

HiTONE Fitness Website Terms of Use

Effective Date: [July 20, 2020]

Welcome to the D&DWA Operations, LLC doing business as HiTONE Fitness, website, www.HiTONEfitness.com, and other HiTONE Fitness-related sites, communications, content, capabilities and services (“Services”) accessible on or by any top-level HiTONE Fitness domain owned by us (the “Website”). Please read these Terms of Use (“Terms”) carefully. By using the Website, you (“User”, “You” or “Your”) are agreeing to these Terms and to the conditions and notices set forth below (collectively, the “Agreement”). By accessing or using this Website in any manner, You agree that (1) You have read and familiarized yourself with this Agreement, (2) You understand the Agreement, and (3) You are bound by the Agreement in your use of the Website. You are entering into this Agreement with D&DWA Operations, LLC (“HiTONE Fitness”). You should print a copy of this Agreement for Your records. This Agreement shall not apply to any services provided to You by HiTONE Fitness which shall be provided according to the written agreement for the applicable services. **If You do not accept all of the terms and conditions contained in or incorporated by reference into this Agreement, please do not use the Website.**

Modification of These Terms of Use

We reserve the right at any time, at our sole discretion, to change or otherwise modify the Agreement without prior notice, and such changes will be effective immediately upon posting. Your continued access or use of the Website signifies Your acceptance of the updated or modified Agreement. Unless otherwise indicated, any new material added to the Website will also be subject to the Agreement. Be sure to return to this page periodically to review the most current version of the Agreement.

Who Can Use the Website

The Website is not intended to be used by persons under the age of 18 years old. If You are under the age of 18 years old, please do not use the Website or any of the services offered by HiTONE Fitness. If You are submitting information for a business entity, by doing so, You represent that You have the authority to bind that business entity to the Agreement. We may, in our sole and absolute discretion, refuse to allow use of the Website or accept a person’s or entity’s information and may, at any time, refuse to permit a person’s, or entity’s, continuing use of the Website for any reason or for no reason, in our sole discretion.

User Conduct and Obligations

The content and information on the Website (including, but not limited to, messages, data, information, text, music, sound, photos, graphics, video, maps, icons, software, code or other material) (collectively, the “Content”), as well as the infrastructure used to provide such Content, is proprietary to HiTONE Fitness. Without our prior written permission, You may not use, copy, reproduce, republish, upload, post, transmit, distribute or modify our trademarks or other proprietary information in any way. You agree to follow all applicable laws and regulations when using the Website. You may not use the Website in any manner that could damage, disable,

overburden, or impair the Website or interfere with any other party's use and enjoyment of the Website. Additionally, You agree not to:

1. Provide false or misleading information about Yourself to HiTONE Fitness, impersonate any other person, or otherwise attempt to mislead others about Your identity or the origin of any Content, message or other communication;
2. Register, subscribe, attempt to register, attempt to subscribe, unsubscribe, or attempt to unsubscribe any party for any services if You are not expressly authorized by such party to do so;
3. Collect information about other visitors to the HiTONE Fitness Website without their consent or otherwise systematically extract data or data fields, including without limitation any financial data or email addresses;
4. Probe, scan, test the vulnerability of or breach the authentication measures of the Website or any related web pages, networks or systems;
5. Use any robot, spider, scraper, deep link or other automated or manual means to access the Website, or copy and/or redistribute any Content, information or software on the Website;
6. Manipulate or otherwise display the Website by using framing, creating deep-links to the Website by bypassing the Website's home page, mirroring or similar navigational technology or directly link to any portion of the Website other than the main home page;
7. Attempt to modify, translate, adapt, edit, decompile, disassemble, or reverse engineer any software programs used by HiTONE Fitness in connection with the Website;
8. Input or upload to the Website any information that contains viruses, Trojan horses, worms, time bombs or other computer programming routines that are intended to damage, interfere with, intercept or expropriate any system, the Website or information or that infringes the intellectual property rights of another;
9. Use or access the Website in any way that, in HiTONE Fitness's sole judgment, adversely affects the performance or function of the Website or interferes with the ability of authorized parties to access the Website, including but not limited to any action that imposes, or may impose, in HiTONE Fitness's sole discretion, an unreasonable or disproportionately large load on our infrastructure; and
10. Engage in, perform or conduct any of the prohibited actions or activities identified below under "Reviews, Comments and Use of Other Interactive Areas."

Intellectual Property

Except for public domain material, the Website is protected by intellectual property laws, including U.S. copyright laws. You are hereby granted a non-exclusive license to use the Content at the Website while connected to the Website (including, where available, to email individual Content to others directly from this site). You are also granted a limited license to print one copy of any Content posted at the Website, but only for Your personal use. Except as expressly provided above, all other rights are reserved. Among other things, except to the extent required for the limited purpose of reviewing material on the Website, electronic reproduction, adaptation, distribution, performance or display is prohibited. Commercial use of any of the Content is strictly prohibited. Use of any of our trademarks such as metatags on other web sites also is strictly prohibited. You may not display the Website in frames (or any of the Content via in-line links) without our express written permission, which may be requested by contacting us through our feedback form.

