

# DAILY BURN END USER LICENSE AGREEMENT AND TERMS

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## **1 Agreement.**

This End-User License Agreement (including the Supplemental Terms, as applicable) ("EULA" or "Agreement") governs your use and access of DailyBurn.com (the "Daily Burn Site" or "Site"), and Daily Burn's mobile and platform applications (collectively "Apps"). The Site and Apps are made available by, and you are entering into this EULA with Daily Burn, Inc. based at 330 West 34th Street, 5th Floor, New York, NY 10001. The terms "Daily Burn", "we", "us" or "our" used in this EULA refer to Daily Burn, Inc. Daily Burn provides digitally accessible fitness services and content. The Site and Apps, along with the fitness service and content made available therein are referred to herein as the "Daily Burn Service" or "Service". By using the Service and/or installing or otherwise using the Apps, you: (a) agree to be bound by the terms and conditions of this EULA, (b) you represent and warrant that you own or control the mobile device in which the App will be installed, and (c) you represent and warrant that you have the right, authority and capacity to enter into this EULA and to abide by all its terms and conditions, just as if you had signed it. The terms and conditions of this EULA also apply to any App updates, supplements, and services that are not provided under a separate license or other agreement with us. If you do not agree to the terms and conditions of this EULA, do not use the Service or install or use any App.

We may amend these terms and conditions from time to time. If the changes include material changes that affect your rights or obligations, we will notify you of the changes by reasonable means. You acknowledge that an email or and in-app message which notifies you of such changes when you open up the App shall constitute reasonable means. Your continued use of the Service after we post any amendments to this EULA will signify your acceptance of such amendments. If you do not agree with any amendment, you must discontinue using the Service. If you have any questions or concerns regarding these terms or conditions herein, please email us

You should also read and understand the Daily Burn Privacy Policy, which is incorporated by reference into and made a part of this Agreement. This Agreement also includes any additional payment terms and other requirements set forth on the download or purchase page of the Site or

marketplaces through which you may purchase or download Apps or access the Service. These marketplaces may have additional terms, conditions and usage rules that govern your access to and use of the Apps and/or the Daily Burn Service.

Prior to using the Daily Burn Service, it is important for you to know and understand that by accessing and/or using the Service through any means, you are agreeing to accept certain liability limitations and legal and health disclaimers, which we further explain throughout this Agreement. In other words, your use of the Daily Burn Service is at your own risk, and we do not assume any liability, or make any warranties of any kind, express or implied, with respect to the Service or your access and use of the Service. If you have any questions or concerns regarding the terms or conditions herein, please email us at [support@dailyburn.com](mailto:support@dailyburn.com).

By using the Service, you consent to receiving this Agreement in electronic form.

**Notice to consumers:** depending on the laws of the jurisdiction where you live, you may have certain rights that cannot be waived through this EULA and that are in addition to the terms of this EULA, and certain provisions of this EULA may be unenforceable as to you. To the extent that any term or condition of this EULA is unenforceable, the remainder of the EULA shall remain in full force and effect.

## **2 Health Warning And Medical Disclaimer.**

YOU SHOULD CONSULT YOUR PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL BEFORE STARTING THE SERVICE OR ANY OTHER EXERCISE OR WEIGHT LOSS PROGRAM TO DETERMINE IF IT IS RIGHT FOR YOUR NEEDS. THIS IS PARTICULARLY TRUE IF YOU (OR YOUR FAMILY) HAVE A HISTORY OF HIGH BLOOD PRESSURE OR HEART DISEASE, IF YOU HAVE EVER EXPERIENCED CHEST PAIN WHEN EXERCISING, SMOKE, HAVE HIGH CHOLESTEROL, HAVE A BONE OR JOINT PROBLEM OR OTHER MEDICAL CONDITION THAT COULD BE MADE WORSE BY A CHANGE IN PHYSICAL ACTIVITY OR DIET. DO NOT USE THE DAILY BURN SERVICE IF YOUR PHYSICIAN OR HEALTH CARE PROVIDER ADVISES AGAINST IT. IF YOU EXPERIENCE FAINTNESS, DIZZINESS, PAIN OR SHORTNESS OF BREATH AT ANY TIME WHILE EXERCISING OR FASTING, YOU SHOULD STOP IMMEDIATELY. THE DAILY BURN SERVICE OFFERS GENERAL HEALTH AND FITNESS INFORMATION AND IS DESIGNED FOR INFORMATIONAL PURPOSES ONLY. NOTHING STATED OR POSTED ON THE DAILY BURN SITE OR AVAILABLE THROUGH ANY DAILY BURN SERVICES IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICAL, PROFESSIONAL OR COUNSELING CARE. FOR PURPOSES OF THIS AGREEMENT, THE PRACTICE OF MEDICINE AND COUNSELING INCLUDES, WITHOUT LIMITATION, PSYCHIATRY, PSYCHOLOGY, PSYCHOTHERAPY, OR PROVIDING HEALTH OR NUTRITION CARE, TREATMENT, INSTRUCTIONS, DIAGNOSIS, PROGNOSIS OR ADVICE. YOU SHOULD NOT RELY ON ANY INFORMATION ON THE DAILY BURN SERVICE AS A SUBSTITUTE FOR, NOR DOES IT REPLACE, PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH, YOU SHOULD ALWAYS CONSULT A PHYSICIAN OR OTHER HEALTH- CARE PROFESSIONAL. DO NOT EVER DISREGARD, AVOID OR DELAY OBTAINING MEDICAL OR HEALTH RELATED ADVICE FROM YOUR HEALTH- CARE PROFESSIONAL BECAUSE OF SOMETHING YOU MAY HAVE READ ON THE SERVICE. THE USE OF ANY INFORMATION PROVIDED ON THE SERVICE IS SOLELY AT YOUR OWN RISK.

