

ACTIV8 ATHLETICISM TERMS OF USE

1. **ACCEPTANCE OF TERMS.** Activ8 Athleticism provides a collection of online resources, (referred to hereafter as "the Service") subject to the following Terms of Use ("TOU"). By using the Service in any way, you are agreeing to comply with the TOU. In addition, when using particular Activ8 Athleticism services, you agree to abide by any applicable posted guidelines for all Activ8 Athleticism services, which may change from time to time. Should you object to any term or condition of the TOU, any guidelines, or any subsequent modifications thereto or become dissatisfied with Activ8 Athleticism in any way, your only recourse is to immediately discontinue use of Activ8 Athleticism's Service. Activ8 Athleticism has the right, but is not obligated, to strictly enforce the TOU through self-help, community moderation, active investigation, litigation and prosecution.

2. **MODIFICATIONS TO THIS AGREEMENT.** We reserve the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately upon the posting thereof. You must review this agreement on a regular basis to keep yourself apprised of any changes. You can find the most recent version of the TOU at:

www.activ8athleticism.com

3. **CONTENT.** The information and materials on this Site could include technical inaccuracies or typographical errors. Changes are periodically made to the information contained herein. You agree that you must evaluate, and bear all risks associated with, the use of any Content, that you may not rely on said Content, and that under no circumstances will Activ8 Athleticism be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. You acknowledge that Activ8 Athleticism does not pre-screen or approve Content, but that Activ8 Athleticism shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service, which is obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable, or for violating the letter or spirit of the TOU or for any other reason.

4. **THIRD PARTY CONTENT, SITES, AND SERVICES.** The Activ8 Athleticism site and Content available through the Service may contain features and functionalities that may link you or provide you with access to third party content which is completely independent of Activ8 Athleticism, including web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole. Your interactions with organizations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Activ8 Athleticism shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on this site, or between users and any third party, you understand and agree that Activ8 Athleticism is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release Activ8 Athleticism, its officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and / or our service. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

5. **PRIVACY AND INFORMATION DISCLOSURE.** Your use of the Activ8 Athleticism website or the Service signifies acknowledgement of, and agreement to, our Privacy Policy. You further acknowledge and

agree that Activ8 Athleticism may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce the TOU; respond to claims that any Content violates the rights of third-parties; respond to claims that contact information (e.g. phone number, street address) of a third-party has been posted or transmitted without their consent or as a form of harassment; protect the rights, property, or personal safety of Activ8 Athleticism, its users or the general public.

If you have any questions about this Privacy Policy, please feel free to contact us through our website or write to us at:

Privacy Matters
c/o Activ8 Athleticism
249 South Highway 101, #229
Solana Beach, CA, 92075

USA

Information we collect and how we use it:

Information you provide – When you go to our website (<http://activ8athleticism.com/>), when you enter your information on the website, when you communicate via email, or when you visit and provide information which is electronically entered into our Mind Body (third party) operational system, we receive information (for example, your name, address, age, what sports you play, how long you have been playing, etc). We obtain your personal information solely for the purpose of assisting you in becoming a member of an Activ8 Athleticism fitness center. We combine the information you submit with information from our third party membership processor in order to provide you with a better experience and to improve the quality of our Services. For certain Services, we may give you the opportunity to opt out of combining such information. We, along with the third party administrators, will have access to your account information including your email address and phone number. You can contact the third party's administrator (<http://www.mindbodyonline.com/>) for more information on their privacy policy.

User communications – When you send email or other communications to Activ8 Athleticism, we may retain those communications in order to process your inquiries, respond to your requests and improve our Services. When you send and receive SMS messages to or from one of our services that provides SMS functionality, we may collect and maintain information associated with those messages, such as the phone number, the content of the message, and the date and time of the transaction. We may use your email address to communicate with you about our Services.

Affiliated Services on other sites – We offer some of our Services on or through other web sites and social media sites. Personal information that you provide to those sites may be sent to Activ8 Athleticism in order to deliver the Service. We process such information under this Privacy Policy.

Other sites – This Privacy Policy applies to Activ8 Athleticism Services only. We do not exercise control over any other or affiliated sites, products or services, or links from within our various services. These other sites may place their own cookies or other files on your computer, collect data or solicit personal information from you.

In addition to the above, we may use the information we collect to:

Provide, maintain, protect, and improve our Services and develop new Services; and

- Protect the rights or property of Activ8 Athleticism or our users.
- If we use this information in a manner different than the purpose for which it was collected, then we will ask for your consent prior to such use.

Information sharing. Activ8 Athleticism only shares personal information with other companies or individuals outside of Activ8 Athleticism in the following limited circumstances:

We provide such information to our subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information on our behalf. We require that these parties agree to process such information based on our instructions and in compliance with this Privacy Policy and any other appropriate confidentiality and security measures.

We have a good faith belief that access, use, preservation or disclosure of such information is reasonably necessary to (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, (b) enforce applicable TOU, including investigation of potential violations thereof, (c) detect, prevent, or otherwise address fraud, security or technical issues, or (d) protect against harm to the rights, property or safety of Activ8 Athleticism, its users or the public as required or permitted by law.

