

MUSCLESOUND LICENSE AGREEMENT

IMPORTANT – PLEASE READ THE FOLLOWING CAREFULLY! THIS CLICK-WRAP LICENSE AGREEMENT (HEREINAFTER “**AGREEMENT**”) IS A LEGAL CONTRACT BETWEEN MUSCLESOUND, LLC, A COLORADO LIMITED LIABILITY COMPANY HAVING OFFICES AT 501 SOUTH CHERRY STREET, SUITE 1080, GLENDALE, CO, 80246 (HEREINAFTER REFERRED TO AS “**LICENSOR**”), AND **YOU** (THE PERSON OR SINGLE BUSINESS ENTITY), HEREINAFTER REFERRED TO AS “**LICENSEE**,” BOTH BEING HEREINAFTER INDIVIDUALLY REFERRED TO AS A **PARTY** AND COLLECTIVELY AS THE **PARTIES**. THIS **AGREEMENT** CONTAINS VERY IMPORTANT INFORMATION ABOUT **YOUR** RIGHTS AND OBLIGATIONS AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY. BY THE TERMS OF THIS AGREEMENT, THE **SOFTWARE** AND ANY ACCOMPANYING DOCUMENTATION IS LICENSED AND NOT SOLD.

BY SIGNING BELOW, OR BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE **SOFTWARE YOU** ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF **YOU** DO NOT AGREE TO ALL OF THE TERMS IN THIS **AGREEMENT**, DO NOT DOWNLOAD, INSTALL, OR USE THE **SOFTWARE**.

Recitals

WHEREAS, **Licensor** owns or has the right to license certain intellectual property and proprietary technology relating to the non-invasive measurement of glycogen stores in muscle tissues and method and system for the non-invasive determination of human body fat (hereinafter “**IP Rights**”, as defined below), and desires to grant to **Licensee** a license to **Software** embodying one or more of these **IP Rights** pursuant to the terms and conditions hereinafter set forth;

WHEREAS, **Licensee** desires to be granted a license to the Software pursuant to the terms and conditions hereinafter set forth;

Now, THEREFORE, in consideration of the premises and of the mutual covenants and promises herein contained, the adequacy of which is hereby acknowledged, the **Parties** hereby agree as follows:

1. Definitions

Terms in this **Agreement** that have been placed bold/italic shall have the meanings set forth below or as defined elsewhere in this **Agreement**. Any term, whether used in a plural or singular form, shall have the same meaning.

1.1 **IP Rights** shall mean:

(a) the claims of a pending or issued patent held by **Licensors**, and for this current version of this **Agreement**, known and identified as US 8,517,942, US 8,512,247 B2, US 8,562,529 B2, US APP 13/159,197, US APP 14/491,553

(b) the claims of future patents that issue in which **Licensors** has an ownership interest or ability to license and which pertain to products or methods in the Field of Use, including the patent applications and provisional patent applications identified in Section 1.1(a) together with any related continuations, continuations-in-part, divisional, regular utility applications, reissues, reexaminations and foreign counterparts throughout the world; and

(c) present and future trade secrets possessed by **Licensors** related to systems, methods and manufacturing know-how related to non-invasive glucose measurement in animal and human tissue and method and system for the non-invasive determination of human body fat that are disclosed by **Licensors** and actually used by **Licensee** in the Field of Use; provided, however, the following trade secrets are excluded from this definition:

(i) the trade secret information through no fault of **Licensors** becomes or has become public knowledge,

(ii) the trade secret is acquired by **Licensee** after the Effective Date from a third party who is entitled to disclose such information,

(iii) the trade secret is independently developed by a third party after the Effective Date, or

(iv) **Licensee** can show it possessed the trade secret at the time of first disclosure by **Licensors**, as can be verified by written records.

1.2 Software shall mean certain software products, related systems or methods covered by or incorporating the **IP Rights** for non-invasive measurement of glycogen stores in human muscular tissue and method and system for the non-invasive determination of human body fat.

1.1 Licensed Field of Use shall mean the field of non-invasive measurement of glycogen stores and method and system for the non-invasive determination of human body fat in human muscular tissue.

1.4 Licensee Affiliates shall mean any corporation or business entity which, either directly or indirectly through one or more intermediaries, is controlled by, controls, or is under common control with **Licensee**.

