

## TrainHeroic Application License and Terms and Conditions

Date of Last Revision: [April 19, 2019]

The [TrainHeroic.com] website (the “Site”) and related mobile application (collectively, with the Site, the “Application”) are provided and operated by TRAIN HEROIC, LLC located in Boulder, CO (“TrainHeroic,” “we” or “us”). The Application allows registered users to utilize the Application to direct, prescribe, track, or purchase strength training and conditioning programs as an athlete and/or a coach (collectively, the “Services”). These terms and conditions of use (the “Terms and Conditions”) and the [Privacy Policy](#) (collectively with the Terms and Conditions, the “Agreement”) constitute a binding legal agreement between TrainHeroic and you and includes the terms which govern your use of the Application.

**YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY CLICKING THE "I HAVE READ AND AGREE" ICON DISPLAYED AS PART OF THE REGISTRATION PROCESS. PLEASE READ THE AGREEMENT CAREFULLY AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. IF YOU DO NOT AGREE TO THE AGREEMENT, THEN YOU SHOULD NOT CLICK THE ICON AND YOU SHOULD NOT ACCESS AND/OR USE THE APPLICATION.**

We reserve the right, at any time, to add to, change, update or modify these Terms and Conditions, simply by posting such change, update, or modification on the Application and without any other notice to you. Any such change, update, or modification will be effective immediately upon posting on the Application. Material changes that impact the provision of the Services will generally be announced and communicated to registered users via email and through our website. Accordingly, it is your responsibility to review the Agreement from time to time to ensure that you continue to agree with them and the content, functionality and output of the Application and Services. Each time you access and/or utilize the Application and Services, you agree to be bound by the then-current Agreement.

### LICENSE GRANT:

In exchange for your payment of the Subscription Fee (defined and set forth below), Licensor hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to access and use the Application solely to obtain the Services. All rights not expressly granted to you are reserved by TrainHeroic and its licensors.

In addition, the Application and all materials available on it or through the use of the Services are the property of TrainHeroic or its licensors and are protected by copyright, trademark and other intellectual property laws. You may not use the contents of the Application in any manner or for any purpose that is inconsistent with the intended use of the Services or that would otherwise constitute infringement of TrainHeroic’s or its licensors’ intellectual property rights. You may download and/or print one copy of individual pages of the Application or documents made available to you through the use of the Services. You may not reproduce or distribute any materials obtained from the Application or the Services except for reproductions or distribution of the materials as provided by TrainHeroic through your use of the Services solely for your personal or internal business purposes.

The trademarks and service marks used or displayed on the Site ("Trademarks") are registered and unregistered trademarks of TrainHeroic and its licensors or affiliates. If you have a coach account, we grant you a limited, non-exclusive, non-sublicensable, personal license to use the Trademarks "TrainHeroic," "TrainHeroic.com" "Powered by TrainHeroic," and any logos or designs we provide containing the foregoing ("Licensed Marks") solely during the term of these Terms of Use and solely to promote your training and coaching services to actual and potential users of the Application. Your use of any Licensed Marks will be subject to any trademark usage instructions we may provide you from time to time. All of your use of the Licensed Marks inures to our benefit and you will acquire no rights in the Licensed Marks and will not challenge or contest our rights in the Licensed Marks or any other Trademarks. This license will terminate immediately upon termination of your account and you must immediately stop using the Licensed Marks, destroy any materials containing the Licensed Marks and delete any references to the Licensed Marks on your website. Unless otherwise expressly provided herein, your access to the Site does not constitute a license to use any Trademarks and you may not use any Trademarks displayed on the Site without the prior express written permission of TrainHeroic or the trademark owner.

#### SUBSCRIPTION FEE:

The fee for accessing and using the Application (the "Subscription Fee") will depend upon which type of user you are and what features and functionalities, and program in which you choose to participate. The Subscription Fee is listed at <https://www.trainheroic.com/pricing/>. The Subscription Fee will automatically be charged on monthly (or yearly basis if selected) until you provide notice to TrainHeroic of your intent terminate the use of the Application. There will be no refunds for any previously paid Subscription Fees. The Subscription Fee may change at any time in TrainHeroic's or its Program Provider's sole discretion.

#### USER ACCOUNTS:

Some features of the Application may require you to create or maintain an account.

**Your Account Information.** By submitting a registration form or creating a password on the Application, you represent to us that: (1) you meet any age restrictions for the Application, and (2) the information you have provided on your Registration ("Account Information") is true, accurate, current and complete. You will maintain and promptly update your Account Information using the functionality provided through the Application to keep it true, accurate, current and complete. You will choose or be assigned a username and password. By registering with the Application, you consent to receive periodic communication from TrainHeroic and any Program Providers you have subscribed to regarding the status of your account or other information associated with your account or the Services provided.