If Activ8 Athleticism becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, we will ensure the confidentiality of any personal information involved in such transactions and provide notice before personal information is transferred and becomes subject to a different privacy policy.

Information security. We take appropriate security measures to protect against unauthorized access to or unauthorized alteration, disclosure or destruction of data. These include internal reviews of our data collection, storage and processing practices and security measures, including appropriate encryption and physical security measures to guard against unauthorized access to systems where we store personal data.

We restrict access to personal information to Activ8 Athleticism employees, contractors and agents who need to know that information in order to process it on our behalf. These individuals are bound by confidentiality obligations and may be subject to discipline, including termination and criminal prosecution, if they fail to meet these obligations.

Activ8 Athleticism regularly reviews its compliance with this Privacy Policy. When we receive formal written complaints, it is Activ8 Athleticism's policy to contact the complaining user regarding his or her concerns. We will cooperate with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of personal data that cannot be resolved between Activ8 Athleticism and an individual.

Changes to this Privacy Policy. Please note that this Privacy Policy may change from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We will post any Privacy Policy changes on this page and, if the changes are significant, we will provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes). We will also keep prior versions of this Privacy Policy in an archive for your review.

Parental Consent: If you are a minor, your parent may agree to the collection and use of your information without consenting to the disclosure of the information to third parties. We will not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation. Your parent can review your personal information, ask to have it deleted and refuse to allow any further collection or use of your information. Should your parent wish to do so or share any other concerns, please contact us at:

Privacy Matters
c/o Activ8 Athleticism
249 South Highway 101, #229
Solana Beach, CA, 92075

USA

6. CONDUCT. You agree not to post, email, or otherwise make available Content:

- a. that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way;
- b. that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- c. that is false, deceptive, misleading, deceitful, misinformative, or constitutes "bait and switch";
- d. that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;
- e. that constitutes or contains "affiliate marketing," "link referral code," "junk mail," "spam," "chain letters," "pyramid schemes," or unsolicited commercial advertisement;
- f. that constitutes or contains any form of advertising or solicitation if: posted in areas of the Activ8 Athleticism sites which are not designated for such purposes; or emailed to Activ8 Athleticism users who have not indicated in writing that it is ok to contact them about other services, products or commercial interests.
- g. that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- h. that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users' ability to use the Service; or
- i. that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service. Additionally, you agree not to:
- j. contact anyone who has asked not to be contacted, or make unsolicited contact with anyone for any commercial purpose; "stalk" or otherwise harass anyone;
- l. collect personal data about other users for commercial or unlawful purposes;
- m. post non-local or otherwise irrelevant Content, repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionately large load on our infrastructure;
- n. attempt to gain unauthorized access to Activ8 Athleticism's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or the Activ8 Athleticism website; or use any form of automated device or computer program ("flagging tool") that enables the use of Activ8 Athleticism's "flagging system" or other community moderation systems without each flag being manually entered by the person that initiates the flag (an "automated flagging device"), or use the flagging tool to remove posts of competitors, or to remove posts without a good faith belief that the post being flagged violates these TOU.

7. NO SPAM POLICY. You understand and agree that sending unsolicited email advertisements to Activ8 Athleticism email addresses or through Activ8 Athleticism computer systems, which is expressly prohibited by these Terms, will use or cause to be used servers located in California. Any unauthorized use of Activ8 Athleticism computer systems is a violation of these Terms and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act (18 U.S.C. Â§ 1030 et seq.), Section 502 of the California Penal Code and Section 17538.45 of the California Business and Professions Code. Such violations may subject the sender and his or her agents to civil and criminal penalties.

8. LIMITATIONS ON SERVICE. You acknowledge that Activ8 Athleticism may establish limits concerning use of the Service, including the maximum number of days that Content will be retained by the Service, the maximum number and size of postings, email messages, or other Content that may be transmitted or stored by the Service, and the frequency with which you may access the Service. You agree

that Activ8 Athleticism has no responsibility or liability for the deletion or failure to store any Content maintained or transmitted by the Service. You acknowledge that Activ8 Athleticism reserves the right at any time to modify or discontinue the Service (or any part thereof) with or without notice, and that Activ8 Athleticism shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

9. ACCESS TO THE SERVICE. Activ8 Athleticism grants you a limited, revocable, nonexclusive license to access the Service for your own personal use. Use of the Service beyond the scope of authorized access granted to you by Activ8 Athleticism immediately terminates said permission or license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the Service or any Content made available via the Service for other purposes (including commercial purposes) not stated herein, you must first obtain a license from Activ8 Athleticism.

10. TERMINATION OF SERVICE. You agree that Activ8 Athleticism, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and remove and discard any Content within the Service, for any reason, including, without limitation, if Activ8 Athleticism believes that you have acted inconsistently with the letter or spirit of the TOU. Further, you agree that Activ8 Athleticism shall not be liable to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 2, 4, 6 and 10-16 shall survive termination of the TOU.