IF YOU ARE IN THE UNITED STATES AND THINK YOU ARE HAVING A MEDICAL OR HEALTH EMERGENCY, CALL YOUR HEALTH CARE PROFESSIONAL, OR 911, IMMEDIATELY.

### 3 Who May Use The Daily Burn Service.

**AGE REQUIREMENT:** You must be at least 18 years old to use the Daily Burn Service. **NOTICE TO PARENTS AND GUARDIANS:** You are responsible for monitoring and supervising your child's use of the Daily Burn Service. If your child is using the Daily Burn Service without your express consent and is under 18, please contact us immediately so that we can disable his or her access. If you have questions about the Daily Burn Service, please contact us at [support@dailyburn.com](mailto:support@dailyburn.com),

### 4 The Service.

**Grant of License.** Subject to your compliance with the terms and conditions of this Agreement, Daily Burn grants you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license, to access and use the most current available versions of the Site, Apps and Service for your lawful, personal and non-commercial use.

**Available Content.** The Service and the content provided therein is available for users of various skill levels, for a variety of activities, and for varying durations. Content may not always be available and is subject to change at any time with or without notice and without any liability to you. Content is intended for informational purposes only and should not be considered medical or healthcare advice.

**Registration.** While you may enjoy certain content and features without registering with Daily Burn, to receive the full benefits of some of our Services, you may be required to register as a member by providing a username, password, valid email address and valid credit card information. You must provide complete and accurate registration information to Daily Burn and notify us if your information changes. In creating a username, you may not use someone else's name, a name that violates any third party right, or a name that is obscene or otherwise objectionable. You may be given the option to access or register for the Service through the use of your third-party social media account, such as Facebook or Google. If you select this option, your social media provider may make certain of your personal information available to us, such as your email address or other unique identifier or we may be asked to share certain information with such social media provider. We recommend that you review your social media provider's privacy policies carefully before using their service to connect to our Services.

**Daily Burn Coaching Service.** The Daily Burn coaching service is intended solely as a general fitness informational means by which Members can communicate with Daily Burn trainer coaches. DAILY BURN DOES NOT REPRESENT IN ANY WAY THAT ANY NUTRITIONAL OR FITNESS ADVICE PROVIDED BY A TRAINER COACH CONSTITUTES QUALIFIED EXPERT ADVICE. If you encounter a Daily Burn coach who is providing expert advice in violation of these principles, please contact us immediately at [support@dailyburn.com](mailto:support@dailyburn.com).

**Non-commercial Use.** Use of the Site and Service is for personal, non-commercial use only. You may not use the Service in connection with any commercial endeavors, such as (i) advertising or soliciting any user to buy or sell any products or services; or (ii) for commercial purposes. Users of the Site may not use any information obtained from the Service to contact, advertise to, solicit, or sell to any other user without his or her prior explicit consent. Organizations, companies, and/or businesses may not use the Service or the Site for any purpose unless expressly authorized by Daily Burn. If you wish to inquire about possible commercial use, please contact us at [support@dailyburn.com](mailto:support@dailyburn.com) . Daily Burn may investigate and take any available legal action in response to illegal and/or unauthorized uses of the Site or the Service.

**Account Security.** You are responsible for all activity that occurs under your account, including any activity by unauthorized users. You must not allow others to use your account. You must safeguard the confidentiality of your password. If you are using a computer that others have access to, you must log out of your account after using the Daily Burn Service. If you become aware of any unauthorized access to your account, you must change your password and notify us immediately at [support@dailyburn.com](mailto:support@dailyburn.com).

Daily Burn may change, modify, add, remove, suspend, cancel or discontinue any aspect of its subscriptions including the functionality, content, and/or availability of any features of such subscriptions at any time in Daily Burn's sole discretion.

## **5 Your Representations and Warranties as a Member.**

In using the Daily Burn Service, you affirm that either (A) all of the following statements are true: (i) no physician has ever informed you that you have a heart condition or that you should only do physical activities recommended by a physician; (ii) you have never felt chest pain when engaging in physical activity; (iii) you have not experienced chest pain when not engaged in physical activity at any time within the past several months; (iv) you have never lost your balance because of dizziness and you have never lost consciousness; (v) you do not have a bone or joint problem that could be made worse by a change in your physical activity; (vi) your physician is not currently prescribing drugs for your blood pressure or heart condition; (vii) you do not have a history of high blood pressure, and no one in your immediate family has a history of high blood pressure or heart problems; and (viii) you do not know of any other reason you should not exercise or, if applicable engage in intermittent fasting, including without limitation pregnancy; or (B) your physician has specifically approved of your use of the Daily Burn Service. You further affirm that you will not access the Service from within the European Economic Area.

## **6 General Disclaimers.**

DAILY BURN PROVIDES THE DAILY BURN SERVICE ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU THEREFORE USE THE DAILY BURN SERVICE AT YOUR OWN RISK.

DAILY BURN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY OTHER WARRANTY THAT MIGHT ARISE UNDER ANY LAW.