For school or corporate accounts, you represent and warrant through your registration and your use of the Application that you have the authority to bind the company to such actions undertaken by the user. Thus, you and your company are responsible for all activity occurring under your account and you represent and warrant that you will abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Application including those related to data privacy, international communications and the transmission of personal data.

**Passwords for Accounts.** You are responsible for maintaining the confidentiality of your username and password and you are not permitted to share or disclose your username or password to anyone else. You will be solely responsible for the activities of anyone accessing the Application using any username and password assigned to you, even if the individual is not, in fact authorized by you. If you have reason to

believe that your password has been compromised or used without authorization, you must immediately change it using the functionality provided on the applicable Application, and notify us at support@TrainHeroic.com. Under certain Account types, your coach may have access to your Account, including the ability to set and reset your password and to view or modify the Athlete Data in your Account.

#### USE OF PERSONAL DATA:

You acknowledge and agree to HB's collection and use of your Personal Information as described in the "[Privacy Policy](#)."

#### USE OF THE APPLICATION:

The Application is intended solely for use as dictated by TrainHeroic or a Program Provider, which include users accessing and using the Application to obtain the features and functionalities of the Services offered now or in the future through TrainHeroic and the Application. You will be required to register in order to access certain features and Services of the Application. During registration, you will be assigned a user name and password through the Application's registration process. You are responsible for keeping your user name and password confidential. TrainHeroic cannot and will not be liable for any loss or damage arising from your failure to keep your account information protected. You will: (i) notify TrainHeroic immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) not impersonate another user or provide false identity information to gain access to or use the Application.

TrainHeroic provides a platform that may be used by you and a selected coach or third-party. Coaches and Program Providers (defined below), you acknowledge you are solely responsible for the materials you use and your relationship with Athletes that obtain training services from you. Athletes, you acknowledge that you are solely responsible for your selection of any coach or other third party you choose to assist you with your training, exercise, desired program or fitness and for any advice, coaching, training, or other services you receive from that Coach. We are not responsible for any coaching services or Training Programs (defined below), whether or not the coach or Program Provider uses the Application or Services to assist them in providing you with any products or services. You may enter into separate trainer-athlete agreements and any such agreement is separate and independent from the Services you may receive from us under these Terms of Use.

Unless otherwise expressly agreed to by the parties in writing, the Application shall not be used by anyone under the age of sixteen (16). By accessing or using the Application or its resources you represent and warrant that you are sixteen (16) years of age or older.

The Application may allow you to submit feedback or comments to TrainHeroic or its Program Providers. By posting, uploading, inputting, providing or otherwise submitting feedback or comments to TrainHeroic or its Program Providers, you represent and warrant that your submission is truthful and that you own or otherwise control all of the rights to your submission. You hereby grant TrainHeroic and its Program Providers an unlimited, world-wide, perpetual and royalty free license to use any content included in your feedback or comments submitted to TrainHeroic or its Program Providers.

#### USER CONTENT:

**For Coaches and Program Providers:** TrainHeroic provides the Application to allow you to create your own training programs or offer your training services and programs, including without limitation, text, images, illustrations, graphics, workout and other data, audio, video or audio-video clips, or other

materials (each a “Training Program”). As a coach, you may be responsible for entering necessary athlete information, which may include name, email address, mobile phone number (collectively, the “Athlete Data”). The proper and efficient functioning of the Application relies on these Training Programs and Athlete Data and you hereby provide TrainHeroic a non-exclusive, worldwide, and limited license to use the Training Programs and Athlete Data to provide, improve and enhance the Services during your use of the Application. TrainHeroic assumes no responsibility regarding the accuracy of the Athlete Data, or any information that is provided by you through the Application and use of such information is at your own risk. TrainHeroic shall have no property right in or to the Athlete Data other than the license granted herein.

**For Program Providers Offering Training Programs in the Marketplace:** TrainHeroic provides the Application to allow you to offer your Training Program in the TrainHeroic marketplace. By choosing to offer your team or training programs in the TrainHeroic marketplace, you thereby grant TrainHeroic a non-exclusive, worldwide, and limited license to use, reproduce, distribute, publicly display, and create derivative works of your Training Program as submitted to TrainHeroic and solely for the purpose of offering your Training Program in the TrainHeroic marketplace and using your Training Program to provide the Services.