1.5 Licensed Territory shall mean the geographic region specified in **Your** MuscleSound Contract.

2. Grant Of Rights

2.1 For the consideration described below, **Licensor** grants to **Licensee** a non-exclusive, non-transferable license in the **Licensed Territory**, without the right to sublicense, to use the **Software** in the **Field of Use**, without the right to sublicense, to make, have made, use, import, offer for sale, sell, lease or otherwise transfer the **Software**. Such rights to use the **Software** pursuant to the provisions of this Section will be referred to collectively hereinafter as the “**License**” or “**Licenses**.” Use of the **Software** by **Licensee Affiliates** shall be deemed to occur through **Licensee** under this Agreement. **Licensor** grants no license under this **Agreement**, either directly or by implication, to any **IP Rights** separate or apart from the **Software**.

3. Representations

3.1 **Licensor** represents and warrants that it is the exclusive owner of the entire right, title and interest in and to the **IP Rights** and **Software**, and that it has the full legal capacity and authority to grant the exclusive rights as set forth in this **Agreement**.

3.2 **Licensor** further represents and warrants that it has not executed any agreement in conflict with this **Agreement**.

3.3 **Licensor** warrants that it will not grant any rights inconsistent with the terms and scope of this **Agreement**.

3.4 **Licensor** Agrees to:

(a) Provide **Licensee** with access to at least one (1) web based platform of the **Software** for use in the location described in Section 1.5;

(b) Allow **Licensee** to publish results of its research using MuscleSound’s System as long as **Licensee** agrees not to publish any material that would be considered Confidential or material anyway that describes proprietary information or **IP Rights** relating to **Licensor** business or it’s System.

(c) Not to perform any research or other act that would be considered validation of the MuscleSound System.

3.5 **Licensee** represents and warrants that by all information provided by **Licensee** to **Licensor** during the registration process for the **Software** is true and accurate in all material respects. **Licensee** further represents and warrants that **Licensee** has been duly authorized to enter into this **Agreement** for and on behalf of any person, company or other entity specified during the initial registration process for the **Software**. Should either of these representations prove false at any time, **Licensor** may, in **Licensor’s** sole discretion, immediately discontinue **Licensee’s** access to and/or disable **Licensee’s** use of the **Software** without notice and without recourse by **Licensee**.

3.6 **Licensee** Agrees:

(a) To measure glycogen levels using **Licensors Software** in designated subjects;

(b) To measure body fat and lean mass in designated subjects (if applicable);

(c) To permit **Licensors** to use the data gathered on a confidential basis for its database;

(d) To use the **Software** only for **Licensees** own business, including in conjunction with **Licensee Affiliates**;

(e) To not reverse engineer, disassemble, decompile or copy the **Software**, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

(f) Permit **Licensors** to use **Licensees** name(s) and logos in **Licensors** marketing and client listing and promote our alliance through our website, e-newsletters, social media, press releases, sales collateral, printed material

(g) Permit **Licensors** the opportunity to use **Licensee** in Testimonials and as a reference on a reasonable basis as approved by Licensee.

3.6 Except as set forth in this article, **Licensors** disclaims all warranties, express or implied, including warranty of non-infringement, warranties of merchantability and fitness for a particular purpose, arising out of this **Agreement** and the rights provided hereunder.

3.7 In no event shall either **Party** be liable under this **Agreement** for any indirect, special or consequential damages including, but not limited to, lost profits or demands against the other **Party** by any person, or other commercial loss. **Licensors** shall have no obligation to maintain or enforce any of the **IP Rights**, and shall have the sole discretion to start, continue or abandon the maintenance or prosecution of its own patent rights.

4. Term, Termination and License Fee

4.1 The term of the **License** granted to the Software under this Agreement will commence on the date **You** accept the terms of this Agreement by signing the last page and shall continue automatically on a month to month bases, unless otherwise terminated.

4.2 In consideration of the **License** granted in this **Agreement**, **Licensee** agrees to pay **Licensor** the fee in United States Dollars as specified in **Your** MuscleSound Contract monthly beginning as of the **Licensee's** acceptance of this **Agreement** and completion of **Your** MuscleSound Contract, verified before grant of access to the **Software**, this fee to be automatically billed by **Licensor** and paid by **Licensee** in accordance with the provided billing details on the first of each subsequent month until termination.

