



## HYDROW, INC. TERMS OF USE

**Effective Date:** October 7, 2020

Hydrow, Inc. (Hydrow) provides a variety of fitness products, services, content, and features through our website ([www.hydrow.com](http://www.hydrow.com)) (the "**Website**"), the interface on tablets connected to Hydrow, Hydrow's Live Outdoor Reality Rower (LOR)<sup>™</sup>, and mobile device application (including Android and IOS applications) (the "**App**"), and through certain Hydrow-controlled social media pages (including Facebook, Instagram, Twitter and YouTube) (all such products, services, content and features collectively described herein as the "**Services**"). These Terms of Use (the "**Terms**") apply to all Services.

When you purchase products from Hydrow or register an account with Hydrow, you are entering into a contract with Hydrow, a corporation in the United States, and agree that your personal information will be processed by Hydrow in the United States in order to process your order and provide the Services to you.

BY USING THE SERVICES IN ANY WAY, YOU: (A) ACCEPT, AND AGREE TO BE BOUND BY ALL OF THE PROVISIONS OF THESE TERMS, WHICH FORM A BINDING AGREEMENT BETWEEN YOU AND HYDROW, AND (B) REPRESENT TO US THAT YOU ARE LEGALLY COMPETENT TO ENTER INTO AND AGREE TO THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS, THEN YOU ARE NOT AUTHORIZED TO USE ANY OF HYDROW'S SERVICES.

THESE TERMS INCLUDE (1) AN ARBITRATION PROVISION; (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST US; AND (3) A RELEASE BY YOU OF CERTAIN CLAIMS FOR DAMAGE AGAINST US THAT MAY ARISE OUT OF YOUR USE OF THE SERVICES. BY USING ANY OF THE SERVICES, YOU AGREE TO THESE PROVISIONS. **You have the right to opt-out of arbitration as explained in Section 16.**

For purposes of these Terms, the user of the Services shall herein be addressed as *you* and *your*. If you use the Services on behalf of a company, organization, or other entity, then (a) you includes you and that entity, and (b) you represent and warrant that you are an authorized representative of that entity with the authority to bind that entity to these Terms, and that you agree to these Terms of Use on that entity's behalf, and (c) your entity is legally and financially responsible for your use of the Services as well as for the use of your account by others affiliated with your entity, including any employees, agents, or contractors.

Please review the following carefully so that you understand these Terms. These Terms describe your responsibilities, Hydrow's liability, and the liability of third parties related to the Services. All users of Hydrow's Services must accept and comply with the terms and conditions set forth in these Terms. If you do not wish to be bound by these Terms, you may not access or use the Services. Certain portions of the Services may be subject to additional terms and conditions specified by us from time to time; your use of those portions of the Services is subject to those additional terms and conditions. If you have any questions regarding these Terms, please contact us via email at [support@hydrow.com](mailto:support@hydrow.com).

### 1. ACCOUNT REGISTRATION

To register an account on the Services (an "**Account**"), you must be at least 18 years of age and must agree to these Terms. If you are at least 13 but under the age of majority in your jurisdiction, your parent or guardian must agree to these Terms on your behalf before you use the Services. You do not need to create an Account to visit the public pages of the Services; however, you do need an Account to enjoy full access to Hydrow's Services and must enter into a subscription agreement for access to our live and on-demand rows, workouts, content, and features ("**Subscription**") and purchase certain physical products via the Services (the "**Products**").

You may create an Account by completing the registration process set forth on the Website or App. You are responsible for providing and maintaining accurate contact information, including your name, email, address, phone number, and payment information. You may access, edit, and update your Account information at any time through the Service's account management feature. You are solely responsible for any activity on your Account and for maintaining the confidentiality and security of your password. We are not liable for any acts or omissions by you in connection with your Account. You must immediately notify us at [support@hydrow.com](mailto:support@hydrow.com) if you know or have any reason to suspect that your Account or password have been stolen, misappropriated or otherwise compromised, or in case of any actual or suspected unauthorized use of your Account.