**For Athletes:** When you register to use the Application, you may have to enter your name, email address, mobile phone number (collectively, the “Athlete Data”). For all Athletes, the Application collects workout data automatically collected or entered manually by a user through your use of the Services (the “Workout Data”). Further, you may have the opportunity to provide your physical information, like your height, weight, body composition, and other physical or biometric data (collectively, the “Biometric Data”). You hereby grant TrainHeroic, your coach and/or your Program Providers an unlimited, world-wide, and royalty free license to use any Workout Data and Biometric Data during your use of the Application to provide the Services. You hereby grant TrainHeroic an unlimited, world-wide, perpetual and royalty free license to use any Workout Data and Biometric for any legal purpose as long as such data is in an anonymized or de-identified form.

#### USER CONDUCT:

You represent and warrant that no materials of any kind submitted to or through the Application will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights, or contain libelous, defamatory or otherwise unlawful material.

In addition to the above, you represent and warrant you will not:

- sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Application without TrainHeroic’s express written consent except as otherwise provided herein;
- modify or make derivative works based upon the Application;
- create Internet "links" to the Service except for access to the Home Page, or "frame" or "mirror" any Content on any other server or wireless or Internet-based device;
- reverse engineer or access the Application in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service;
- you may not share user licenses as each user must register with the Platform;
- not impersonate another user or provide false identity information to gain access to or use the Application;

- use the Application in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Application;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share or otherwise make available any 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; and
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law.

#### LINKS TO THIRD PARTY APPLICATIONS:

The Application may contain links to other websites ("Third Party Websites"). We do not control or monitor such Third Party Websites and we are not responsible for any Third Party Websites accessed through the Application. Inclusion of, linking to or permitting the use or installation of any Third Party Website does not imply approval or endorsement thereof by us. If you decide to leave the Application and access the Third Party Website, you do so at your own risk and you should be aware that the Agreement no longer applies to your usage of such Third Party Websites.

#### FEDERAL AND STATE LAWS:

When using the Application, or on the Application, you represent and warrant you will obey and comply with all applicable federal, state and local laws. The Application was created and will be operated from the United States. Any use of the Application that violates any applicable laws will be grounds for discontinuing your rights to access the Application.

#### RELATIONSHIP OF THE PARTIES:

TrainHeroic and you agree that nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales relationship, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf.

#### TERMINATION:

TrainHeroic may terminate your access to the Application and the Services for any reason, at any time, and in TrainHeroic's sole discretion, with or without notice.

If you are an Athlete under a coach account, your coach may have the right to not renew or terminate, or to direct us to not renew or terminate, your account. However, if your account is terminated by your coach, we will give you an opportunity to re-designate your account as an Athlete account.

#### SUSPENSION:

Without limiting our right to terminate your Account, we may also immediately and indefinitely suspend your access to the Application, including, without limitation, all of your data, with or without notice to you, upon (a) any actual, threatened, or suspected breach of these Terms of Use or applicable law or upon any other conduct we deem to be inappropriate or detrimental to the Application, Services, us, or any

other customer or user, or (b) if you have a Coach account, we reserve the right to disable your password and suspend your access to your account if you have had no fees payable on your account for a period of ninety (90) days. You may reactivate your account by paying all applicable fees required in connection with initial activation of a coach account provided you are not in breach of the Terms of Use.

**MEDICAL DISCLAIMER:**

SHOULD YOU HAVE AN EMERGENCY, CALL YOUR PHYSICIAN OR 911 IMMEDIATELY. DO NOT RELY ON THE APPLICATION OR ELECTRONIC COMMUNICATIONS FOR ASSISTANCE IN REGARD TO YOUR EMERGENCY MEDICAL NEEDS.

YOU ACKNOWLEDGE THAT THE INFORMATION ON THE APPLICATION IS PROVIDED “AS-IS” FOR GENERAL INFORMATION ONLY. THE INFORMATION CONTAINED ON THIS APPLICATION IS NOT INTENDED, AND SHALL NOT BE CONSTRUED AS, MEDICAL ADVICE, DIAGNOSIS OR TREATMENT AND IS NOT A SUBSTITUTE FOR CONSULTATIONS WITH QUALIFIED HEALTH PROFESSIONALS.

**DISCLAIMER:**

TO THE FULLEST EXTENT PROVIDED BY LAW AND EXCEPT AS OTHERWISE PROVIDED HEREIN OR ON THE INFORMATION AND SERVICES OFFERED ON OR THROUGH THE APPLICATION AND ANY REFERENCED THIRD-PARTY SITES ARE PROVIDED “AS IS” AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THIS INCLUDES ANY LISTING OF ANY THIRD PARTY GOODS OR SERVICE PROVIDER (INCLUDING PROGRAM PROVIDERS) INCLUDED IN THE APPLICATION. YOU ASSUME THE RISK OF ANY AND ALL DAMAGE OR LOSS FROM USE OF, OR INABILITY TO USE, THE APPLICATION. ANY THIRD PARTY GOODS OR SERVICE PROVIDER (INCLUDING THE PROGRAM PROVIDER) IS SUPPLIED AS A CONVENIENCE TO THE USER AND LISTING DOES NOT CONSTITUTE SPONSORSHIP, AFFILIATION, PARTNERSHIP, OR ENDORSEMENT.