Electronic Communications

When You visit the Website or send or accept electronic messages through the Website, You are communicating with us electronically, and as a result, You consent to receive communications from us electronically. We may communicate with You by email or other authorized form of electronic message or by posting notices on the Website. You agree that all agreements, notices, disclosures and other communications that we provide to You electronically satisfy any legal requirement that such communications be in writing. You further agree that any notices provided by us electronically are deemed to be given and received on the date we transmit any such electronic communication as described in the Agreement. You have a right to withdraw your consent to receive electronic communications at any time, and may request a paper version of any electronic communication. You acknowledge that such withdrawal of consent will prohibit You from accessing and using core functionalities of the Website. You further acknowledge that we reserve the right to charge You a reasonable fee for the production and mailing of paper versions of electronic communications, unless charging a fee is prohibited by applicable law. To request a paper copy of an electronic communication, write us at webmaster@HiTONEfitness.com.

If our hardware or software requirements change, we will post to the Website notice of the revised hardware or software requirements. Continuing to use the Website after receiving notice of the changes to the Website is reaffirmation of Your consent.

Reviews, Comments and Use of Other Interactive Areas

Please be aware that by submitting any message, data, information, text, music, sound, photos, graphics, code or any other Content to the Website by electronic mail, postings on the Website, or other social network platforms operated by HiTONE Fitness, including any questions, comments, suggestions, ideas or the like contained in any submissions (collectively, "Submissions"), You are certifying that You are the rightful owner or licensee of the Submission and you grant HiTONE Fitness a nonexclusive, royalty-free, perpetual, transferable, irrevocable and fully sublicensable right to (a) use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display and perform such Submissions throughout the world in any media, now known or hereafter devised; and (b) use the name that You submit in connection with such Submission. You acknowledge that HiTONE Fitness may choose to provide attribution of Your comments or reviews at our discretion. You further grant HiTONE Fitness the right to pursue at law any person or entity that violates Your or HiTONE Fitness's rights in the Submissions by a breach of the Agreement. You acknowledge and agree that Submissions are non-confidential and non-proprietary.

The Website and HiTONE Fitness's other social network platforms may contain discussion forums, bulletin boards, reviews or other means in which You or third parties may post Content, messages, materials or other items on the Website ("Interactive Areas"). If HiTONE Fitness provides such Interactive Areas, You are solely responsible for Your use of such Interactive Areas and use them at Your own risk. By using any Interactive Areas, You expressly agree not to post, upload to, transmit, distribute, store, create or otherwise publish through the Website any of the following:

1. Any Submission that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable;
2. Submissions that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
3. Submissions that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
4. Submissions that impersonate any person or entity or otherwise misrepresents Your affiliation with a person or entity, including HiTONE Fitness;
5. Unsolicited promotions, political campaigning, advertising, contests, raffles, or solicitations;
6. Private information of any third party, including, without limitation, surname (family name) addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
7. Viruses, corrupted data or other harmful, disruptive or destructive files;
8. Any Submission that is unrelated to the topic of the Interactive Area(s) in which such Submission is posted; or
9. Submissions or links to Content that, in the sole judgment of HiTONE Fitness, (a) violates the previous subsections herein, (b) is objectionable, (c) restricts or inhibits any other person from using or enjoying the Interactive Areas or the Website, or (d) exposes or could expose HiTONE Fitness or its customers to any harm or liability of any type.

HiTONE Fitness takes no responsibility and assumes no liability for any Submissions posted, stored or uploaded by You or any third party, or for any loss or damage thereto, nor is HiTONE Fitness liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity You may encounter. HiTONE Fitness is not liable for any statements, representations or Submission provided by its Users in any public forum, personal home page or other Interactive Area. Although HiTONE Fitness has no obligation to screen, edit or monitor any of the Submissions posted to or distributed through any Interactive Area, HiTONE Fitness reserves the right, and has absolute discretion, to remove, screen or edit without notice any Content posted or stored on the Website at any time and for any reason.

If it is determined that You retain moral rights (including rights of attribution or integrity) in Submissions, You hereby declare that (a) You do not require that any personally identifying information be used in connection with the Submission, or any derivative works of or upgrades or updates thereto; (b) You have no objection to the publication, use, modification, deletion and exploitation of the Submission by HiTONE Fitness or its licensees, successors and assigns; (c) You forever waive and agree not to claim or assert any entitlement to any and all moral rights of an author in any of the Submission; and (d) You forever release HiTONE Fitness, and its licensees, successors and assigns, from any claims that You could otherwise assert against HiTONE Fitness by virtue of any such moral rights.