## 2. ORDERS FOR PRODUCTS AND/OR SERVICES

- 2.1. Payment.** The Services may permit you to purchase certain Products and Subscriptions. You acknowledge and agree that all information you provide with regards to a purchase of Products or Subscriptions, including, without limitation, credit card, PayPal, or other payment information, is accurate, current and complete. You represent and warrant that you have the legal right to use the payment method you provide to us or our payment processor, including, without limitation, any credit card you provide when completing a transaction. We reserve the right, with or without prior notice and in our sole and complete discretion, to (a) discontinue, modify, or limit the available quantity of, any Products or Subscriptions, (b) refuse to allow any user to purchase any Products or Subscription or deliver such Products to a user or a user-designated address, and (c) cancel any order placed through the Services without liability, justification or notice. When you purchase Products, you (a) agree to pay the price for such Products as set forth in the Services, all applicable shipping and handling charges and all applicable taxes in connection with your purchase (the **"Full Purchase Amount"**), and (b) authorize us to charge your credit card or other payment method for the Full Purchase Amount. We will refund you in the event we cancel your order after charging your credit card or other payment method. The Services may allow you to purchase Products and designate them to be delivered or provided at a future date. In such instances, you acknowledge and agree that we may charge your credit card or other payment method for the Full Purchase Amount on the date of purchase, rather than on the ultimate date of delivery or provision of the applicable Product. Unless otherwise noted, all currency references are in U.S. Dollars. All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable. Payment can be made by credit card, debit card, or through PayPal or other means that we may make available. Orders will not be processed until payment has been received in full, and any holds on your account by PayPal or any other payment processor are solely your responsibility. Failure to pay the Full Purchase Amount (or any amount thereof) will result in the termination of your access to any applicable Services.
- 2.2. Promotional Codes.** We may from time to time offer certain promotional codes, referral codes, discount codes, coupon codes or similar offers (**"Promotional Codes"**) that may be redeemed for discounts on future Products, Subscriptions, or other features or benefits related to the Services, subject to any additional terms that Hydrow establishes. You agree that Promotional Codes: (a) must be used in a lawful manner; (b) must be used for the intended audience and purpose; (c) may not be duplicated, sold or transferred in any manner, or made publicly available by you (whether posted to a public forum, coupon collecting service, or otherwise), unless expressly permitted by Hydrow; (d) may be disabled or have additional conditions applied to them by Hydrow at any time for any reason without liability to Hydrow; (e) may only be used pursuant to the specific terms that Hydrow establishes for such Promotional Code; (f) are not valid for cash or other credits or points; (g) are not valid for prior purchases and may not be applied retroactively; and (h) may expire prior to your use.
- 2.3. Gift Cards.** Digital gift cards containing stored money value, may be offered by us for the purchase of Products or Subscriptions (**"Gift Cards"**). You acknowledge that Hydrow does not make any warranties with respect to your Gift Card balance and is not responsible for any unauthorized access to, or alteration, theft, or destruction of a Gift Card or Gift Card code that results from any action by you or a third party. You also acknowledge that we may suspend or prohibit use of your Gift Card if your Gift Card or Gift Card code has been reported lost or stolen, or if we believe your Gift Card balance is being used suspiciously, fraudulently, or in an otherwise unauthorized manner. If your Gift Card code stops working, your only remedy is for us to issue you a replacement Gift Card code. By purchasing a Gift Card, you represent and warrant to Hydrow that your possession and use of the Gift Card, and the possession and use of the Gift Card by any person you permit to possess or use the Gift Card, will in each case comply with these Terms and all applicable laws, rules and regulations, and you will not use, or permit any other person to use, any Gift Card in any manner that is misleading, deceptive, unfair or otherwise harmful to consumers. Gift Cards cannot be used to purchase other gift cards, resold, used for the purchase of Products outside of the Services, used for unauthorized marketing, sweepstakes, advertising, or other promotional purposes, redeemed for more than face value, transferred for value, redeemed for cash, or returned for a cash refund (except to the extent required by law). Gift Cards do not expire, and Hydrow will not assess a service fee or dormancy fee with respect to a Gift Card.
- 2.4. Changes and Pricing.** The Company may, at any time, revise or change the pricing, availability, specifications, content, descriptions or features of any Products. While we attempt to be as accurate as we can in our descriptions for the Product, we do not warrant that descriptions for the Products are accurate, complete, reliable, current, or error-free. If a Product itself is not as described on the Services, your sole remedy is to return



it (for physical products, in unused condition). The inclusion of any Product for purchase through the Services at a particular time does not imply or warrant that a particular Product will be available at any other time. We reserve the right to change prices for Products displayed on the Services at any time, and to correct pricing errors that may inadvertently occur (and to cancel any orders in our sole discretion that were purchased with pricing errors). All such changes shall be effective immediately upon posting of such new prices for the Products to the Services and/or upon making the customer aware of the pricing error.

- 2.5.** Order Acceptance: Shipment. Once we receive your order for a Product, we will provide you with an order confirmation. Your receipt of an order confirmation, however, does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell; we are simply confirming that we received your order. We reserve the right at any time after receiving your order to accept or decline your order for any reason and at our sole discretion. If we cancel an order after you have already been billed, then we will refund the billed amount. Title and risk of loss for any purchases of physical products pass to you upon our delivery to our carrier. We reserve the right to ship partial orders (at no additional cost to you), and notwithstanding anything to the contrary in Section 3.1, the portion of any order that is partially shipped may be charged at the time of shipment. All orders are shipped using one of our third party couriers. Online tracking may be available at our courier's website (for example, UPS, Fedex, etc.), though we make no warranties regarding its availability because it is not under our control. While deliveries may be scheduled for a specified arrival, we cannot guarantee delivery by any specific date or time.
- 2.6.** Return, Refund and Exchange Policy. Hydrow's return policy can be found [here](#).
- 2.7.** Manufacturer's Warranty and Disclaimers. The terms of our Home Use Warranty are posted [here](#).
- 2.8.** No Delivery to Children. In furtherance of our policy of not collecting personal information from persons under the age of 13, you are not allowed to give the Company the personal information of any persons under the age of 13 for delivery or shipping purposes or any other reason.

