provided as a service to users who agree to abide by the following acceptable conduct terms. Your right to use the Site is governed by these Terms of Use and our [Privacy Policy](#) (collectively, "Terms"), and you should take the time to review both carefully before you use the Site. By using the Site in any way, you are agreeing to comply with these Terms. The Site reserves the right to change the Terms at any time and for any reason. Updated versions of the Terms will be posted to the Site at (url) and you should visit this page periodically to keep apprised of any changes. By continuing to use the Site after any such change, you accept and agree to the modified Terms. The Site reserves the right to modify or discontinue, temporarily or permanently, the Site, any site features, benefits (including without limitation blocking or terminating your Account), rules or conditions, all without notice, even though such changes may affect the way you use the Site. You agree that the Site will not be liable to you or any third-party for any modification or discontinuance of the Site.

Terms of Use.

- a) Acceptance of Terms. By accessing and/or using the Site, you accept and agree to be bound by these Terms, just as if you had agreed to these Terms in writing. If you do not agree to these Terms, do not use the Site.
- b) Amendment of Terms. FitScene may amend the Terms from time to time. Unless we provide a delayed effective date, all amendments will be effective upon posting of such

updated Terms. Your continued access to or use of the Site after such posting constitutes your consent to be bound by the Terms, as amended.

c) Additional Terms. In addition to these Terms, when using particular plans, offers, products, services or features, you will also be subject to any additional posted guidelines, or rules applicable to such plan, offer, product, service or feature, which may be posted and modified from time to time. All such additional terms are hereby incorporated by reference into the Terms, provided that in the event of any conflict between such additional terms and the Terms, the Terms shall control.

Eligibility; Registration Information and Password; Site Access.

a) Eligibility Criteria. The availability of all or part of our Site may be limited based on geographic, age, or other criteria as we may establish from time to time. You understand and agree we may disallow you from subscribing to FitScene or may terminate your subscription at any time based on these criteria. For example, you must be 18 years of age or older to use this Site or to purchase a FitScene membership.

THESE TERMS ARE ONLY APPLICABLE TO USERS IN THE U.S. AND SEPARATE TERMS APPLY TO USERS IN OTHER JURISDICTIONS. THE SITE IS NOT AVAILABLE TO ANY USERS SUSPENDED OR REMOVED FROM THE SITE BY CLASSPASS. BY USING THE SITE, YOU REPRESENT THAT YOU ARE A RESIDENT OF THE UNITED STATES, AT LEAST 18 YEARS OLD AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE SITE. THOSE WHO CHOOSE TO ACCESS THE SITE DO SO AT THEIR OWN INITIATIVE AND ARE RESPONSIBLE FOR COMPLIANCE WITH ALL LOCAL RULES INCLUDING, WITHOUT LIMITATION, RULES ABOUT THE INTERNET, DATA, EMAIL OR OTHER ELECTRONIC MESSAGES, OR PRIVACY.

b) Subscribing Organizations. If you are using or opening an account on behalf of a company, entity, or organization (a "Subscribing Organization"), then you represent and warrant that you are an authorized representative of that Subscribing Organization with the authority to bind such organization to these Terms; and agree to be bound by these Terms on behalf of such Subscribing Organization.

c) Account Information. You agree that the information you provide to FitScene at registration and at all other times will be true, accurate, current, and complete. You also agree that you will ensure that this information is kept accurate and up-to-date at all times. When you register, you will be asked to create a password. You are solely

responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account.

USER CONDUCT:

Without limitation, you agree to refrain from the following actions while using the Site:

1. Transmitting any information, data, text, files, links, software, chats, communication or other materials that is unlawful, and in particular, that is harmful to minors, physically threatening, invasive of another's privacy, defamatory, obscene, or that contains hate speech, as well as material of any kind or nature that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, provincial, national, or international law or regulation,;
2. Impersonating an employee of FitScene or falsely claiming affiliation with FitScene
3. Forging headers or otherwise manipulating identifiers in order to disguise the origin of any materials transmitted through the Site;
4.
 - a. Posting adult content or explicit adult material unless:
 - i. such material is specifically permitted in designated adult categories and permitted under applicable federal, state, and local law; and
 - ii. you are at least 18 years of age or older and not considered to be a minor in your state of residence;
 - b. Posting, anywhere on the Site, obscene or lewd and lascivious graphics or photographs, or graphics or photographs which depict or simulate sexual acts;
5. Harming minors in any way;
6. Impersonating any person or entity, or falsely stating or otherwise misrepresenting your affiliation with a person or entity;
7. Uploading, posting, emailing, transmitting, or otherwise making available any unsolicited or unauthorized advertising, promotional materials, spam, chain letters, pyramid schemes, or any other form of solicitation, except in areas of our Site specifically designated for such purpose;
8. Interfering with or infringing the patents, copyrights, trademarks, service marks, logos, confidential information or intellectual property rights of others;
9. Using any automated device, spider, robot, crawler, data mining tool, software or routine to access, copy, or download any part of the Site unless expressly permitted by the Site;