11. PROPRIETARY RIGHTS. The Service is protected to the maximum extent permitted by copyright laws and international treaties. Content displayed on or through the Service is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the site or the collective work, and/or copying or reproducing the sites or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of Activ8 Athleticism. You further agree not to reproduce, duplicate or copy Content from the Service without the express written consent of Activ8 Athleticism, and agree to abide by any and all copyright notices displayed on the Service. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service. ACTIV8 ATHLETICISM is a registered mark in the U.S. Patent and Trademark Office. Although Activ8 Athleticism does not claim ownership of content that its users post, by posting Content to any area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to Activ8 Athleticism an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Service, you automatically grant Activ8 Athleticism all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Service by any party for any purpose.

12. DISCLAIMER OF WARRANTIES. YOU AGREE THAT USE OF THE ACTIV8 ATHLETICISM SITE AND THE SERVICE IS ENTIRELY AT YOUR OWN RISK. THE ACTIV8 ATHLETICISM SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, ACTIV8 ATHLETICISM DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE

ACTIV8 ATHLETICISM SITE AND THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, ACTIV8 ATHLETICISM DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE ACTIV8 ATHLETICISM SITE OR THE SITES OR SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE ACTIV8 ATHLETICISM SITE. TO THE FULLEST EXTENT PERMITTED BY LAW, ACTIV8 ATHLETICISM DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL COMPONENTS IN CONNECTION WITH THE ACTIV8 ATHLETICISM SITE OR THE SERVICE. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, some of the foregoing disclaimers may not apply to you insofar as they relate to implied warranties.

13. LIMITATIONS OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL ACTIV8 ATHLETICISM BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF ACTIV8 ATHLETICISM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE ACTIV8 ATHLETICISM SITE OR THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE ACTIV8 ATHLETICISM SITE OR THE SERVICE, FROM INABILITY TO USE THE ACTIV8 ATHLETICISM SITE OR THE SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE ACTIV8 ATHLETICISM SITE OR THE SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE ACTIV8 ATHLETICISM SITE OR THE SERVICE OR ANY LINKS ON THE ACTIV8 ATHLETICISM SITE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE ACTIV8 ATHLETICISM SITE OR THE SERVICE OR ANY LINKS ON THE ACTIV8 ATHLETICISM SITE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. In some jurisdictions, limitations of liability are not permitted. In such jurisdictions, some of the foregoing limitation may not apply to you.

14. INDEMNITY. You agree to indemnify and hold Activ8 Athleticism, its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including reasonable attorney fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of the TOU, your breach of any of the representations and warranties herein, or your violation of any rights of another.

15. GENERAL INFORMATION. The TOU constitute the entire agreement between you and Activ8 Athleticism and govern your use of the Service, superseding any prior agreements between you and Activ8 Athleticism. The TOU and the relationship between you and Activ8 Athleticism shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Activ8 Athleticism agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Diego, California. The failure of Activ8 Athleticism to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of the TOU 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, and the other provisions of the TOU remain in full force and effect. You 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 Service or the TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.

16. VIOLATION OF TERMS AND LIQUIDATED DAMAGES. Please report any violations of the TOU, by flagging the posting(s) for review, or by emailing to: WMEADE@ACTIV8ATHLETICISM.COM. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. You understand and agree that, because damages are often difficult to

quantify, if it becomes necessary for Activ8 Athleticism to pursue legal action to enforce these Terms, you will be liable to pay Activ8 Athleticism the following amounts as liquidated damages, which you accept as reasonable estimates of Activ8 Athleticism's damages for the specified breaches of these Terms:

- a. If you post a message that (1) impersonates any person or entity; (2) falsely states or otherwise misrepresents your affiliation with a person or entity; or (3) that includes personal or identifying information about another person without that person's explicit consent, you agree to pay Activ8 Athleticism one thousand dollars (\$1,000) for each such message. This provision does not apply to Content that constitutes lawful non-deceptive parody of public figures.
- b. If Activ8 Athleticism establishes limits on the frequency with which you may access the Service, or terminates your access to or use of the Service, you agree to pay Activ8 Athleticism one hundred dollars (\$100) for each message posted in excess of such limits or for each day on which you access Activ8 Athleticism in excess of such limits, whichever is higher.
- c. If you send unsolicited email advertisements to Activ8 Athleticism email addresses or through Activ8 Athleticism computer systems, you agree to pay Activ8 Athleticism twenty-five dollars (\$25) for each such email.
- d. If you post Content in violation of the TOU, other than as described above, you agree to pay Activ8 Athleticism one hundred dollars (\$100) for each Item of Content posted. In its sole discretion, Activ8 Athleticism may elect to issue a warning before assessing damages.

If you aggregate, display, copy, duplicate, reproduce, or otherwise exploit for any purpose any Content (except for your own Content) in violation of these Terms without Activ8 Athleticism's express written permission, you agree to pay Activ8 Athleticism three thousand dollars (\$3,000) for each day on which you engage in such conduct. Otherwise, you agree to pay Activ8 Athleticism's actual damages, to the extent such actual damages can be reasonably calculated.

Notwithstanding any other provision of these Terms, Activ8 Athleticism retains the right to seek the remedy of specific performance of any term contained in these Terms, or a preliminary or permanent injunction against the breach of any such term or in aid of the exercise of any power granted in these Terms, or any combination thereof.