### **3. SUBSCRIPTIONS AND FREE TRIALS**

- 3.1.** Subscription Payment. Without limiting the terms of Section 1, if you subscribe to any of our paid Services, you agree that (a) we may collect and, through either our third-party payment processor or through the applicable app store, store and continue billing your payment method (e.g. credit card) to avoid interruption of the Services, and (b) we may calculate taxes payable by you based on the billing information that you provide us at the time of purchase. We reserve the right to change our subscription plans or adjust pricing for the Services in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise provided in these Terms or required by applicable law, any price changes or changes to your subscription plan will take effect following reasonable notice to you. You must provide us (or our designated third-party payment provider) with an accurate and valid credit card or other payment information upon agreeing to subscribe for a paid Service, and shall timely provide updated payment information in the event any information you previously provided becomes invalid or incomplete. All subscriptions are payable in accordance with payment terms in effect at the time the subscription becomes payable. Subscriptions will not be processed until payment has been received in full, and any holds on your account by any other payment processor are solely your responsibility.
- 3.2.** Subscription Renewals and Cancellations. You agree that if you purchase a subscription, your subscription will automatically renew at the subscription period frequency referenced on your subscription page (or if not designated, then monthly), and your payment method will automatically be charged at the start of each new subscription period for the fees and taxes applicable to that period. To avoid future subscription charges, you must cancel your subscription at least one (1) day before the subscription period renewal date by sending us an email at [support@hydrow.com](mailto:support@hydrow.com) that (i) includes your full name and Account information, (ii) identifies the Services to which you are subscribed, and (iii) unequivocally indicates that you desire to terminate such subscription. All updates made to your subscription in accordance with section 3.2 shall be effective on the last day of the billing period during which you submitted the cancellation request. Hydrow does not offer prorated refunds for cancelled subscriptions. To cancel your App subscription, you must request cancellation through the app store from which you signed up for the subscription (e.g., the Apple App Store or Google Play).



**3.3. No Subscription Refunds.** Except as expressly set forth in these Terms or required by applicable law, payments in respect of any subscriptions to the Services are nonrefundable and there are no credits for partially used periods. Following any cancellation by you in accordance with Section 2.2, however, you will continue to have access to the paid Services through the end of the subscription period for which payment has already been made.

**3.4. Free Trials.** If we permit you to sign up for a trial for the paid portion of or any subscription to the Services, your trial period starts on the day you enroll in such trial and lasts for the number of days indicated on the trial sign-up page. You may cancel your trial at any time until the last day of your trial by following the cancellation procedures outlined in Section 2.2 (other than the requirement that you cancel your subscription at least one (1) day before the subscription period renewal date). If you timely cancel your trial, you acknowledge and agree that we may delete all of your content or data associated with your trial at the end of such trial period. If you do not timely cancel your trial in accordance with these Terms and, you acknowledge that you will be charged, and authorize us to charge the credit card or other payment information you provided, the Product or subscription amount set forth on the trial enrollment page in respect of your right to continue to use the paid Services during the then-subscription period. If your trial is converted into a paid subscription, you may cancel such subscription in accordance with Section 2.2 of these Terms.

#### **4. COMMUNITY**

Hydrow is building a community, consisting of both online and in-person interactions. The community is a positive, supportive group of individuals. We expect each member to treat each other member with respect. By using the Services, you agree to behave respectfully towards other community members. We reserve the right to pause or terminate your community membership or your Account at our sole discretion.

#### **5. AGE REQUIREMENT**

Use of the Products by anyone under the age of thirteen (13) is not permitted. Minors that are at least 13 and can safely fit the dimensions of the Hydrow rower may use the Products, provided that (a) they and their parent/guardian have signed a Hydrow waiver and release, (which can be obtained from Hydrow Customer Service upon request), and (b) their parent/guardian is present at all times. The Services are intended for use by users who are eighteen (18) years of age or older. Access to, or use of the Services by anyone under eighteen (18) without the express permission of their parent or legal guardian is unauthorized, unlicensed, and in violation of these Terms. By using the Services you represent and warrant that you are 18 or older, or that your parent or guardian has registered an Account and has expressly given you permission to use the Services and that you agree to abide by these Terms.

#### **6. ACCOUNT SECURITY**

You are the sole authorized user of your user Account. You are responsible for maintaining the confidentiality of any password and Account number provided by you or Hydrow for accessing the Services. You are solely and fully responsible for all activities that occur under your password or Account. Hydrow has no control over the use of your or any user's Account and expressly disclaims any liability derived therefrom. Should you suspect that any unauthorized party may be using your password or Account, or you suspect any other breach of security, you will cease all use and notify Hydrow immediately by emailing [support@hydrow.com](mailto:support@hydrow.com).

#### **7. LICENSE TO USE THE SERVICES**

Subject to your compliance with these Terms, Hydrow hereby grants you a personal, limited, non-exclusive, non-transferable, non-sublicensable, revocable license to download and install the App, and to access and use the Services solely on devices that you own or control, subject to the terms and conditions set forth herein solely for your personal use. These Terms are limited to the intellectual property rights of Hydrow and its affiliates and licensors and do not include any rights to other patents or intellectual property. We reserve any and all rights not expressly granted to you pursuant to these Terms. The limited rights granted to you to access and use the Services comprise a limited license and do not constitute the sale of any software program.