4.3 Without prejudice to any other rights, **Licensor** may terminate this agreement if **Licensee** fails to comply with the terms and conditions of this **Agreement**, including without limitation, Licensee's non-payment. Either **Party** may terminate upon 30 days' notice to the other **Party**.

5. Marking And Copyright

5.1 The **Software**, including any documentation, illustrations, media, or other materials is copyrighted and constituted **Licensor** valuable property. **Licensee** agrees that all physical manifestations of the **Software** or product from the **Software** will display **Licensor's** copyright notice "Copyright © 2016 MuscleSound, LLC" in a conspicuous manner. To the extent the Software or other **Licensor** provided materials include patent notices in accordance with 35 U.S.C. §287, **Licensee** shall maintain and not remove such patent notices.

6. Assignment

6.1 **Licensee** shall in no event have the right to assign this **Agreement** or any part of its rights and obligations hereunder to any corporation, firm, person or entity, including in case of merger, consolidation, or acquisition of **Licensee** with or transfer to another corporation, firm, person or entity without the prior written consent of **Licensor**.

6.2 This **Agreement** shall be binding upon and insure to any corporation or other legal entity with which **Licensor** may be merged or consolidated, or to the benefit of the assignee of the assets of **Licensor** to which this **Agreement** relates.

7. Disclaimer of Warranties And Limitations on Liability

7.1 **LICENSOR** DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT **YOUR** USE OF THE **SOFTWARE** WILL BE UNINTERRUPTED OR ERROR FREE, AND **YOU** AGREE THAT FROM TIME TO TIME **LICENSOR** MAY REMOVE, OR DISABLE, THE **SOFTWARE** FOR UNSPECIFIED PERIODS OF TIME.

7.2 **YOU, LICENSEE**, EXPRESSLY AGREE THAT **YOUR** USE OF THE SOFTWARE, OR INABILITY TO USE THE SOFTWARE IS AT **YOUR** OWN RISK. THE

SOFTWARE AND ALL MATERIALS AND SERVICES DELIVERED OR PROVIDED TO **YOU** IN CONNECTION WITH THE SOFTWARE, UNLESS OTHERWISE EXPRESSLY STATED BY **LICENSOR**, ARE PROVIDED “AS IS: AND “AS AVAILABLE” FOR **YOUR** USE WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY OR MAY NOT APPLY TO **LICENSEE**.

7.3 Licensor shall have the exclusive right, but not the obligation to take appropriate action in connection with any proceeding or suit to abate or to prevent an infringement. Before commencing action to abate or prevent infringement, **Licensor** shall consult with **Licensee** to determine if **Licensee** also wishes to enter into such suit. **Licensee** shall have the right to be represented by counsel at the suit proceedings and to participate therein at its own cost, but shall not have the right to control the suit. **Licensee** agrees to cooperate with, and give reasonable assistance to **Licensor** in abating or preventing an infringement.

7.4 Licensee agrees not to initiate or participate in any class action lawsuit, against or involving **Licensor** as a defendant.

7.5 Licensor's total limit of liability (including all costs and expenses incurred by **Licensor** in connection therewith) for all claims, representations, guarantees, warranties and indemnifications relating to, or arising from this **Agreement** and/or the **Software** licensed hereunder, shall not in the aggregate exceed amounts paid to **Licensor** or \$2,000 U.S., whichever is less, and **Licensor** shall have no further liability to **Licensee** when such amount has been expended.

7.6 The foregoing Sections 7.1, 7.2, 7.3 and 7.4 set forth **Licensor's** sole and exclusive liability arising from this Agreement. Except as expressly set forth in this Agreement, no representations, guarantees, warranties or indemnifications, either expressed or implied, are made or given or intended to be made or given by **Licensor** to **Licensee** with respect to the non-infringement of patents owned by others, or with respect to any rights granted to **Licensee** hereunder.

7.7 The liability of **Licensor** and/or Affiliates of **Licensor**, at law or otherwise, howsoever arising (whether in contract, tort or otherwise) by reason of this **Agreement** or the use of the **Software** by **Licensee** is specifically limited as provided herein, and in no event shall **Licensor**, Affiliates of **Licensor**, their employees and/or agents be liable for any special, indirect, exemplary, incidental, speculative or consequential damages whatsoever, meaning to include herein, but not by way of limitation, any delays or loss of time to **Licensee** or loss of profits.