10. Taking any action creating a disproportionately large usage load on the Site unless expressly permitted by the Site;
11. Sending messages for the purpose of, or otherwise engaging in, disruptive or damaging activities online, including excessive use of scripts, sound waves, scrolling, or use of viruses, bots, worms, time bombs, trojan horses or any other destructive element;
12. Gaining or attempting to gain unauthorized access to non-public areas of the Site. In addition, if you have a password to a non-public area of the Site, you may not disclose to, or share your password, with any third parties and/or use your password for unauthorized purposes;
13. Attempting to decipher, decompile, disassemble or reverse engineer any of the software comprising or in any way making up all or any part of the Site; modifying any meta data, copying or duplicating in any manner any of the content; framing of or linking to any of the Site, its content or information available from the Site without the express written consent of agents of the Site;
14. Interfering with or disrupting the Site or servers or networks through which the Site is provided;
15. Stalking or otherwise harassing any other person;
16. Using the Site to engage in or assist another individual or entity to engage in fraudulent, abusive, manipulative or illegal activity;
17. Harass, threaten, disrupt or defraud users, members or staff of ClassPass or Venues or otherwise create or contribute to an unsafe, harassing, threatening or disruptive environment;
18. Make unsolicited offers, advertisements, proposals, or send junk mail or “spam” to users;
19. Impersonate another person or access another user’s account;
20. Share ClassPass-issued passwords with any third party or encourage any other user to do so;
21. Permit anyone to use any classes or services booked under your own membership, including other members;
22. Reserve or cancel any ClassPass class directly with a Venue, rather than through the ClassPass Site,
23. Misrepresent the source, identity, or content of information transmitted via the Site, including deleting the copyright or other proprietary rights;
24. Upload material (e.g. virus) that is damaging to computer systems or data of ClassPass or users of the Site;
25. Upload copyrighted material that is not your own or that you do not have the legal right to distribute, display, and otherwise make available to others; or
26. Upload or send to Site users pornographic, threatening, embarrassing, hateful, racially or ethnically insulting, libelous, or otherwise inappropriate content.

You agree to comply with all applicable laws, statutes, regulations, and ordinances concerning your use of the Site. You understand that any materials that you post, transmit, or otherwise make available for viewing on public areas of the Site and its social media channels, including but not limited to comments and messages posted in response to our news articles (collectively, "User Content") are solely the responsibility of the person from whom such User Content originated. You agree that the Site may or may not, in its sole discretion, pre-screen, monitor or approve any User Content, but that the Site shall have no obligation to pre-screen, monitor or approve such Content. You acknowledge and agree that the Site shall have the right, but not the obligation, to remove, move (including moving an ad or posting to another section or category within the classifieds), refuse, edit, republish or delete any User Content for any reason whatsoever. Any user who violates the Terms may be permanently banned, at our sole discretion, from posting ads or using the Site.

You acknowledge, consent and agree that the Site may access, preserve and disclose your account information and User Content you upload, post, or otherwise make available on the Site if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to:

- i. comply with legal process;
- ii. enforce these Terms;
- iii. respond to claims that any Content violates the rights of third parties
- iv. respond to your requests for customer service; or
- v. protect the rights, property or personal safety of the Site, its users and the public.

USE OF MATERIALS:

Any User Content that you post, transmit, or otherwise make available for viewing on public areas of the Site, including but not limited to comments and messages posted in response to our news articles (collectively, "User Content"), will be treated as non-confidential and non-proprietary to you. You understand and agree that any such User Content may be used by the Site or our affiliates, without review or approval by you, for any purpose whatsoever, and in any medium, including our print media. You grant the Site (and our affiliates) the irrevocable right to use and/or edit your User Content, without review or approval by you, for any purpose whatsoever, including, without limitation, reproduction, disclosure, transmission, publication, broadcast, posting, and advertising in any media in perpetuity without notice or compensation to you.