#### **8. USE CONDITIONS AND RESTRICTIONS**

You agree that: (i) you will not use the Services if you are not fully able and legally competent to agree to these Terms; (ii)



you will only use the Services for lawful purposes; (iii) you will not use the Services for sending or storing any unlawful material, for fraudulent purposes, or to engage in any illegal, offensive, indecent, or objectionable conduct; (iv) you will not use the Services to advertise, solicit, or transmit unsolicited commercial email; (v) you will not use the Services to cause nuisance, annoyance, or inconvenience; (vi) you will not impair the proper operation of the Services; (vii) you will not try to harm the Services in any way whatsoever; (viii) you will not copy or distribute the Services, or other content without written permission from Hydrow; (ix) you will only use the Services for your own use and will not resell the Services to a third party; (x) you will keep your Account login information secure and confidential; and (xi) you will provide us with whatever proof of identity we may reasonably request.

You agree to protect the Services, and their proprietary content, information, and other materials from any unauthorized access or use, and you agree that you will not use the Services or such proprietary content, information, or other materials except as expressly permitted herein or expressly authorized in writing by Hydrow. Except as specifically permitted herein or expressly authorized in writing by Hydrow, you agree that you will not directly or indirectly: (i) distribute, sell, assign, encumber, transfer, rent, lease, loan, sublicense, modify, time-share, or otherwise exploit the Services in any unauthorized manner, including but not limited to by trespass or burdening network capacity; (ii) copy, reproduce, adapt, create derivative works of, translate, localize, port, or otherwise modify the Services, any updates, or any part thereof in any form or manner or by any means; (iii) harvest or scrape any content or data from the Services, or (iv) permit any third party to engage in any of the acts described in clauses (i)-(iii).

You further understand and agree that you are not permitted to: (i) remove or alter any copyright or other proprietary rights' notice, or restrictive rights legend contained or included in the Services; (ii) decompile, disassemble, reverse compile, reverse assemble, reverse translate, or otherwise reverse engineer any part of the Services, any updates, or any part thereof (except as, and only to the extent any foregoing restriction is prohibited by applicable law, or to the extent as may be permitted by the licensing terms governing the use of any open sourced components included with the Services); (iii) use any means to discover the source code of any portion of the Services; or (iv) otherwise circumvent any functionality that controls access to or otherwise protects the Services. Any attempt to do any of the foregoing is a violation of the rights of Hydrow and its licensors. If you breach these restrictions, you may be subject to prosecution and damages. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame, or otherwise infringe or violate the rights of any other party, and that Hydrow is not in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive or illegal messages, or transmissions that you may receive as a result of using the Services.

## **9. THIRD-PARTY SERVICES AND MATERIALS**

Certain Services may display, include, or make available content; data; information; applications; or materials from third parties ("**Third-Party Materials**"), or provide links to certain third-party websites. By using the Services, you acknowledge and agree that Hydrow is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect of such Third-Party Materials or websites. Hydrow does not warrant or endorse, and does not assume, and will not have any liability or responsibility to you, or any other person, for any third-party Services, Third-Party Materials or websites, or any other materials, products, or services of third parties. Third-Party Materials and links to other websites are provided solely as a convenience to you. In addition, third-party services and Third-Party Materials that may be accessed from, displayed on, or linked to, from the Services are not available in all languages or in all countries. Hydrow makes no representation that any third-party services and Third-Party Materials are appropriate or available for use in any particular location. To the extent you choose to access such services or Third-Party Materials, you do so at your own initiative and are responsible for compliance with any applicable laws, including, but not limited to applicable local laws.

Open Source Software. The Services may contain or make use of certain Open Source Software. Further information is available on our website at [www.hydrow.com](http://www.hydrow.com).

## **10. YOUR CONTENT**

As a condition of your use of the Services, you hereby grant to Hydrow a non-exclusive, perpetual, worldwide, irrevocable, transferable, sub-licenseable, royalty-free license to access, use, reproduce, transmit, display, publish, distribute, modify and adapt, and create a derivative work from any content that you post, upload, publish, submit, or transmit to be made available through the Services (Your Content). For purposes of these Terms, content shall mean text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided, or otherwise made available through the Services and shall include without



limitation Your Content.

You hereby waive any so-called *moral rights*, or rights of privacy or publicity in Your Content. By posting or submitting Your Content through the Services, including any publicly accessible blog, comments, or community forum that we may make available (collectively Forums), you represent and warrant: (a) that you own or otherwise control all of the rights to Your Content, including without limitation all copyrights; (b) that Your Content is accurate; and (c) that use of Your Content does not violate these Terms, the Privacy Policy, or all applicable laws, rules, and regulations and will not cause injury to any person or entity. You acknowledge that all content, including Your Content, accessed by you using the Services, is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. To the full extent permitted by law, we make no representations, warranties, or guarantees with respect to any content that you access on or through the Services, and we take no responsibility and assume no liability for any content or materials submitted or posted through the Services, including in the Forums, by you or any third party.

You can remove Your Content by deleting it. However, in certain instances, some of Your Content (such as posts or comments you make) may not be completely removed and copies of Your Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of Your Content. WE RESERVE THE RIGHT TO REMOVE ANY CONTENT, MATERIALS, OR SUBMISSION THAT WE DETERMINE, IN OUR SOLE DISCRETION, VIOLATES ANY LAW OR RIGHT OF ANY PERSON, INFRINGES THE RIGHTS OF ANY PERSON, OR IS OTHERWISE INAPPROPRIATE FOR POSTING ON THE SERVICES.