Without limiting the foregoing, Daily Burn makes no representations or warranties:

- That the Daily Burn Service, or any particular fitness or weight-loss program is suitable for you;
- Regarding the adequacy or safety of the Daily Burn Service for any particular user;
- That the Daily Burn Service will meet your personal needs;
- That the Daily Burn Service will be permitted in your jurisdiction;
- That the Daily Burn Service will be uninterrupted or error-free;
- Concerning any content submitted by any member;
- Concerning any third party's use of content that you submit;
- That Daily Burn will continue to support any particular feature of the Daily Burn Service; or
- Concerning sites and resources outside of the Daily Burn Service, even if linked to/from the Daily Burn Service.

Daily Burn reserves the right to modify the Daily Burn Service. You are responsible for providing your own access (e.g., computer, mobile device, Internet connection, etc.) to the Daily Burn Service. Daily Burn has no obligation to screen or monitor any content and does not guarantee that any content made available on the Daily Burn Service complies with this Agreement or is suitable for all users. Daily Burn shall not be responsible for loss or corruption of data, and hereby waives all claims with respect to damage to your computer system, internet access, download or display device. To the extent that a secondary party may have access to or view Daily Burn content on your computer or mobile device, you are solely responsible for informing such party of all provisions, terms, disclaimers and warnings in this Agreement. To the extent any disclaimer or limitation of liability in this Agreement does not apply, all applicable express, implied, and statutory warranties will be limited in duration to a period of thirty (30) days after the date on which you first used the Daily Burn Service, and no warranties shall apply after such period.

## **7 Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED BY LAW: (I) IN NO EVENT SHALL DAILY BURN, NOR ITS AFFILIATES, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY, DEATH, LOSS OF LIVELIHOOD, LOSS OF ENJOYMENT, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF PROFITS, LOSS OF FUTURE EARNINGS, GOODWILL, USE, AND/OR ANY OTHER DAMAGES OR OTHER INTANGIBLE LOSSES; AND (II) DAILY BURN'S, AND ITS AFFILIATES' TOTAL LIABILITY TO YOU SHALL NOT EXCEED THE AMOUNTS PAID BY YOU TO DAILY BURN OVER THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM(S).IF YOU DO NOT ACCEPT THIS LIMITATION OF

LIABILITY, YOU ARE NOT AUTHORIZED TO OBTAIN OR ACCESS THE SERVICE, SITE OR APPLICATIONS.

## 8 Privacy.

Your privacy rights are set forth in our [Privacy Policy](#), which forms a part of this Agreement. Please review the [Privacy Policy](#) to learn about:

- What information we may collect about you;
- What we use that information for; and
- When and with whom we share that information.

You agree that we may collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, which may be gathered periodically to facilitate the provision of software updates, product support and other services related to the Daily Burn Service.

CONSENT TO EMAIL: When you sign up for certain of our Services using email, you agree and consent to receive email messages from us. These emails may be transactional or relationship communications relating to the Service, such as administrative notices and service announcements or changes, or they may contain exclusive offers, promotions or special offers.

## 9 Payments and Auto-Renewal

### 9.1 Auto-renewal and billing; Subscription Fees; Free Trial Terms.

**Subscriptions.** Subscriptions to the Service are auto-renewing. You will be charged the stated subscription amount for the subscription period upon completion of your registration and submission of your payment information or, if applicable, at the end of your free trial period if you have not canceled at least 24 hours in advance of the expiration of the trial period. You hereby agree to and authorize automatic (recurring) billing, and you agree to pay the charges made to your account in connection therewith. You will be billed at the then-current applicable subscription price plus any applicable taxes. Payments for renewal subscriptions are processed using the same billing cycle as your current subscription. Subscription fees may change at any time, to the fullest extent permitted under applicable law. Your subscription, and recurring billing of your account, will continue indefinitely until cancelled by you in accordance with the Cancellation section of this Agreement.

If you provide a payment method and our charge results in an overdraft, chargeback or other fee from your bank, you alone are responsible for that fee. EVEN IF YOU DO NOT USE THE SUBSCRIPTION OR ACCESS THE DAILY BURN APPLICATION, YOU WILL BE RESPONSIBLE FOR ANY SUBSCRIPTION FEES UNTIL YOU CANCEL YOUR SUBSCRIPTION OR IT IS OTHERWISE TERMINATED.

For auto renewing subscriptions completed in our iOS mobile applications, the following terms apply:

- Payment will be charged to iTunes Account at confirmation of purchase.
- Subscription automatically renews unless auto-renew is turned off at least 24-hours before the end of the current period.
- Account will be charged for renewal within 24-hours prior to the end of the current period and identify the cost of the renewal.
- Subscriptions may be managed by the user and auto-renewal may be turned off by going to the user's Account Settings after purchase.
- Any unused portion of a free trial period, if offered, will be forfeited when the user purchases a subscription to that publication, where applicable.
- You can cancel a free trial or subscription anytime by turning off auto-renewal through your iTunes account settings. This must be done 24 hours before the end of a free trial or subscription period to avoid being charged. The cancellation will take effect the day after the last day of the current subscription period, and you will be downgraded to the free service.

**Free Trials.** If you accepted an offer with a Free Trial, your Daily Burn membership begins when you have completed the Free Trial sign-up process (i.e., when we collect your personal and payment information). At the end of your Free Trial, you will begin to be billed automatically each subscription period until you cancel. Once we begin to bill you, cancellations take effect starting at the end of your current billing period, meaning there are no partial month refunds or credits.