TRAINHEROIC DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT OF THE LAW, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. TRAINHEROIC DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE APPLICATION, OR ANY MATERIAL ON THE APPLICATION IN TERMS OF ITS CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY OR OTHERWISE. TRAINHEROIC DOES NOT WARRANT THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE.

BY PROVIDING THE SERVICES ON THE APPLICATION, TRAINHEROIC DOES NOT IN ANY WAY PROMISE THAT THE SERVICES WILL REMAIN AVAILABLE TO YOU. TRAINHEROIC IS ENTITLED TO TERMINATE ALL OR PART OF ANY OF THE APPLICATION AT ANY TIME, IN ITS SOLE DISCRETION WITHOUT NOTICE TO YOU.

**LIMITATION ON LIABILITY:**

TRAINHEROIC’S LIABILITY TO YOU IS LIMITED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TRAINHEROIC OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO YOU FOR DAMAGES OF ANY KIND (INCLUDING, BUT NOT

LIMITED TO, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE APPLICATION OR ANY OTHER MATERIALS OR SERVICES PROVIDED TO YOU BY TRAINHEROIC. THIS LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT, OR ANY OTHER LEGAL THEORY OR FORM OF ACTION. TRAINHEROIC'S AGGREGATE LIABILITY TO YOU FOR ANY REASON SHALL NOT EXCEED THE FEES YOU HAVE PAID TO TRAINHEROIC FOR YOUR USE OF THE APPLICATION WITHIN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT OR ACTION ASSERTED AS SUBJECTING TRAINHEROIC TO LIABILITY.

INDEMNITY:

You agree to indemnify, defend, and hold harmless TrainHeroic, its affiliates, officers, directors, employees, consultants, agents, and representatives from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from your access to or use of the Application, your acts or omissions, your violation of these Terms and Conditions, or your actual or alleged infringement, or infringement by any other user of your account, of any intellectual property or other right of any person or entity. We will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

GOVERNING LAW:

These Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Colorado, and you hereby irrevocably consent to the exclusive jurisdiction of the state or federal courts in Boulder, Colorado for all disputes arising out of or related to the use of the Application.

SEVERABILITY; WAIVER:

If, for whatever reason, a court of competent jurisdiction finds any term or condition in this Agreement to be unenforceable, all other terms and conditions will remain unaffected and in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

ASSIGNMENT/CHANGE OF CONTROL:

You shall not assign your rights or obligations under these Terms of Use to any party without the express written consent of TrainHeroic. In the event of a change of control of TrainHeroic or the sale of substantially all of TrainHeroic's assets, all rights of TrainHeroic hereunder shall be transferable without notice to you.

COPYRIGHT INFRINGEMENT:

TrainHeroic has in place certain legally mandated procedures regarding allegations of copyright infringement occurring on the Application. Our policy is to investigate any allegations of copyright infringement brought to our attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want TrainHeroic to review, delete, edit, or disable the material in question, you must provide TrainHeroic with all of the following information:

- a. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- b. Description of the copyrighted work that you claim has been infringed;

- c. The location of the material that you claim is infringing is located on the Application;
- d. Your address, telephone number and e-mail address;
- e. A statement that your claim of infringement is based on a good faith belief; and
- f. A statement made under penalty of perjury that the information you have provided is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

For this notification to be effective, you must direct your correspondence to TrainHeroic's designated agent: [[support@TrainHeroic.com](mailto:support@TrainHeroic.com)].

ENTIRE AGREEMENT:

Except if you enter into a separate written Enrollment Agreement with TrainHeroic, in which case these Terms of Use shall supplement the Enrollment Agreement, this Agreement constitutes the entire agreement between TrainHeroic and you regarding the use of the Application, superseding any prior agreements between TrainHeroic and you relating to your use of the Application. In the event there is a conflict between an Enrollment Agreement and these Terms of Use, the terms of the Enrollment Agreement shall control.

CONTACT US:

By Email: [support@TrainHeroic.com](mailto:support@TrainHeroic.com)

By Mail:

TrainHeroic, LLC

7007 Winchester Circle, Suite 200

Boulder, Colorado 80301

By phone: 720-863-6886.