Any and all (i) suggestions for correction, change and modification to the Services, and other feedback (including but not limited to quotations of written or oral feedback), information, and reports provided to Hydrow by you (collectively Feedback), and all (ii) improvements, updates, modifications, or enhancements, whether made, created or developed by Hydrow or otherwise relating to the Services (collectively Revisions), are and will remain the property of Hydrow. You acknowledge and expressly agree that any contribution of Feedback or Revisions does not and will not give or grant you any right, title, or interest in the Services or in any such Feedback or Revisions. All Feedback and Revisions become the sole and exclusive property of Hydrow, and Hydrow may use and disclose Feedback and/or Revisions in any manner and for any purpose whatsoever, without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to Hydrow any and all right, title, and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights, and any and all other intellectual property right) that you may have in, and to any and all, Feedback and Revisions. At Hydrow's request, you will execute any document, registration, or filing required to give effect to the foregoing assignment.

## 11. INTELLECTUAL PROPERTY

- 11.1. Ownership of the Services.** The Services and their content, including their *look and feel* (e.g., text, graphics, images, logos), proprietary content, information, and other materials, are protected under intellectual property, copyright, trademark, and other laws. You acknowledge and agree that Hydrow and/or its licensors own all right, title, and interest in and to the Services (including without limitation any and all patent, copyright, trade secret, trademark, show-how, know-how, and any and all other intellectual property rights therein or related thereto) and you agree not to take any action(s) inconsistent with such ownership interests. You do not acquire any rights or licenses under any of Hydrow's (or its licensors') patents, patent applications, copyrights, trade secrets, trademarks, or other intellectual property rights on account of these Terms. All rights not expressly granted in these Terms are reserved.
- 11.2. Ownership of Trademarks.** The Hydrow name, logos, and affiliated properties, designs, and marks, are the exclusive property of Hydrow, whether registered or unregistered, and may not be used in connection with any product or service that is not ours, or in any manner that is likely to cause confusion as to our endorsement, affiliation, or sponsorship of any person, product, or service.
- 11.3. Ownership of Feedback.** We welcome feedback, comments and suggestions for improvements to the Services ("**Feedback**"). You acknowledge and expressly agree that any contribution of Feedback does not and will not give or grant you any right, title or interest in the Services or in any such Feedback. All Feedback becomes the sole and exclusive property of Hydrow, and Hydrow may use and disclose Feedback in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to Hydrow any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights and any and all other intellectual property right) that you may have in and to any and all Feedback.



## **12. DISCLAIMER OF WARRANTIES; SAFETY WARNING**

YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER USERS OF THE SERVICES. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICES ARE AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. EXCEPT AS SET FORTH IN SECTION 3.7, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES (INCLUDING WITHOUT LIMITATION ANY THIRD-PARTY MATERIALS, SOFTWARE, OR SERVICES) ARE PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND—HYDROW HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. HYDROW DOES NOT WARRANT THAT (A) THE SERVICES WILL MEET YOUR REQUIREMENTS, (B) THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR VIRUS- OR ERROR-FREE, (C) THAT THE SERVICES WILL OPERATE OR BE COMPATIBLE WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM OR DEVICE, OR (D) DEFECTS IN THE SERVICES CAN OR WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION, OR ADVICE PROVIDED BY HYDROW OR ITS AUTHORIZED REPRESENTATIVE SHALL BE DEEMED TO CREATE ANY WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO SOME OR ALL OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. TO THE EXTENT THAT ANOTHER PARTY MAY HAVE ACCESS TO OR VIEW CONTENT ON YOUR DEVICE, YOU ARE SOLELY RESPONSIBLE FOR INFORMING SUCH PARTY OF ALL DISCLAIMERS AND WARNINGS IN THESE TERMS.

TO THE EXTENT ANY DISCLAIMER OR LIMITATION OF LIABILITY DOES NOT APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, ALL APPLICABLE EXPRESS, IMPLIED, AND STATUTORY WARRANTIES WILL BE LIMITED IN DURATION TO A PERIOD OF 30 DAYS AFTER THE DATE ON WHICH YOU FIRST USED THE SERVICES, AND NO WARRANTIES SHALL APPLY AFTER SUCH PERIOD.

YOU SHOULD CONSULT YOUR PHYSICIAN OR GENERAL PRACTITIONER BEFORE BEGINNING TO USE THE SERVICES IN ANY WAY. THE SERVICES OFFERS ARE DESIGNED FOR EDUCATIONAL AND ENTERTAINMENT PURPOSES ONLY. YOU SHOULD NOT RELY ON THE SERVICES, OR ANY INFORMATION CONTAINED THEREIN, AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE.