**Pricing and Special Offers.** The pricing of our Services may vary periodically. We cannot guarantee that the price of your Subscription is the lowest available, or historically lowest or best, price. You will be charged in accordance with the billing terms you agreed to at the time you signed up. At certain times, we may offer special promotional offers ("Special Offers") that are billed at a discounted rate. These offers may have a different Free Trial period length, or no Free Trial period. In these cases, you will begin to be billed at the time payment information is collected, or, if a Free Trial is being offered, at the end of the special Free Trial period.

**Add-On Services.** We refer to any additional, paid subscription Service we offer beyond the Daily Burn Site and Apps as an "Add-On Service." For example, our personalized Coaching service is an Add-On Service. Each Add-On Service is a separate subscription service and is subject to additional fees that automatically renew just like your regular subscription.

**Paused Subscriptions.** If you use the Daily Burn site, in circumstances in which you elect to pause your subscription, your account will automatically reactivate following the time period that you specified at the time of pausing, and we will then automatically start to bill you again. You will be



responsible for payment upon reactivation regardless of whether or not you receive a reminder notice regarding the expiration of your paused status. By electing to pause your subscription, you agree and authorize Daily Burn to bill your account starting at the expiration of your paused account status period.

**Changes to DailyBurn.com Subscription Fees;** Daily Burn may increase its subscription fee for the Daily Burn Site effective the first day of a billing renewal by giving you notice of the new fees at least thirty (30) days before you are billed. If you have and do not cancel your subscription, you will be deemed to have accepted the new fees.

## **10 Cancellation; Term and Termination; Account Deletion**

### **10.1 How To Cancel.**

**If you are using the Daily Burn Service through the Daily Burn Site** and you do not wish for your account to renew automatically, or if you want to change or terminate your subscription, first log into your account, and then [click on the following link](#), or type in the following address into your web browser while you are still logged in: <https://dailyburn.com/cancel-subscription> You can also cancel under "[Account Settings](#)" which appears on the lower left-hand side of the page whenever you are logged in. Your cancellation will take effect starting at the end of your current billing period.

From the Account Settings page, simply follow these few steps: \* Click on the "Manage Subscription" button \* Scroll down to the "View your options" button in the lower left section of the page \* Enter your reason for cancelling and hit "Continue" on the next two screens \* Confirm your cancellation by selecting the "Confirm cancellation" option. \* A "Cancel my subscription" button will then appear. Select it. \* Click "Yes" on the final confirmation pop-up.

Note that a blue notification bar will appear in your Account Settings confirming cancellation. Your Subscription status will state that your account is "Pending Cancellation." This is because your cancellation takes effect at the start of the next billing cycle (Don't worry - your cancellation effective date will be listed and you will continue to have access to your account through the account expiration date). So, for example, if you have a monthly subscription that began on the first of the month but cancel mid-month, your cancellation will take effect as of the beginning of the following month. Sorry-- there are no refunds on Daily Burn subscriptions for billing periods that have already lapsed.

**If you are accessing the Daily Burn Service through a third party platform or App**, cancellation, uninstall and removal methods vary depending on your device or the marketplace through which you purchased or downloaded an App. To uninstall and remove a Daily Burn mobile application, please use the application manager provided with your device or consult your device manual for reference. Additionally, if you purchased access or downloaded a Daily Burn App through a third-party marketplace, cancellation and refunds may be governed by such third party's cancellation

and payment policies. If you purchased your subscription through the Apple Store, you can cancel anytime by turning off auto-renewal through your iTunes account settings. This must be done 24 hours before the end of a free trial or subscription period to avoid being charged. The cancellation will take effect the day after the last day of the current subscription period, and you will be downgraded to the free service.

**TERM:** This Agreement begins on the date you first use the Daily Burn Service and continues as long as you have an account with us.

**ACCOUNT DELETION:** You may delete your account at any time. We reserve the right, but are under no obligation to, to delete an account from the Daily Burn Service that remains inactive (i.e., the user fails to log in) for a continuous period of at least six (6) months, or immediately when payment expires, is withdrawn or otherwise ceases.

**TERMINATION FOR BREACH:** Daily Burn may suspend, disable, or delete your account (or any part thereof) or block or remove any content you submitted if Daily Burn determines that you have violated any provision of this Agreement or that your conduct or content would tend to damage Daily Burn's reputation or goodwill. If Daily Burn deletes your account for the foregoing reasons, you may not re-register for the Daily Burn Service. Daily Burn may block your email address and Internet protocol address to prevent further registration. Daily Burn is not required to disclose, and may be prohibited by law from disclosing, the reason for the termination or suspension of your account.

After your membership or subscription is terminated for any reason, all terms of this Agreement survive such termination, and continue in full force and effect, except for any terms that by their nature expire or are fully satisfied.

**EFFECT OF TERMINATION/ACCOUNT DELETION:** Upon termination, all licenses granted by Daily Burn will terminate. In the event of account deletion for any reason, content that you submitted may no longer be available. Daily Burn shall not be responsible for the loss of such content.

## **11 Community Guidelines; User Content.**

Daily Burn offers you the ability to submit or post User Content through certain of its Services, including through social features available within certain of our mobile applications, provided such submission or transmission of User Content is in strict compliance with these terms. For the purposes of this Agreement, "User Content" means video, images, text, comments, app store reviews (including the public-facing user name as it appears with the review), audio recordings and other content, that you upload, post or transmit (collectively "submit") to the Service, any Daily Burn social media page or by providing an app review through a third-party service.

Guidelines. Daily Burn gives you the ability to submit User Content in order to create a community experience where our users can encourage, support and motivate one other. You agree to follow these guidelines when submitting User Content:

**SUPPORT** — For any support related questions or issues that require help beyond what we can offer in this Agreement, please contact our Customer Support team at [support@dailyburn.com](mailto:support@dailyburn.com) for the fastest response.

