

# Terms of Service

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All sections of these Terms of Use that, by their nature, should survive termination will survive termination, including, without limitation.

## Introduction

The MyWindFit.com website and mobile application is system for tracking, managing, and analyzing fitness activities, referred to herein by (“products”, or “product”, or “services”). MyWindFit.com is a product that has been developed by Fitlytics, Inc., referred to herein by the following: (“us” or “we” or “our” or “MyWindFit”, or “MyWindFit.com”). MyWindFit will

You should review MyWindFit’s privacy statement at [www.MyWindFit.com/privacy](http://www.MyWindFit.com/privacy) for more information regarding the ways in which MyWindFit collects, uses and shares this information and other information relating to you. By using the MyWindFit products you consent to the collection, use and sharing of this information in accordance with this paragraph and our privacy statement.

Please read these terms of use carefully before using any MyWindFit product. By using any MyWindFit product you signify your agreement to these terms of use. If you do not agree to these terms of use, you may not use the MyWindFit products. MyWindFit may modify these terms of use at any time by updating this posting. You are bound by any such modification and should therefore visit this page periodically to review these terms of use.

## General

These Terms of Use and all legal issues arising from or related to the use of any MyWindFit product or system will be construed in accordance with and determined by the laws of the State of Wisconsin applicable to contracts entered into and performed within the State of Wisconsin without respect to its conflict of laws principles. By using a MyWindFit product or system, you agree that the exclusive forum for any claims or causes of action arising out of your use of a MyWindFit product or system is the United States Wisconsin Eastern District Federal Court, in Brown County, Wisconsin. You hereby irrevocably waive, to the fullest extent permitted by law, any objection which you may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. These Terms of Use will inure to the benefit of our successors, assigns, licensees, and sub-licensees. These Terms of Use, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us without restriction. If any provision of these Terms of Use is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms of Use, which shall remain in full force and effect. Except as expressly agreed by us and you, these Terms of Use constitute the entire agreement between you and us with respect to the subject matter, and supersede all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter.

## User Content

The Services permit the submission of Content at the direction of users of the Services ("User Content") and the hosting, sharing, and/or publishing of such User Content. You understand that whether or not such User Content is published, we do not guarantee any confidentiality with respect to any submissions. We cannot guarantee the security of any information you disclose through any of these media; you make such disclosures voluntarily and at your own risk. MyWindFit has no duty to monitor User Content including any Public Forums on the MyWindFit products.

You shall be solely responsible for User Content you submit and the consequences of our posting or publishing such User Content. In connection with any User Content you submit, you affirm, represent, and/or warrant that: (i) you own or have the necessary licenses, rights, consents, and permissions to use and authorize us to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all User Content to enable inclusion and use of the User Content in the manner contemplated by the Services and these Terms of Use; and (ii) you have the express consent, release, and/or permission of each and every identifiable individual person in the User Content to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the User Content in the manner contemplated by the Services and these Terms of Use. You agree not to impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person's username, password or other account information, or another person's name, likeness, voice, image or photograph. You also agree to notify us promptly at [webmaster@MyWindFit.com](mailto:webmaster@MyWindFit.com) of any unauthorized use of your username, password, other account information, or any other breach of security that you become aware of involving or relating to any MyWindFit product.

You will be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from a User Content. By submitting material to MyWindFit products, you automatically grant, or warrant that the owner of such material has expressly granted, MyWindFit the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed for the full term of any copyright or other rights that may exist in such material. In connection with User Content, you further agree that you will not: (i) submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant us all of the license rights granted herein; (ii) publish falsehoods or misrepresentations that could damage us or any third party; (iii) submit material that is unlawful, obscene, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate; (iv) post advertisements or solicitations of business; or (v) impersonate another person. We do not endorse any User Content or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with any User Content. We do not permit copyright infringing activities and infringement of intellectual property rights in connection with the Services, and we will remove all Content and User Content if properly notified that such Content or User Content infringes on another's intellectual property rights. We may remove any Content and User Content without prior notice. We also reserve the right to decide whether Content or User Content is appropriate and complies with these Terms of Use for violations other than copyright infringement and violations of intellectual property law, such as, but

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not limited to, pornography, obscene or defamatory material. We may remove such User Content and/or terminate your access for uploading such material in violation of these Terms of Use at any time, without prior notice and at its sole discretion.

## **Use of Content**

The content contained on and in MyWindFit products, such as text, graphics, images, audio, video and other material, as well as the domain names, tagline, organization and user look-and-feel is protected by copyright, trademark and other such laws in the United States and foreign countries, and is owned or controlled by MyWindFit or by third parties that have licensed their Content to MyWindFit. Unauthorized use of the Content may violate copyright, trademark, and other laws.

## **Links to Other Sites**

The MyWindFit products may contain links to various Web sites that are maintained by others. Any such links are provided solely as a convenience to you and not as an endorsement by MyWindFit of the contents on such Web sites. MyWindFit is not responsible for the content of linked sites and does not make any representations or warranties regarding the content or accuracy of materials on such Web sites or the privacy practices of such third parties. If you decide to access linked third-party Web sites, you do so at your own risk.