## **13. LIMITATION OF LIABILITY**

IN NO EVENT WILL HYDROW, ITS SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY ARISING OUT OF, OR IN CONNECTION WITH, YOUR USE, OR INABILITY TO USE, THE SERVICES, INCLUDING ANY DIRECT; INDIRECT; SPECIAL; INCIDENTAL; CONSEQUENTIAL; OR PUNITIVE DAMAGES. THESE INCLUDE, BUT ARE NOT LIMITED TO, PERSONAL INJURY, PAIN, AND SUFFERING; EMOTIONAL DISTRESS; LOSS OF REVENUE; LOSS OF PROFITS; LOSS OF BUSINESS OR ANTICIPATED SAVINGS; LOSS OF USE; LOSS OF GOODWILL; OR LOSS OF DATA, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE—EVEN IF FORESEEABLE. YOU AGREE THAT HYDROW'S TOTAL LIABILITY TO YOU FOR ALL CLAIMS, IN THE AGGREGATE, SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO HYDROW FOR THE SERVICES OVER THE TWELVE (12) MONTHS PRECEDING THE DATE YOUR FIRST CLAIM(S) AROSE. THE FOREGOING LIMITATIONS DO NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Basis of the Bargain. You agree that the above limitations of liability together with the other provisions in these Terms that limit liability are essential terms of these Terms and that Hydrow would not be willing to grant you the rights set forth in these Terms but for your agreement to the above limitations of liability; you are agreeing to these limitations of liability to induce Hydrow to grant you the rights set forth in these Terms.

## **14. INDEMNITY**

By entering into these Terms and using the Services, you agree that you shall defend, indemnify, and hold Hydrow, its licensors and their respective parent organizations; subsidiaries; affiliates; officers; directors; members; employees; attorneys; and agents, harmless from and against any and all claims; costs; damages; losses; liabilities; and expenses



(including attorney's fees and costs) arising out of or in connection with (a) your violation or breach of any term of these Terms or any applicable law or regulation; (b) your violation of any rights of any third party; (c) any unauthorized use of the Services; (d) your negligence or willful misconduct; or (e) any user content submitted by or on behalf of you.

## **15. NOTICES OF COPYRIGHT INFRINGEMENT**

If properly notified that any materials infringe a third party's copyright, Hydrow will promptly remove such materials from the Services in accordance with the U.S. Digital Millennium Copyright Act (DMCA) or equivalent laws which are applicable in other jurisdictions. In addition, we may, in our sole discretion, terminate the Accounts of repeat copyright infringers.

Anyone who believes that his or her work has been reproduced on the Services in a manner which constitutes copyright infringement may submit a notification to Hydrow in accordance with the DMCA by providing all of the following information in writing: (1) identification of the copyrighted work that is claimed to be infringed; (2) identification of the allegedly infringing material that is requested to be removed, including a description of where it is located on the Service; (3) information for Hydrow's copyright agent to contact you, such as an address, telephone number, and, if available, e-mail address; (4) a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent, or the law; (5) a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and (6) a physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed. If you are asserting infringement of an intellectual property right other than copyright, please specify the intellectual property right at issue (for example, "trademark") by indicating this in your written notice. You acknowledge that if you fail to comply with all of the requirements for a notice of infringement as specified above, your DMCA notice may not be valid.

Notices of copyright infringement claims, or any counter-notices, may be sent by mail to Hydrow By True Rowing, Inc., 14 Arrow Street 4th Floor, Cambridge, MA 02138, Attn: Copyright Notice, or by email to [privacy@hydrow.com](mailto:privacy@hydrow.com) with the subject line *Copyright Notice*. Hydrow will respond expeditiously to claims of copyright infringement that are reported to Hydrow in the manner explained above. It is Hydrow's policy, in appropriate circumstances and at its discretion, to disable or terminate the Accounts of users who repeatedly infringe copyrights or intellectual property rights of others.

If you believe that any of Your Content that was removed (or to which access was disabled) after Hydrow received a notice of copyright infringement is not actually infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use such content, you may send a counter-notice containing all of the following information to Hydrow's copyright agent: (1) your physical or electronic signature (with your full legal name); (2) identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled; (3) a statement that you have a good faith belief, under penalty of perjury, that the content was removed or disabled as a result of mistake or misidentification of the content; (4) your name, address, telephone number, and email address; and (5) a statement that you will accept service of process from the person who provided the original notification of the alleged infringement.

If a counter-notice is received by Hydrow's copyright agent, Hydrow may send a copy of the counter-notice to the original complaining party informing that person that Hydrow may replace the removed content or cease disabling it. Unless the original complaining party files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 business days or more after receipt of the counter-notice, at Hydrow's sole discretion. Please understand that filing a counter-notification may lead to legal proceedings between you and the complaining party to determine ownership. Be aware that there may be adverse legal consequences in your country if you make a false or bad faith allegation by using this process.

Hydrow may disclose any communications concerning DMCA or other applicable copyright 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 or other applicable copyright notice or counter-notice, please contact an attorney. Further information on the DMCA can be found in 17 U.S.C. 512 or on the United States (U.S.) Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>.

## **16. ARBITRATION AND CLASS ACTION WAIVER**

THIS SECTION INCLUDES AN ARBITRATION AGREEMENT AND AN AGREEMENT THAT ALL CLAIMS WILL BE

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BROUGHT ONLY IN AN INDIVIDUAL CAPACITY (AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE PROCEEDING). PLEASE READ IT CAREFULLY. YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT BY FOLLOWING THE OPT OUT PROCEDURE DESCRIBED BELOW. THIS SECTION IS APPLICABLE TO THE FULLEST EXTENT OF THE LAW AND WILL SURVIVE THE TERMINATION OF THESE TERMS.