Any violation of the foregoing violates the Agreement and may result in, among other things, termination or suspension of Your rights to use the Interactive Areas and/or the Website. See "Termination", below.

Digital Millennium Copyright Act Notice

HiTONE Fitness respects the intellectual property rights of others. HiTONE Fitness may, in appropriate circumstances and at its sole discretion, terminate the access of Users who infringe the copyrights or intellectual property rights of others.

If You believe Your work has been copied and is accessible at the Website, or other social network platforms operated by HiTONE Fitness, in a way that constitutes copyright infringement, or that the Website contains links or other references to another online location that contains material or activity that infringes Your copyright, You may notify us by providing our copyright agent the information required by the U.S. Online Copyright Infringement Liability Limitation Act of the U.S. Digital Millennium Copyright Act. Our agent for notice of claims of copyright infringement on or regarding the Website can be reached by mail: HiTONE Fitness, LLC, 3735 Bean Road, Suite B, Charlotte, North Carolina 28217; by email: legal@HiTONEfitness.com.

Your notice must satisfy the requirements of the DMCA and include the following information:

- (i) Your name, mailing address, and email address;
- (ii) A statement identifying the copyrighted material You claim is infringed, such as a URL linking to an authorized version of the copyrighted material;
- (iii) A statement identifying where the allegedly infringing material is located, such as URL linking to the allegedly infringing material;
- (iv) A statement that You have a good faith belief that the allegedly infringing material identified in section (ii), above, is not authorized by the copyright owner, its agent, or the law;
- (v) A statement, made under penalty of perjury, that the information in this notice is accurate and that You are the owner of the copyrighted material or are authorized to act on behalf of the owner of the copyrighted material; and
- (vi) An electronic or physical signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

HiTONE Fitness Privacy Policy

The HiTONE Fitness Privacy Policy governs the use of information collected from or provided by You through the Website. With respect to any individual whose personal information is provided by You to HiTONE Fitness, You represent to HiTONE Fitness that You have obtained all necessary consents for the processing of such personal information contemplated by the services You are using, including the transfer of such data to the United States or other countries whose laws may not provide the same level of protection for the personal data as the laws of the country of origin of such individual.

HiTONE Fitness believes in protecting Your privacy. Please [click here](#) to review our current Privacy Policy, which also governs Your use of the Website and all other websites, pages, accounts and other electronic media owned or controlled by HiTONE Fitness, to understand our practices.

Contests and Promotions

Any contests, raffles, surveys, games, loyalty programs or similar promotions (collectively, "Promotions") made available through the Site may be governed by rules and terms and conditions ("Promotion Terms") that are separate from these Terms. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If any Promotion Terms conflict with these Terms, the Promotion Terms will govern.

Security

Registered Users are responsible for the protection of their account numbers, customer name, and password associated with Internet access to all Website and Interactive Areas. In the event of any unauthorized access to Your account, You must immediately notify HiTONE Fitness; however, HiTONE Fitness is not responsible or liable for damage of any kind as a result of any unauthorized access. To protect Yourself from unauthorized access to Your account information, HiTONE Fitness highly recommends that You change Your password frequently and do not share Your password with anyone.

Limitation of Liability

IN NO EVENT SHALL HITONE FITNESS BE LIABLE FOR ANY INCIDENTAL, DIRECT, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR ANY KIND OF DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND LOST PROFITS OR SAVINGS) RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OF OR INABILITY TO USE THE WEBSITE, INTERACTIVE AREAS, OR HITONE FITNESS'S SERVICES WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT HITONE FITNESS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Disclaimer of Warranties

HITONE FITNESS MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OF THE INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES, CONTAINED ON THE WEBSITE FOR ANY PURPOSE, AND THE INCLUSION OR OFFERING OF ANY PRODUCTS OR SERVICES ON THE WEBSITE DOES NOT CONSTITUTE ANY ENDORSEMENT OR RECOMMENDATION OF SUCH PRODUCTS OR SERVICES BY HITONE FITNESS. ALL SUCH INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. HITONE FITNESS DISCLAIMS ALL WARRANTIES AND CONDITIONS THAT THE WEBSITE, ITS SERVERS OR ANY EMAIL SENT FROM HITONE FITNESS, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. HITONE FITNESS HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

Indemnification

You agree to defend and indemnify HiTONE Fitness and each of its subsidiaries, affiliates, directors, officers, agents, partners, investors, employees, successors and assigns from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature, including but not limited to reasonable legal and accounting fees, arising from:

1. Your breach of this Agreement;
2. Your violation of any law or the rights of a third party; or
3. Your use of this Website.