Prohibited Uses

As a condition of your use of the Site, you will not use the Site for any purpose that is unlawful or prohibited by these Terms. You may not use the Site in any manner that could damage, disable, overburden, or impair it or interfere with any other party's use and enjoyment of the Site. You may not attempt to gain unauthorized access to the Site, or any part of the Site, other accounts, computer systems or networks connected to the Site, or any part of them, through hacking, password mining, or any other means or interfere or attempt to interfere with the proper working of the Site or any activities conducted on the Site. You may not remove, circumvent, disable, damage or otherwise interfere with security-related features of the Site, any features that prevent or restrict use or copying of any content accessible through the Site, or any features that enforce limitations on the use of the Site or the content therein. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Site. You agree neither to modify the Site in any manner or form, nor to use modified versions of the Site, including (without limitation) for the purpose of obtaining unauthorized access to the Site. The Site may contain robot exclusion headers. You agree that you will not use any robot, spider, scraper, or other automated means to access the Site for any purpose without our express written permission or bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Site.

FitScene reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.

User Submissions.

a) General. The Site provides certain features which enable you and other users to submit, post, and share content, which may include without limitation text, graphic and pictorial works, or any other content submitted by you and other users through the Site ("User Submissions"). FitScene does not guarantee any anonymity or confidentiality with respect to any User Submissions, and strongly recommends that you think carefully about what you upload to the Site. You understand and agree that User Submissions may be made public without any additional notice to or consent by you and you should assume that any person (whether or not a user of FitnScene' platform), including any Venue, may read your User Submissions. FitScene is not responsible for the use or disclosure of any information that you disclose in connection with User Submissions, including any personal information. User Submissions are displayed for information purposes only and

reflect the opinions of the person making the submission. They are not controlled by, and may not reflect the opinion of, FitScene. You understand that all User Submissions are the sole responsibility of the person from whom such User Submission originated. This means that you, and not FitScene, are entirely responsible for all User Submissions that you upload, post, e-mail, transmit, or otherwise make available through the Site.

b) Right to Remove or Edit User Submissions. FitScene makes no representations that it will publish or make available on the Site any User Submissions, and reserves the right, in its sole discretion, to refuse to allow any User Submissions on the Site, or to edit or remove any User Submission at any time with or without notice. Without limiting the generality of the preceding sentence, FitScene complies with the Digital Millennium Copyright Act, and will remove User Submissions upon receipt of a compliant takedown notice (see the “Digital Millennium Copyright Act” section below).

c) License Grant by You to FitScene. You retain all your ownership rights in original aspects of your User Submissions. By submitting User Submissions to FitScene, you hereby grant FitScene and its affiliates, sublicensees, partners, designees, and assignees of the Site (collectively, the “FitScene Licensees”) a worldwide, non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable, sublicensable, and transferable license to use, reproduce (including by making mechanical reproductions), distribute, modify, adapt, translate, prepare derivative works of, publicly display, publish, publicly perform, and otherwise exploit your User Submissions and derivatives thereof in connection with the Site and FitScene’s (and its successors’) business, including, without limitation, for marketing, promoting, and redistributing part or all of the Site (and derivative works thereof), in any media formats and through any media channels now known or hereafter discovered or developed.

d) User Submissions Representations and Warranties. You are solely responsible for your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, you affirm, represent, and warrant that: (i) you own, or have the necessary licenses, rights, consents, and permissions to use and authorize FitScene to use all patent, trademark, copyright, or other proprietary rights in and to your User Submissions to enable inclusion and use of your User Submissions in the manner contemplated by FitScene and these Terms, and to grant the rights and license set forth above, and (ii) your User Submissions, FitScene’s or any FitScene Licensee’s use of such User Submissions pursuant to these Terms, and FitScene’s or any of FitScene Licensee’s exercise of the license rights set forth above, do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or