**R-E-S-P-E-C-T** — Please be respectful and courteous to the members of this group.

**FEEDBACK** — We welcome constructive feedback (both positive and negative) on your Daily Burn experience and ask that you contact us directly at [support@dailyburn.com](mailto:support@dailyburn.com) so that we can be sure we hear your thoughts on our Service and strive to improve.

**REPORTING POSTS** — If you notice any User Content that you believe to be in violation of this Agreement, or spam, report it to the administrators at [support@dailyburn.com](mailto:support@dailyburn.com).

**Restrictions.** You may not submit any User Content that: \* Infringes any third party's copyrights or other rights (e.g., trademark, privacy rights, etc.); \* Contains sexually explicit content or pornography (provided, however, that non-sexual nudity is permitted); \* Contains hateful, defamatory, or discriminatory content or incites hatred against any individual or group; \* Advocates harassment or intimidation of another person; \* Exploits minors; \* Depicts unlawful acts or extreme violence; \* Contains video, audio, photographs, or images of another person without his or her permission (or in the case of a minor, the minor's legal guardian); \* Depicts animal cruelty or extreme violence towards animals; or \* Contains viruses, time bombs, trojan horses, cancelbots, worms or other harmful, or disruptive codes, components or devices.

**User Content Screening and Disclosure.** We do not, and cannot, pre-screen or monitor all User Content. However, Daily Burn has the right (but not the obligation) to monitor your conduct and User Content submission on our Service and you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning your submission of any User Content. We have the right, but not the obligation, in our sole discretion to edit, refuse to post, remove, disallow, block or delete any User Content. Under no circumstances will Daily Burn be liable for any of your User Content. You shall be solely responsible for any User Content submitted through your account.

We may access, preserve or disclose any of your information or User Content (including without limitation chat text) if we are required to do so by law, or if we believe in good faith that it is reasonably necessary to (i) respond to claims asserted against us or to comply with legal process (for example, subpoenas or warrants), including those issued by courts having jurisdiction over us or you; (ii) enforce or administer our agreements with users, such as this Agreement; (iii) for fraud prevention, risk assessment, investigation, customer support, providing the app services or engineering support; (iv) protect the rights, property or safety of Daily Burn, its users, or members of the public or (v) to report a crime or other offensive behavior.

**Objectionable Content.** Daily Burn may also act to remove Objectionable Content. The decision to remove Objectionable Content shall be made at Daily Burn's sole discretion. "Objectionable Content" includes, but is not limited to: 1. User Content that is unlawful, harmful, threatening,

abusive, harassing, tortuous, defamatory, or libelous, 2. User Content that is hateful, or advocates hate crimes, harm or violence against a person or group, 3. User Content that may harm minors in any way; 4. User Content that has the goal or effect of "stalking" or otherwise harassing another 5. Private information about any individual such as phone numbers, addresses, Social Security numbers or any other information that is invasive of another's privacy; 6. User Content that is vulgar, offensive, obscene or pornographic, 7. Unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; 8. Material 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.

**Social Features.** Daily Burn may provide opportunities for you to submit User Content through social features on its Site or through its mobile applications. These are intended to be a community-based venue for Daily Burn users to chat, interact, motivate and support one another.

As between you and Daily Burn, you own all User Content that you submit to the Daily Burn Service, whether directly via the Daily Burn Service or indirectly (for example, via Facebook or Twitter). However, it is important that you understand that by posting User Content to Daily Burn or to Daily Burn's social media pages or by providing an app review through a third party service, you are granting Daily Burn and its affiliates a worldwide, perpetual, irrevocable, non-exclusive, sub-licensable (through multiple tiers) royalty-free license and right to use, copy, transmit, distribute, publicly perform and display (through all media now known or hereafter created), and make derivative works from your User Content (including without limitation, your name and likeness, photographs, testimonials and app reviews) for any purpose whatsoever commercial or otherwise without compensation to you. In addition, you waive any so-called "moral rights" or "performance rights" in your User Content. If you prefer that we do not use your app reviews for promotional purposes, contact [support@dailyburn.com](mailto:support@dailyburn.com).

You further grant all users of the Daily Burn Service permission to view your User Content for their personal, non-commercial purposes. If you make suggestions to Daily Burn on improving or adding new features to the Daily Burn Service, Daily Burn shall have the right to use your suggestions without any compensation to you.

For each piece of User Content that you submit, you represent and warrant that: (i) you have the right to submit the User Content to Daily Burn and grant the licenses set forth above; (ii) Daily Burn will not need to obtain licenses from any third party or pay royalties to any third party; (iii) the User Content does not infringe any third party's rights, including intellectual property rights and privacy rights; and (iv) the User Content complies with this Agreement and all applicable laws.