You and each of Your successors, assigns, subsidiaries and affiliates, hereby unconditionally release and forever discharge HiTONE Fitness and each of its subsidiaries, affiliates, directors, officers, agents, partners, investors, employees, successors and assigns harmless from any and all complaints, claims, charges, damages, demands, suits, actions and causes of action, whether at law or in equity (including attorneys' fees, costs and expenses), known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with your use of the Website.

Termination

You agree that HiTONE Fitness, in its sole discretion, may terminate or suspend Your use or access to the Website, Interactive Areas, Submissions, Content, information, and services at any time and for any or no reason, in its sole discretion, and without prior notification, even if access and use continues to be allowed to others. Upon such suspension or termination, You must immediately (a) discontinue use of the Website, and (b) destroy any copies You have made of any portion of Submissions. Accessing the Website, Interactive Areas, Submissions, Content, information, and services after such termination, suspension or discontinuation shall constitute an act of trespass. Further, You agree that HiTONE Fitness shall not be liable to You or any third party for any termination or suspension of Your access to the Website, Interactive Areas, Content, information, and services.

Third Parties

The Website may contain links to websites, pages, accounts or other electronic media owned or controlled by parties other than HiTONE Fitness. Such links are provided for Your reference and convenience only. We do not control such websites and are not responsible for their contents or the privacy or other practices of such websites. Further, it is up to You to take precautions to ensure that whatever links You select or software You download (whether from the Website or other websites) is free of such items as viruses, worms, Trojan horses, defects and other items of a destructive nature. Our inclusion of links to such websites does not imply any endorsement of the material on such websites or any association with their operators. In some cases you may be asked by a third party site to link Your profile on HiTONE Fitness to a profile on another third party site. Choosing to do so is purely optional, and the decision to allow this information to be linked can be disabled (with the third party site) at any time.

Copyright and Trademark Notices

All trademarks, trade names, logos, images, typefaces, graphics, service marks and trade dress displayed on the Sites (collectively, the “Marks”) are the property of HiTONE Fitness or its licensors, content providers or other third parties. Nothing in these Terms of Use or on the Sites shall be construed as granting, by implication, estoppel or otherwise, any license or right to use any Mark without the prior written consent of HiTONE Fitness or the owner of the Mark. In addition, the look and feel of the Website, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of HiTONE Fitness and may not be copied, imitated or used, in whole or in part, without the prior written permission of HiTONE Fitness. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Website are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise, does not constitute or imply endorsement, sponsorship or recommendation thereof by HiTONE Fitness.

If You are aware of an infringement of either Your brand or our brand, please let HiTONE Fitness know by contacting us via phone or email. See “How to Contact HiTONE Fitness,” below.

Business Uses of our Services

If You are using our Services on behalf of a business, that business accepts these terms. It will hold harmless and indemnify HiTONE Fitness and its affiliates, officers, agents, and employees from any claim, suit or action arising from or related to the use of the Services or violation of these terms, including any liability or expense arising from claims, losses, damages, suits, judgments, litigation costs and attorneys’ fees.

No Legal Advice

The information provided on this Website is neither designed nor intended to provide legal or other professional advice but is intended merely to be a starting point for research on the subject of legal technology.

General

You agree to use the Website in strict compliance with all applicable laws, rules, rulings and regulations and in a fashion that does not, in the sole judgment of HiTONE Fitness, negatively reflect on the goodwill or reputation of HiTONE Fitness and shall take no actions that would cause HiTONE Fitness to be in violation of any laws, rules, rulings or regulations applicable to HiTONE Fitness. HiTONE Fitness and the Website are based in the United States. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without reference to the principles of conflicts of law of that state or any other jurisdiction. You hereby consent to the exclusive jurisdiction and venue of the courts of the state of North Carolina or the courts of the United States located in Mecklenburg County, North Carolina, and stipulate to the fairness and convenience of proceedings in such courts for all disputes arising out of or relating to the use of the Website. You agree that all claims You may have against HiTONE Fitness arising from or relating to the Website must be heard and resolved in a court of competent subject matter jurisdiction located in the State of North Carolina within two (2) years from the date on which

such claim or action arose or accrued or such claim or cause of action will be irrevocably waived. Use of the Website is unauthorized in any jurisdiction that does not give effect to all provisions of the Agreement, including, without limitation, this paragraph. If any part of the Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remaining provisions in the Agreement shall continue in full force and effect.

The Agreement (and any other terms and conditions referenced herein) constitutes the entire agreement between You and HiTONE Fitness with respect to the Website and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the User and HiTONE Fitness with respect to the Website. A printed version of the Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

How to Contact HiTONE Fitness

If You have any questions or comments about the Agreement, or Your dealings with the Website, please contact us by email sent to webmaster@HiTONEfitness.com or by mail at HiTONE Fitness, LLC, 3735 Bean Road, Suite B, Charlotte, North Carolina, 28217, U.S.A.