proprietary right; (b) contain any material that is illegal, threatening, obscene, racist, defamatory, libelous, hateful, pornographic, purposely false or otherwise injurious to third parties, promotional in nature, promotes any illegal activity or harm to groups or individuals, or consists of or contain software, computer viruses, commercial solicitation, political campaigning, chain letters, mass mailings, any form of “spam” or references to illegal activity, malpractice or false advertising; (c) violate these Terms or any applicable law or regulation; or (d) require obtaining a license from or paying fees or royalties to any third party for the exercise of any rights granted in these Terms, including, by way of example and not limitation, the payment of any royalties to any copyright owners, including any royalties to any agency, collection society, or other entity that administers such rights on behalf of others. FitScene may, but is not obligated to, monitor and edit or remove any activity or content, including but not limited to content that FitScene determines in its sole discretion to violate the standards of this Site. FitScene takes no responsibility and assumes no liability for any User Submissions.

e) Inaccurate or Offensive User Submissions. You understand that when using the Site, you may be exposed to User Submissions from a variety of sources and that FitScene does not endorse and is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable. YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST CLASSPASS WITH RESPECT THERETO.

f) Feedback. If you provide FitScene with any comments, bug reports, feedback, or modifications proposed or suggested by you to the Site (“Feedback”), FitScene shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Site. You hereby grant FitScene a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use your Feedback for any purpose.

Ownership; Proprietary Rights.

The Site and mobile applications are owned and operated by FitScene. The visual interfaces, graphics, design, compilation, information, computer code, products, software (including any downloadable software), services, and all other elements of the Site provided by FitScene (“Materials”) are protected by the copyright, trade dress, patent, and trademark laws of the United States and other countries, international conventions,

and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any content uploaded by you, all Materials contained on the Site are the copyrighted property of FitScene or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to FitScene or its affiliates and/or third-party licensors. Except as expressly authorized by FitScene, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials.

TERMINATION OF ACCESS:

The Site has the right terminate your access for any reason if we believe you have violated these Terms in any manner. You agree not to hold the Site liable for such termination, and further agree not to attempt to use the Site after termination.

COPYRIGHT AND TRADEMARKS:

All materials on the Site, including without limitation, logos, images, text, illustrations, audio and video files are protected by copyrights, trademarks, service marks, or other proprietary rights which are either owned by or licensed to the Site or owned by other parties who have posted on the Site. Materials from the Site and from any other web site owned, operated, controlled, or licensed by the Site may not be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way. In posting content on the Site, you grant the Site, and its owners and licensees, the right to use, reproduce, distribute, translate, modify, adapt, publicly perform, publicly display, archive and create derivative works from the posted content.

NOTIFICATION OF INFRINGEMENT:

If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide the following information to the Site's Copyright Agent:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. A description of the copyrighted work or other intellectual property that you claim has been infringed;
3. A description of where the material that you claim is infringing is located on the site;
4. Your name, address, telephone number and e-mail address;

5. A signed statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. A statement by you, made under penalty of perjury, that the information provided in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Our Copyright Agent can be reached as follows:

(Contact info)

The Site may, under appropriate circumstances and at our own discretion, disable and/or terminate the accounts of users who may be repeat infringers.

PRIVACY POLICY:

The Site has created a Privacy Policy setting forth how information collected about you is collected, used and stored. Your use of the Site constitutes acknowledgment and agreement with our Privacy Policy. You further acknowledge and agree that The Site may use your personal information in the manner described in our Privacy Policy.

FEES:

The Site may impose a fee on the posting of Content in certain areas of the Site. Users uploading Content to fee-based areas are responsible for such Content and for compliance with these Terms. Under no circumstances will the Site provide a refund in the event that Content is removed from fee-based areas for violation of these Terms.

Third-Party Sites, Products and Services; Links.

The Site has no control over and is not responsible for the content of or claims made on websites that may be linked to or from the Site, whether or not they may be affiliated with the Site. Any websites linked to or from the Site are for your convenience only, and you access them at your own risk.

The Site may include links or access to other web sites or services (“Linked Sites”) solely as a convenience to users. ClassPass does not endorse any such Linked Sites or the information, material, products, or services contained on other linked sites or accessible through other Linked Sites. Furthermore, FitScene makes no express or implied warranties with regard to the information, material, products, or services that are contained on or accessible through linked sites. ACCESS AND USE OF LINKED SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND

SERVICES ON LINKED SITES OR AVAILABLE THROUGH LINKED SITES, IS SOLELY AT YOUR OWN RISK.