Informal Process First. You agree that in the event of any dispute between you and Hydrow, you will first contact Hydrow and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation any court action.

Arbitration Agreement. After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, Claim) relating in any way to your use of Hydrow's services and/or products, including the Services, or relating in any way to the communications between you and Hydrow or any other users of the Services, will be finally resolved solely by binding arbitration, including threshold questions of arbitrability of the Claim. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the "JAMS Rules") then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). The JAMS Rules and the JAMS Consumer Arbitration Minimum Standards, the latter effective July 15, 2009, are available at <https://www.jamsadr.com>.

No Judge or Jury.

**Arbitration will be handled by a sole, neutral arbitrator in accordance with the JAMS Rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class, consolidated or representative arbitrations and class, consolidated or representative actions are not permitted. You understand that by agreeing to these Terms, you and the Company are each waiving the right to trial by jury or to participate in a class, consolidated or representative action or class, consolidated or representative arbitration. Court review of an arbitration award is limited. The arbitrator, however, can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief, or statutory damages).** Notwithstanding the foregoing: (a) this arbitration agreement does not govern any Claim by Hydrow for infringement of its intellectual property or access to the Service that is unauthorized or exceeds authorization granted in these Terms; (b) you and the Company will have the right to bring an action in a court of proper jurisdiction for injunctive or other equitable or conservatory relief, pending a final decision by the arbitrator. You may instead assert your claim in "small claims" court, but only if your claim qualifies, your claim remains in such court and your claim remains on an individual, non-representative and non-class basis.

Arbitration Rules. If you wish to begin an arbitration proceeding, after following the informal dispute resolution procedure, you must send a letter requesting arbitration and describing your claim to 14 Arrow Street 4th Floor, Cambridge, MA 02138. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the "**JAMS Rules**") then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). The JAMS Rules and the JAMS Consumer Arbitration Minimum Standards, the latter effective July 15, 2009, are available at <https://www.jamsadr.com>.

Conduct of the Arbitration. The number of arbitrators will be one. The arbitration will be conducted in the English language. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be Boston, Massachusetts, but if you prefer a hearing in or closer to your hometown area, you and the Company will confer in good faith in order to identify a reasonable alternative location. Each of the Parties shall cooperate in good faith in the discovery or exchange of nonprivileged information relevant to the dispute as necessary in accordance with the JAMS Rules. The arbitrator's award will consist of a written statement stating the disposition of each claim, and the award will also provide a concise written statement of the essential findings and conclusions on which the award is based. You and the Company shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision.

Fees. Payment for any and all reasonable JAMS filing, administrative and arbitrator fees will be in accordance with the JAMS Rules and the JAMS Consumer Arbitration Minimum Standards. If the value of your claim does not exceed \$10,000, the Company will pay for the reasonable filing, administrative and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought was frivolous or brought for an



improper purpose.

**Interpretation.** The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability, or formation of this arbitration agreement, including any claim that all or any part of this arbitration agreement is void or voidable. However, the preceding sentence will not apply to the “Class Action Waiver” section below.

**Opting-Out.** If you do not want to arbitrate disputes with Hydrow and you are an individual, you may opt out of this arbitration agreement by sending an email to [support@hydrow.com](mailto:support@hydrow.com) within 30 days of the date you first agree to these Terms.

**Class Action Waiver.** YOU AND Hydrow AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, REPRESENTATIVE, MULTIPLE PLAINTIFF, OR SIMILAR PROCEEDING (CLASS ACTION). The parties expressly waive any ability to maintain any Class Action in any Forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar Claims or conduct any Class Action or make an award to any person or entity not a party to the arbitration. Any Claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The parties understand that any right to litigate in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is waived, and that any claims must be decided individually, through arbitration. If this class action waiver is found to be unenforceable, then the entirety of the Arbitration Agreement, if otherwise effective, will be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual Claim. If for any reason a Claim proceeds in court rather than in arbitration, you and Hydrow each waive any right to a jury trial.

**Severability.** With the exception of any of the provisions in “Class Action Waiver” paragraph above, if an arbitrator or a court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

## 17. **SMS Messaging and Phone Calls.**

If you elect to receive marketing text messages from us, either via the Services or by sending a text message indicating your consent, you are providing your prior express written consent to receive recurring marketing or promotional SMS text messages from us (each, a “**Text Message**”) sent through an automatic telephone dialing system. These may include cart reminder messages. Message frequency varies. This service is optional and is not a condition for purchase. You can opt out of receiving any further Text Messages from us at any time by replying “STOP” to any Text Message you receive from us. For help, reply “HELP” to any Text Message you receive from us or email [textsupport@wunderkind.co](mailto:textsupport@wunderkind.co).

In addition to any fee of which you are notified, your mobile provider’s message and data rates may apply to our confirmation Text Message and all subsequent Text Message correspondence according to your individual rate plan provided by your wireless carrier. Please consult your mobile service carrier’s pricing plan to determine the charges for browsing data and sending and receiving Text Messages. Under no circumstances will we or our affiliates be responsible for any SMS messaging or wireless charges incurred by you or by a person that has access to your wireless device or telephone number. If your carrier does not permit SMS messages, you may not receive the Text Messages.