## **12 Code of Conduct and Prohibited Activities.**

In using the Daily Burn Service, you must behave in a civil and respectful manner at all times. Further, you will not and it is strictly prohibited to:

- Act in a deceptive manner by, among other things, impersonating any person;
- Harass or stalk any other person;
- Harm or exploit minors;
- Distribute "spam";
- Promote information that is false or misleading, or promote illegal activities or conduct that is defamatory, libelous or otherwise objectionable;
- "Frame" or "mirror" any part of the Service or the Site;
- Use meta tags or code or other devices containing any reference to Daily Burn, the Site or the Service (or any trademark, trade name, service mark, logo or slogan of Daily Burn) to direct any person to any other website for any purpose;
- Modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service or the Site or any software used on or for the Service or the Site, or cause others to do so;
- Post, use, transmit or distribute, directly or indirectly, (e.g. screen scrape) in any manner or media any content or information obtained from the Site or the Service other than solely in connection with your use of the Service in accordance with this Agreement.
- Collect information about others;
- Advertise or solicit others to purchase any product or service within the Daily Burn Site;
- Promote fraudulent schemes, multi-level marketing (MLM) schemes, get rich quick schemes, online gaming and gambling, cash gifting, work from home businesses, or any other dubious money-making ventures;
- Publicize or promote commercial activities and/or sales without our prior written consent such as contests, sweepstakes, barter, advertising, and pyramid schemes.
- Participate in any activity that in any way violates any law; or
- Access or use the Site and Service (including any Add-on Service or application available through a mobile or set- top device) from the European Economic Area.

Daily Burn reserves the right, in its sole discretion, to investigate and take appropriate legal action against anyone who violates this Agreement, including removing the offending communication from the Site or Service and terminating or suspending the membership of such violators.

Your use of the Site and Service must comply with all applicable laws and regulations. You agree that Daily Burn may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary, such as to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service or allow you to use the Site in the future; or (v) protect the rights, property or personal safety of the Company or any other person.

## 13 Indemnification

You agree to indemnify, defend, and hold harmless Daily Burn and its affiliates, directors, officers, employees, and agents, from and against any liability, claims, damages, losses and costs (including reasonable attorney's fees) that: (i) arise from your activities on the Daily Burn Service; (ii) assert a violation by you of any term of this Agreement; or (iii) assert that any content you submitted to Daily Burn violates any law or infringes any personal right or third party right, including any intellectual property or privacy right. Daily Burn reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Daily Burn in connection therewith.

## 14 License to Use the Daily Burn Service

**LICENSE:** Daily Burn grants you a limited, non-exclusive license to access and use the Daily Burn Service for your own personal, non-commercial purposes. This includes the right to view content available on the Daily Burn Service. This license is personal to you and may not be assigned or sublicensed to anyone else.

**RESTRICTIONS:** Except as expressly permitted by Daily Burn in writing, you will not reproduce, redistribute, publicly display, sell, create derivative works from, decompile, reverse engineer, or disassemble the Daily Burn Service. Nor will you take any measures to interfere with or damage the Daily Burn Service. All rights not expressly granted by Daily Burn are reserved.

**DEVICES AND PLATFORMS:** These Terms of Service, and all of the provisions herein, also govern the use of our mobile, desktop and set-top devices and related applications (for example, iOS devices, Android devices, Roku, Apple TV and other such devices and their corresponding apps).

Your use of the Daily Burn Service through any applications or device constitutes your agreement to be bound by these Terms.

Any Daily Burn application, regardless of the manner and means in which it is downloaded (for example the Apple AppStore, Google Play Store, your console's app store, etc.) is licensed, not sold, to you for use only under these Terms. We, the licensor, Daily Burn, Inc. (Application Provider) reserve all rights not expressly granted to you.

## 15 Third Party Links and Content.

Certain links on the Daily Burn Sites and/or the Daily Burn Service may let you leave the particular Daily Burn Site or Daily Burn Service you are accessing in order to access a linked site (the "Linked Sites"). When you are linking to a third party site, it is important to know that Daily Burn does not control these sites, nor has Daily Burn reviewed or approved the content which appears on the linked sites. Daily Burn is not responsible for the legality, accuracy or nature of any content, advertising, products or other materials on or available from any linked sites, or the conduct of

such linked sites. You acknowledge and agree that Daily Burn shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of any of the links, content, goods or services available on or through the linked sites.

More specifically, your participation, correspondence or business dealings with any third party found on or through the Daily Burn Sites and Service (i.e., a linked site), regarding payment and delivery of specific goods and services, and any other terms, conditions, representations or warranties associated with such dealings, are solely between you and such third party. You agree that Daily Burn shall not be responsible or liable for any loss, damage, or other matters of any sort incurred as the result of such dealings.

## **16 Intellectual Property.**

You acknowledge that the Daily Burn Site and Services contain software, graphics, photos, videos, know-how, product ideas, comments and other material (collectively, "Content") that is protected by copyrights, patents, trademarks, trade secrets or other proprietary rights, and that these rights are valid and protected in all forms, media and technologies existing now or hereafter developed. All Daily Burn-generated content and content developed for Daily Burn by its partners and licensors is copyrighted individually and/or as a collective work under the U.S. copyright laws; further, Daily Burn owns a copyright in the selection, coordination, arrangement and enhancement of all Content in the Daily Burn Site. Subject to your compliance with this Agreement, and solely for so long as you are permitted by us to access and use the Services, you may download one copy of the application (but never the Content) to any single computer or device for your personal, non-commercial home use only, provided you keep intact all copyright and other proprietary notices, and are in compliance with this Agreement. Unless otherwise specified, modification of the Content or use of the Content for any other purpose, including use of any such Content on any other website or networked computer environment is strictly prohibited.

The Daily Burn name, logos and affiliated applications and technologies are the exclusive property of Daily Burn, Inc. All other trademarks appearing on the Services are trademarks of their respective owners. Our partners or service providers may also have additional proprietary rights in the content which they make available through the Services. The trade names, trademarks and service marks owned by us, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. Nothing contained on the Services should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or service marks without our express prior written consent.