## **Annual Subscription Fees, Renewal and Cancellation**

Service begins as soon as your initial payment for any MyWindFit product is processed. You'll be charged the annual rate stated at the time of purchase as one lump sum, plus any applicable taxes. The annual subscription rate is stated in the FAQ section of the MyWindFit webpages. When we renew your subscription, we will use the payment method currently associated with your account. Your contract will renew automatically, on your annual renewal date, until you cancel. Your renewal date is recurring all will occur every year on the calendar month and day from your initial payment (plus or minus 5 days), until canceled by you. Renewal rates are subject to change, but we'll always notify you beforehand. If you cancel within 14 days of your order or renewal date, you'll be fully refunded. Should you cancel after 14 days, your payment is non-refundable and your service will continue until the end of your contracted term. You can change or cancel your subscription at any time by making changes in your subscription through your accounts settings page. You may also request cancellation by emailing us at [unsubscribe@MyWindFit.com](mailto:unsubscribe@MyWindFit.com).

MyWindFit reserve the right to suspend or terminate your subscription or product for any reason, with or without notice and without further obligation. You will not be entitled to a refund in these circumstances. If any or all of MyWindFit products are temporarily unavailable, you will not receive a refund. We reserve the right to issue refunds or credits at our sole discretion. If we issue a refund or credit, we are under no obligation to issue the same or similar refund in the future.

MyWindFit does not store any credit card or other PAN data and is out of scope of PCI-DSS. Credit card information will be stored directly in PayPal or other third party PCI-DSS approved locations.

## **Limited Liability and Warranty**

The MyWindFit products, systems and content are provided on an 'as is' basis without any warranties of any kind. MyWindFit, to the fullest extent permitted by law, disclaims all warranties, including, but not limited to, the warranty of merchantability, non-infringement of proprietary or third party rights, and the warranty of fitness for particular purpose. MyWindFit products are intended to be used only in fitness tracking and not be used for any purpose requiring precise measurement of direction, distance, location or topography and MyWindFit makes no warranty as to the accuracy of these measurements.

MyWindFit shall not be liable for (1) any inaccuracy, error in or failure of the software; (2) any loss or damage (including without limitation any consequential, indirect, incidental, special or exemplary damages) arising from any download or use made of the software, or occasioned by any such inaccuracy, error or failure of the software. If any of the above provisions are void under applicable law, MyWindFit's liability shall be limited to the full extent permitted by law.

Your use of the MyWindFit products are at your own risk. If you are dissatisfied with any of the content or other contents of the MyWindFit products or with these terms and conditions, your sole remedy is to discontinue use of the MyWindFit products. We do however, encourage dialog with us to ensure we do our best to gain your satisfaction prior to discontinuing your use.

### **Accuracy of Activity Tracking Data and Analysis**

MyWindFit products are designed to provide you with information to help you better understand your athletic results. MyWindFit relies on sensors to track your movement and record your environment. In addition to these sensors, MyWindFit uses mathematical equations to derive its data, both of which are not 100% accurate. The data and information provided by MyWindFit is intended to be a close approximation of your activity and metrics tracked, but may not be completely accurate, including but not limited to distance, heart rate, heart rate zone, calorie, and power data. MyWindFit products are not medical devices, and the data provided by them is not intended to be utilized for any medical purposes whatsoever. In addition, MyWindFit recommends you consult your doctor before engaging in any exercise routine.

### **One-Year Limited Warranty on Sensors**

The MyWindFit Sensor (wind, temperature, etc.) is warranted to be free from defects in materials or workmanship for one year from the date of purchase. Within the warranty period, MyWindFit retains the exclusive right and at its discretion to repair or replace (with a new or newly overhauled replacement product) or offer a full refund of the purchase price at its sole discretion. SUCH REMEDY SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY. Such repairs or replacement will be made at no charge to the customer for parts or labor. The customer (user of MyWindFit products) shall be responsible for transportation costs to return any goods to MyWindFit.

This warranty applies to products that exhibit a defect under normal use and does not apply to: (i) cosmetic damage, such as scratches, nicks and dents; (ii) batteries; (iii) damage caused by accident, abuse, misuse, submersion in water, fire, or other acts of nature or external causes; In addition, MyWindFit reserves the right to refuse warranty claims against products or services that are obtained and/or used in violation of the laws of any country.

THE WARRANTIES AND REMEDIES CONTAINED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY LIABILITY ARISING UNDER ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, WHICH MAY VARY FROM STATE TO STATE.

Before requesting warranty, please review MyWindFit's FAQ section or email us at [support@mywindfit.com](mailto:support@mywindfit.com) to see if the issue can be address prior to return. To request warranty, contact MyWindFit using the Contact page on MyWindFit.com or send an email to [warranty@mywindfit.com](mailto:warranty@mywindfit.com). MyWindFit will respond with shipping instructions and an RMA tracking number. Securely pack the device and a copy of the original sales receipt, which is required as the proof of purchase for warranty repairs. Write the tracking number clearly on the outside of the package.

## **Indemnity**

You agree to defend, indemnify, and hold harmless MyWindFit, its officers, directors, employees and agents, from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from your breach of these Terms of Use.

## **Copyright Policy**

It is MyWindFit's policy, at its discretion and when appropriate, to terminate the accounts of users who may infringe or repeatedly infringe the copyrights of third parties. To submit a copyright infringement notification to MyWindFit.com, please submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing the below-specified Copyright Agent with the following information in writing:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
4. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You acknowledge that if you fail to comply with all of the requirements of the preceding paragraph, your DMCA notice may not be valid. Please see 17 U.S.C. § 512 for more information regarding the DMCA and DMCA notifications.

Our Agent to Receive Notification of Claimed Copyright Infringement can be reached at the following email: [copyright@MyWindFit.com](mailto:copyright@MyWindFit.com)