Neither we nor the wireless carriers (such as T-Mobile) will be liable for any delays in the receipt of, or failure to deliver, any Text Messages, as delivery is subject to effective transmission from your network operator. Text Message services are provided on an “AS IS” basis. Data obtained from you in connection with any Text Message services may include your cell phone number, your provider’s name and the date, time and content of your text messages. We may use this information in accordance with our Privacy Policy to contact you and to provide the services you request from us. For more information on how we use telephone numbers, please read our Privacy Policy.

If you change or deactivate the phone number you provided, you have an affirmative obligation to update your account information and the phone number(s) attached to your account to prevent us from inadvertently communicating with anyone who acquires any phone number(s) previously attributed to you, and any new phone number(s) you attach to your account may receive our standard marketing Text Messages unless you also unsubscribe via the above procedures.



## 18. GENERAL PROVISIONS

**Modifications.** We may modify these Terms at any time. Modifications will be effective on the date that they are posted to our website. No other act, document, usage, or custom will be deemed to modify or amend these Terms. Your continued access or use of the Services after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications to the Terms, then you may not access or use the Services anymore. We may change or discontinue all or any part of the Services, at any time and without notice, in our sole discretion.

**Term: Termination.** These Terms shall begin on the date you first use the Services and shall continue as long as you have an Account with Hydrow and/or continue to use the Services. If you breach any of the terms of these Terms, all licenses granted by Hydrow, including permission to use the Services, will terminate automatically. Additionally, Hydrow may suspend, disable, or delete your Account and/or the Services (or any part of the foregoing) with or without notice, for any or no reason.

**Effect of Termination: Account Deletion.** Upon termination of these Terms, all licenses granted to you by Hydrow will terminate. If Hydrow deletes your Account for any suspected breach of these Terms by you, you are prohibited from re-registering for the Services under a different name. For clarity, if you cancel your Account or it is terminated for any reason, you will lose access to all live and on-demand classes and any other Content or features provided through the Services. Hydrow, in its sole discretion, may make available a very limited amount of Content or features to non-subscribers from time to time, and any use of that Content is governed by these Terms. In the event of Account deletion for any reason, Hydrow may, but is not obligated to, delete any of Your Content. Hydrow shall not be responsible for the deletion of (or failure to delete) Your Content. All sections which by their nature should survive the termination of these Terms shall continue in full force and effect, subsequent to and notwithstanding any termination of this Agreement by Hydrow or you, including without limitation the following: Sections 9 (Your Content), 10 (Intellectual Property), 11 (Disclaimer of Warranties; Safety Warning), 12 (Limitation of Liability), 13 (Indemnity), 15 (Arbitration and Class Action Waiver), and 16 (General Provisions). Termination will not limit any of Hydrow's other rights or remedies at law or in equity.

**California Residents.** If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

**Export Laws.** You agree that you will not export or re-export, directly or indirectly the Services and/or other information or materials provided by Hydrow hereunder, to any country for which the U.S. or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. In particular without limitation the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a *terrorist-supporting country*, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Services, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by U.S. law, including without limitation the development, design, manufacture, or production of nuclear, missiles, or chemical or biological weapons. You are responsible for and hereby agree to comply at your sole expense with all applicable U.S. export laws and regulations.

**U.S. Government Restricted Rights.** The Services and related documentation are Commercial Items, as that term 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. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

**Injunctive Relief.** You agree that a breach of these Terms will cause irreparable injury to Hydrow for which monetary damages would not be an adequate remedy, and in such event, Hydrow shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.

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Entire Agreement. The following legal documents, as well as any other policies or procedures that are posted to our website from time to time, are incorporated herein by reference: [Privacy Policy](#), and [Warranty](#). In the event of a conflict between any policies posted on the Services and these Terms, these Terms shall control. These Terms represent the entire understanding between Hydrow and you regarding the Services and Content and supersedes all prior agreements and understandings regarding the same.

Miscellaneous. These Terms will insure to the benefit of, and will be binding upon each party's successors and assigns. These Terms and the licenses granted hereunder may be assigned by Hydrow but may not be assigned by you without the prior express written consent of Hydrow. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof will be affected thereby, and the remaining provisions will continue with the same effect as if such unenforceable or invalid provisions will not have been inserted herein; provided that the ability of either party to obtain substantially the bargained-for performance of the other will not have thereby been impaired. It is expressly understood that in the event either party, on any occasion fails to perform any term hereof and the other party does not enforce that term, the failure to enforce on any occasion will not constitute a waiver of any term and will not prevent enforcement on any other occasion. Nothing contained in these Terms will be deemed to constitute either party as the agent or representative of the other party or both parties as joint venturers or partners for any purpose. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these Terms due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance will be extended for the period of delay or inability to perform due to such occurrence. The headings and captions contained herein will not be considered to be part of the Terms and are for convenience only. You and Hydrow agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or construction of these Terms. The AAA Rules and the laws of the Commonwealth of Massachusetts, excluding its conflicts of law provisions, govern these Terms and your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws.

Contact Us. You may contact us regarding the Services or these Terms at: 14 Arrow Street 4th Floor, Cambridge, MA 02138 or by email to [support@hydrow.com](mailto:support@hydrow.com).