Daily Burn owns and retains all proprietary rights in the Site and the Service, and in all content, trademarks, trade names, service marks and other intellectual property rights related thereto. You agree to not copy, modify, transmit, create any derivative works from, make use of, or reproduce in any way any copyrighted material, trademarks, trade names, service marks, or other intellectual

property or proprietary information accessible on the Site or through the Service, without first obtaining the prior written consent of the Company or, if such property is not owned by the Company, the owner of such intellectual property or proprietary rights. You agree to not remove, obscure or otherwise alter any proprietary notices appearing on any content, including copyright, trademark and other intellectual property notices.

## **17 Copyright / DMCA Policy.**

Daily Burn respects the intellectual property of others, and we ask our users to do the same. Each user is responsible for ensuring that the materials they upload to the Daily Burn Site do not infringe any third-party copyright.

Daily Burn will promptly remove materials from the Daily Burn Site in accordance with the Digital Millennium Copyright Act ("DMCA") if properly notified that the materials infringe a third party's copyright. In addition, Daily Burn may, in appropriate circumstances, terminate the accounts of repeat copyright infringers.

**Filing a DMCA Notice to Remove Copyrighted Content-for Copyright Holders** If you believe that your work has been copied in a way that constitutes copyright infringement, please provide us with a written notice containing the following information: 1. Your name, address, telephone number, and email address (if any). 2. A description of the copyrighted work that you claim has been infringed. 3. A description of where on the Daily Burn Site the material that you claim is infringing may be found, sufficient for Daily Burn to locate the material (e.g., the URL).

4. A statement that you have a good faith belief that the use of the copyrighted work is not authorized by the copyright owner, its agent, or the law. 5. A statement by you UNDER PENALTY OF PERJURY that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. 6. Your electronic or physical signature.

You may submit this information via: 1. Email: [dmca@iacapps.com](mailto:dmca@iacapps.com). 2. Offline: Daily Burn's Copyright Agent (see contact information below)

**Filing a DMCA Counter-notification to Restore Removed Content for Daily Burn Users** If you believe that your material has been removed by mistake or misidentification, please provide Daily Burn with a written counter-notification containing the following information: 1. Your name, address, and telephone number. 2. A description of the material that was removed and the location on the Daily Burn Site (e.g., the URL) where it previously appeared. 3. A statement UNDER PENALTY OF PERJURY that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification. 4. A statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, any judicial district in which Daily Burn may be found (which includes the United States District Court for the Southern District of New York), and that you will



accept service of process from the person who filed the original DMCA notice or an agent of that person. 5. Your electronic or physical signature.

You may submit this information via: 1. Email: [dmca@iacapps.com](mailto:dmca@iacapps.com) 2. Offline: Daily Burn's Copyright Agent (see contact information below)

Please note that we will send any complete counter-notifications we receive to the person who submitted the original DMCA notice. That person may elect to file a lawsuit against you for copyright infringement. If we do not receive notice that a lawsuit has been filed within ten (10) business days after we provide notice of your counter-notification, we will restore the removed materials. Until that time, your materials will remain removed.

**Warning** In filing a DMCA notice or counter-notification, please make sure that you have complied with all of the above requirements. If we request additional information necessary to make your DMCA notice or counter-notification complete, please provide that information promptly. If you fail to comply with all of these requirements, your DMCA notice or counter-notification may not be processed further.

In addition, please make sure that all of the information you provide is accurate. UNDER SECTION 512(f) OF THE COPYRIGHT ACT, 17 U.S.C. § 512(f), ANY PERSON WHO KNOWINGLY MATERIALLY MISREPRESENTS THAT MATERIAL OR ACTIVITY IS INFRINGING OR WAS REMOVED OR DISABLED BY MISTAKE OR MISIDENTIFICATION MAY BE SUBJECT TO LIABILITY.

Daily Burn may disclose any communications concerning DMCA notices or other intellectual property complaints with third parties, including the users who have posted the allegedly infringing material.

If you have questions about the legal requirements of a DMCA notice, please contact an attorney or see Section 512(c)(3) of the U.S. Copyright Act, 17 U.S.C. § 512(c)(3), for more information. If you have questions about the legal requirements of a DMCA counter-notification, please contact an attorney or see Section 512(g)(3) of the U.S. Copyright Act, 17 U.S.C. § 512(g)(3), for more information.

**Daily Burn's Copyright Agent** You may send a DMCA notice, a DMCA counter-notification, or any inquiries concerning intellectual property to Daily Burn's Copyright Agent:

330 West 34th Street, 5th Floor

New York, New York 10001

Attn: Legal Dept. - Copyright Agent

[dmca@iacapps.com](mailto:dmca@iacapps.com)

## **18 EEA Resident Online Dispute Resolution.**

If you reside in the European Union, you can find information about online dispute resolution here: <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.show&lng=EN>. Please note that we reserve the right not to participate in forms of alternative dispute resolution. For further information, please contact: [support@dailyburn.com](mailto:support@dailyburn.com).

## **19 Security.**

The Daily Burn Site and Apps, like other consumer technologies, may not be 100% secure. By accepting this EULA you acknowledge and accept that the Daily Burn Service and any information you download or offer to share by means of an the Daily Burn Service, may be exposed to unauthorized access, interception, corruption, damage or misuse, and cannot be regarded as 100% secure. You accept all responsibility for such security risks and any damage resulting therefrom. Further, you are solely responsible for securing your mobile device from unauthorized access, including by such means as using complex password protection and, for Android users, enabling device encryption in your settings. You agree that Daily Burn shall not be liable for any unauthorized access to your mobile device or the app data thereon.