Sometimes promotional plans are offered in conjunction with the provision of third party products and services. We are not responsible for the products and services provided by such third parties, and use of such products and services is at your own risk.

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Site are solely between you and such advertiser. YOU AGREE THAT FITSCENE 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 ON THE SITE.

Electronic Signatures and Agreements.

You acknowledge and agree that by clicking on the button labeled "CONFIRM PURCHASE," "SUBMIT", "DOWNLOAD", "PLACE MY ORDER", "I ACCEPT" or such similar links as may be designated by FitScene to accept the terms and conditions of these Terms, you are submitting a legally binding electronic signature and are entering into a legally binding contract. You acknowledge that your electronic submissions constitute your agreement and intent to be bound by these Terms. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") or other similar statutes, YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE SITE OR SERVICES OFFERED BY FITSCENE. Further, you hereby waive any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means.

RELEASE:

The Site assumes no responsibility for the accuracy, currency, completeness or usefulness of information, views, opinions or advice in any material contained on the

Site. In addition, it does not endorse any opinions or recommendations posted by others. Any information posted on the Site is the responsibility of the person or persons posting the message. You understand that the Site does not control, and is not responsible for User Content available on the Site. The Site shall not be responsible for any interaction between you and the other users of the Site. Your dealings with others through the Site are solely between you and such other parties. Under no circumstances will the Site be liable for any goods, services, resources or content available through such third party dealings or communications, or for any harm related thereto. The Site is under no obligation to become involved in any disputes between you and other users of the Site or between you and any other third parties.

You are entirely responsible and liable for any User Content that you post or that is posted through your Account.

You understand that FitScene is not a gym or fitness studio or other service provider and the classes you take or services you use are operated and delivered by the applicable Venue and not by FitScene. Although FitScene endeavors to offer inventory that is of high quality, FitScene is not responsible for the quality of any class or service. You understand that there are certain inherent risks and dangers in exercising and that the classes you may attend offer a range of activity and intensity level. You acknowledge and agree, on behalf of yourself, your heirs, personal representatives and/or assigns that you are aware of these risks which include, but are not limited to, property damage, illness and bodily injury or death. You acknowledge that some of these risks cannot be eliminated and you specifically assume the risk of injury or harm. You acknowledge and agree that it is your responsibility to consult with your primary care physician prior to participating and to determine if and how participating in any class or service is appropriate for you. You also understand and agree that the Site offers health and fitness information that is designed for informational, educational and entertainment purposes only. The use of any of the information provided on the Site is solely at your own risk.

Therefore, to the fullest extent permitted by law, you release, indemnify, and hold harmless FitScene, its parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns, from any and all responsibility, claims, actions, suits, procedures, costs, expenses, damages and liabilities arising out of or in any way related to your participation in or use of the Site, including with respect to bodily injury, physical harm, illness, death or property damage.

DISCLAIMER OF WARRANTIES FOR SITE:

YOU EXPRESSLY AGREE THAT USE OF THE SITE IS AT YOUR OWN RISK. THE SITE SHALL NOT BE RESPONSIBLE FOR ANY CONTENT FOUND ON THESE CLASSIFIEDS. THE SITE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE SITE MAKES NO WARRANTY THAT ITS CLASSIFIEDS OR USE OF THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, WITHOUT DEFECT OR ERROR FREE. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU ACKNOWLEDGE AND AGREE THAT ANY MATERIAL, AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIS WEB SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

CLASSES, ACTIVITIES, AND OTHER NON-CLASSPASS PRODUCTS AND SERVICES OFFERED VIA THE SITE ARE OFFERED AND PROVIDED BY THIRD PARTIES (AND THE DESCRIPTIONS OF THE FOREGOING POSTED ON THE SITE ARE PROVIDED BY SUCH THIRD PARTIES), NOT FITSCENE. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, YOUR ATTENDANCE AT AND PARTICIPATION IN THESE CLASSES, ACTIVITIES, AND YOUR USE OF THESE NON-FITSCENE PRODUCTS AND SERVICES IS SOLELY AT YOUR OWN RISK. IN NO EVENT SHALL CLASSPASS BE LIABLE FOR ANY ACT, ERROR OR OMISSION BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WHICH ARISES OUT OF OR IS ANY WAY CONNECTED WITH A USER'S ATTENDANCE, USE OF OR PARTICIPATION IN A CLASS, SERVICE, PRODUCT OR APPOINTMENT MADE THROUGH THE SITE, OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY PROVIDER IN CONNECTION WITH THE SERVICES. CLASSPASS IS NOT AN AGENT OF ANY THIRD PARTY PROVIDER.

THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, FITSCENE, ON BEHALF OF ITSELF AND ITS SUPPLIERS AND PARTNERS,

DISCLAIMS AND EXCLUDES ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS.

WITHOUT LIMITING THE FOREGOING, CLASSPASS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS (I) THAT THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (II) REGARDING THE USE OF THE SITE AND ANY DOWNLOADABLE SOFTWARE, CONTENT, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SITE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. ANY MATERIAL OR DATA THAT YOU DOWNLOAD OR OTHERWISE OBTAIN THROUGH THE SITE IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS SET FORTH IN THESE TERMS MIGHT NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

LIMITATION OF LIABILITY:

The information, services and products available to you on this Site may contain errors and are subject to periods of interruption. While the Site does its best to maintain the information, services and products it offers on the Site, it cannot be held responsible for any errors, defects, lost profits or other consequential damages arising from the use of the Site.

IN NO EVENT SHALL THE SITE OR ITS AFFILIATES, OWNERS, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, SPONSORS, SUPPLIERS, OR PARTNERS (COLLECTIVELY "INDEMNIFIED PARTIES")

BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY DAMAGES, OR ANY DAMAGES WHATSOEVER, ARISING FROM OR IN ANY WAY CONNECTED OR RELATING TO

- i. THE USE OF (OR INABILITY TO USE), OR PERFORMANCE OF THIS SITE,
- ii. ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH THIS SITE, OR
- iii. ANY INTERACTION BETWEEN YOU AND OTHER PARTICIPANTS OF THE SITE, EVEN IF ANY OF THE INDEMNIFIED PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU ACCEPT ALL RESPONSIBILITY FOR, AND HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST, ANY ACTIONS TAKEN BY YOU OR BY ANY PERSON AUTHORIZED TO USE YOUR ACCOUNT, INCLUDING WITHOUT LIMITATION, DISCLOSURE OF PASSWORDS TO THIRD PARTIES. BY USING THE SITE, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL LIABILITY REGARDING YOUR USE OF THE SITE OR PARTICIPATION IN ANY SITE'S ACTIVITIES. IF YOU ARE DISSATISFIED WITH THE SITE, OR ANY PORTION THEREOF, OR DO NOT AGREE WITH THESE TERMS, YOUR ONLY RECOURSE AND EXCLUSIVE REMEDY SHALL BE TO STOP USING THE SITE.

UNDER NO CIRCUMSTANCES WILL FITSCENE OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY), OR OTHERWISE, EVEN IF FITSCENE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FITSCENE'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

INDEMNITY:

You agree to indemnify and hold harmless the Indemnified Parties from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Site, the violation of these Terms by you, or the

infringement by you, or other users of the Site using your computer, of any intellectual property or other right of any person or entity. The Site reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. Jurisdiction and Choice of Law: These Terms shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, without regard to its choice of law provisions. Any action you or any third party may bring to enforce these Terms, or in connection with any matters related to the Site, shall be brought only in either the state or Federal courts located in the county of Denver, and you expressly consent to the jurisdiction of said courts. You also agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

GENERAL:

These Terms constitute the entire agreement between you and the Site and govern your use of the Site, superseding any prior agreements between you and the Site. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software, or visit another site linked to by this Site. The section titles in these Terms are for convenience only and have no legal or contractual effect.

VIOLATIONS:

Please report any violations of these Terms to our [feedback form](#).

SEVERANCE AND WAIVER:

You acknowledge and agree that if any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. Furthermore, if any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision. The Site's failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the Site.

Arbitration Agreement

PLEASE READ THE FOLLOWING CAREFULLY:

a) Purpose. This Arbitration Agreement facilitates the prompt and efficient resolution of any disputes that may arise between you and FitScene. Arbitration is a form of private dispute resolution in which parties to a contract agree to submit their disputes and

potential disputes to a neutral third person (called an arbitrator) for a binding decision, instead of having such dispute(s) decided in a lawsuit, in court, by a judge or jury trial.