## **20 Export Controls.**

The Daily Burn Service and the underlying information and technology are subject to US and international laws, restrictions and regulations that may govern the import, export, downloading and use of the Applications. You agree to comply with these laws, restrictions and regulations when downloading or using the Apps.

## **21 Notice to U.S. Government End Users.**

Any Apps installed for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights as "commercial Items," as that terms is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48

C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Pursuant to Federal Acquisition Regulation 12.212 (48 C.F.R. §12.212), the U.S. Government shall have only those rights specified in the license contained herein. The U.S. Government shall not be entitled to (i) technical information that is not customarily provided to the public or to (ii) use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as specified herein. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 C.F.R. 52.227-19, as applicable.

## 22 Open Source Attributions.

[HIIT Open-Source Attribution](#)

[Yoga Open-Source Attribution](#)

## 23 Apple App Store.

By accessing the Daily Burn Service through a device made by Apple, Inc. ("Apple"), you specifically acknowledge and agree that:

- This EULA is between Daily Burn and you; Apple is not a party to this EULA.
- The license granted to you hereunder is limited to a personal, limited, non-exclusive, non-transferable right to install the mobile applications on the Apple device(s) authorized by Apple that you own or control for personal, non-commercial use, subject to the Usage Rules set forth in Apple's App Store Terms of Service.
- Apple is not responsible for the mobile applications or the content thereof and has no obligation whatsoever to furnish any maintenance or support services with respect to the mobile applications.
- In the event of any failure of the any mobile application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Application, if any, to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to any Application.
- Apple is not responsible for addressing any claims by you or a third party relating to any Application or your possession or use of an Application, including without limitation (a) product liability claims; (b) any claim that an Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation. In the event of any third party claim that an Application or your possession and use of an Application infringes such third party's intellectual property rights, Apple is not responsible for the investigation, defense, settlement or discharge of such intellectual property infringement claim.
- You represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties. Apple and its subsidiaries are third party beneficiaries of this EULA and upon your acceptance of the terms and conditions of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary hereof.
- Daily Burn expressly authorizes use of the Mobile Apps by multiple users through the Family Sharing or any similar functionality provided by Apple.

## 24 Arbitration And Governing Law.

The exclusive means of resolving any dispute or claim arising out of or relating to this Agreement (including any alleged breach thereof), the Service, or the Site shall be BINDING ARBITRATION administered by the American Arbitration Association. The one exception to the exclusivity of arbitration is that you have the right to bring an individual claim against Daily Burn in a small-claims court of competent jurisdiction. But whether you choose arbitration or small-claims court, you may not under any circumstances commence or maintain against Daily Burn or its affiliates any class action, class arbitration, or other representative action or proceeding.

By using the Site or the Service in any manner, you agree to the above arbitration agreement. In doing so, YOU GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend any claims between you and Daily Burn or its affiliates (except for matters that may be taken to small-claims court). YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN A CLASS

ACTION OR OTHER CLASS PROCEEDING. Your rights will be determined by a NEUTRAL ARBITRATOR, NOT A JUDGE OR JURY. You are entitled to a fair hearing before the arbitrator. The arbitrator can grant any relief that a court can, but you should note that arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate an arbitration award, may be commenced in any court of competent jurisdiction. In the event that this arbitration agreement is for any reason held to be unenforceable, any litigation against Daily Burn (except for small-claims court actions) may be commenced only in the federal or state courts located in New York County, New York. You hereby irrevocably consent to the jurisdiction of those courts for such purposes and you irrevocably waive any right to a trial by jury.

This Agreement, and any dispute between you and Daily Burn, shall be governed by the laws of the state of New York without regard to principles of conflicts of law, provided that this arbitration agreement shall be governed by the Federal Arbitration Act.

## 25 General Provisions.

**INTERPRETATION; SEVERABILITY; WAIVER; REMEDIES:** Headings are for convenience only and shall not be used to construe the terms of this Agreement. If any term of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from this Agreement. No failure or delay by Daily Burn in exercising any right hereunder will waive any further exercise of that right. Daily Burn's rights and remedies hereunder are cumulative and not exclusive.

**SUCCESSORS; ASSIGNMENT; NO THIRD PARTY BENEFICIARIES:** This Agreement is binding upon and shall inure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives, and permitted assigns. You may not assign this Agreement without Daily Burn's prior written consent. No third party shall have any rights hereunder.

**NOTICES:** You consent to receive all communications including notices, agreements, disclosures, or other information from Daily Burn electronically. Daily Burn may provide all such communications by email or by posting them on the Daily Burn Service. For support- related inquiries, you may send an email to [support@dailyburn.com](mailto:support@dailyburn.com) or the following address:

Daily Burn, Inc.

330 West 34<sup>th</sup> Street, 5<sup>th</sup> Floor

New York, New York 10001

Attention: Legal Department

Nothing herein shall limit Daily Burn's right to object to subpoenas, claims, or other demands.

**MODIFICATION:** This Agreement may not be modified except by a revised EULA posted by Daily Burn on the Daily Burn Site or a written amendment signed by an authorized representative of Daily Burn. A revised EULA will be effective as of the date it is posted through the Daily Burn Service.

**ENTIRE AGREEMENT:** This Agreement incorporates the following documents by reference: [Privacy Policy](#). This Agreement constitutes the entire understanding between Daily Burn and you concerning the subject matter hereof and supersedes all prior agreements and understandings regarding the same.