Please read this Arbitration Agreement carefully. It provides that all disputes between you and FitScene shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Entering into this Arbitration Agreement constitutes a waiver of your right to litigate claims in court and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this Arbitration Agreement and can award the same damages and relief as a court (including attorney's fees).

For the purpose of this Arbitration Agreement, "Fitscene" means FitScene and its parents, subsidiaries, and affiliated companies, and each of their respective officers, directors, employees, and agents. The term "Dispute" means any dispute, claim, or controversy between you and FitScene regarding any aspect of your relationship with FitScene, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, gross negligence or reckless behavior), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Agreement (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced.

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT.

b) Pre-Arbitration Dispute Resolution. Before initiating any Dispute, whether in court or arbitration, you must first give FitScene an opportunity to resolve the Dispute by mailing written notification to ClassPass, Legal Department, (insert address). That written notification must include (1) your name, (2) your address, (3) a written description of the Dispute, and (4) a description of the specific relief you seek. If Fitscene does not resolve the Dispute to your satisfaction within 45 days after it receives your written notification, you may pursue your Dispute in arbitration.

c) Arbitration Procedures. If the Dispute is not resolved as provided above in the Pre-Arbitration Claim Resolution section, either you or FitScene may initiate arbitration proceedings. The American Arbitration Association (“AAA”), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. All issues shall be for the arbitrator to decide, including the scope of this Arbitration Agreement. For arbitration before the AAA, for Disputes in which less than \$75,000 is at issue, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA’s Commercial Arbitration Rules will apply. In either instance, the AAA’s Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. In the event that this Arbitration Agreement conflicts with the applicable arbitration rules, this Arbitration Agreement shall govern. Under no circumstances will class action procedures or rules apply to the arbitration. Because your contract with FitScene, the Terms of Use, and this this Arbitration Agreement concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

d) Arbitration Award. The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator shall make any award in writing but need not provide a statement of reasons unless requested by a party. Such award by the arbitrator will be final and binding on the parties, except for any right of appeal provided by applicable federal law, including but not limited to the Federal Arbitration Act (“the FAA”), and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

e) Location of Arbitration. Arbitration shall take place in Minneapolis, Minnesota, but it may proceed by telephone if you so choose.

f) Payment of Arbitration Fees and Costs. FitScen will pay all arbitration filing fees and arbitrator’s costs and expenses upon your written request given prior to the commencement of the arbitration. You are responsible for all additional fees and costs

that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law.

g) Class Action Waiver. Any Disputes arising out of or relating to any purchase you make on or through the Site, any information you provide via the Site, these Terms (including the formation, performance, or alleged breach), and your use of the Site shall be submitted individually by you and will not be subject to any class action or representative status. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, representative action, consolidated action or private attorney general action) . Neither you, nor any other Member of FitScene and/or user of FitSCene services, can be a class representative, class member, or otherwise participate in a class, representative, consolidated or private attorney general proceeding with respect to the matters set forth in the first sentence of this paragraph. You agree that this Class Action Waiver is material and essential to the arbitration of any dispute between you and FitScene and is nonseverable from the Arbitration Agreement. If any portion of this Class Action Waiver is limited, voided, or cannot be enforced, then the Arbitration Agreement shall be null and void. You understand that by agreeing to this Class Action Waiver, you may only pursue Dispute against FitScene in an individual capacity and not as a plaintiff or class member in any purported class action or representative proceeding.

h) Limitation of Procedural Rights. You understand and agree that, by entering into this Arbitration Agreement, you and FitScene are each agreeing to arbitration instead of the right to a trial before a judge or jury in a public court. In the absence of this Arbitration Agreement, you and FitScene might otherwise have a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). By using the FitScene Site and products and services, you are entering into this Arbitration Agreement, and you give up those procedural rights. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited in arbitration. The right to appellate review of an arbitrator's decision is much more limited than in court, and in general an arbitrator's decision may not be appealed for errors of fact or law.

i) Severability. If any clause within this Arbitration Agreement, other than the Class Action Waiver clause above, is found to be illegal or unenforceable, that clause will be severed from this Arbitration Agreement, and the remainder of this Arbitration Agreement will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, then this entire Arbitration Agreement will be unenforceable and the Dispute will be decided by a court of competent jurisdiction.

j) Continuation. This Arbitration Agreement shall survive the termination of your contract with FitScene and your use of the Fitscene Site and services.