7.8 Licensor shall use reasonable efforts to protect information submitted by **You** in connection with this **Agreement** and **your** use of the **Software**, but **You, Licensee**, agree that **your** submission of such information is at **your** sole risk, and **Licensor** hereby disclaims any and all liability to **You** for any loss or liability relating to such information in any way.

8. Confidentiality

8.1 Licensor and **Licensee** will take all reasonable precautions to ensure that information regarding the **Software**, its use and applications, the terms of this **Agreement**, the terms of this License, as well as any other confidential business information that is disclosed to one party by another is kept confidential and neither party will disclose it to any third party without the non-disclosing party's prior written consent, except as is necessary for the purposes and uses set forth in this **Agreement**. This obligation will survive the termination or expiration of this **Agreement** (for whatever reason) but will not apply:

(a) to any information regarding the Intellectual Property, its use and applications that is now or through no fault of **Licensee** subsequently becomes public knowledge;

(b) to any information regarding the **Software**, its use and application that is acquired by **Licensee** after the Effective Date from a third party entitled to disclose such information;

(c) to any information regarding the **Software**, its use and application that **Licensee** can show was already in its possession at the time of first disclosure by **Licensor**;

(d) to any technical information which becomes known to the public as a result of efforts to patent subject matter in the Field of Use; or

(e) if required to be disclosed by the receiving party to comply with applicable laws or governmental or regulatory regulations, provided that the receiving party (i) provides prior written notice of such disclosure and the terms and conditions of the required disclosure to the Disclosing Party; (ii) consults with the Disclosing Party, and reasonably cooperates with the Disclosing Party's requests to resist or narrow that request; (iii) furnishes only information that, according to written advice of its legal counsel, the Receiving Party is legally compelled to disclose; (iv) takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure; and (v) uses reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded the information disclosed.

8.2 The parties agree that any information regarded as confidential hereunder is to be treated by one party in a reciprocal manner to that required of the other party by this **Agreement**.

8.3 *Licensee* and/or *Licensors* shall not be in breach of this **Agreement** to the extent that technology export controls may restrict or prevent the divulgence of information which the terms and conditions of this **Agreement** would otherwise require. If technology export controls impose a problem or barrier to the performance of either party under this **Agreement**, the *Parties* will use commercially reasonable efforts to perform according to the purposes of this **Agreement**, while recognizing that compliance with the technology export controls is of paramount importance.

9. Improvements; Additional Inventions; Co-Inventions

9.1 If *Licensee* makes any improvements to or new inventions in, related to or derived from the **Software**, the improvements or new inventions will be promptly disclosed to *Licensors*, assigned to *Licensors* and made a part hereof and licensed to *Licensee* upon the same terms and conditions as contained herein.

9.2 *Licensee* shall have no right to and shall not work with a third party in order to develop any improvements or new inventions in, related to or derived from the **Software**.

9.3 *Licensee* shall not cause or permit reverse engineering or recompilation or disassembly of any **Software** programs received by it under this **Agreement**.

10. Governing Laws

10.1 This **Agreement**, and the rights and liabilities of the *Parties* with respect to this **Agreement** and its subject matter, shall be governed by the laws of the State of Colorado, without reference to the principles of conflicts of laws thereof. Any dispute arising out of or relating to this **Agreement** or its subject matter not settled by the *Parties* may be resolved only by the courts of the State of Colorado, or if subject matter jurisdiction exists, by the United States federal courts, with venue in the County of Denver (in the case of state court) or in the U.S. District Court for the District of Colorado (in the case of federal court). Each of the *Parties* hereby consents to the jurisdiction of such courts over it in any action involving any such dispute. Each of the *Parties* agree not to commence or maintain a legal proceeding involving any such dispute in any forum except a court of the State of Colorado located in Denver County or the United States District Court for the District of Colorado (other than to enforce a judgment obtained in such courts) and agrees not to contest the venue of any action involving any such dispute in the County of Denver or the District of Colorado, as the case may be, nor to assert in any such court the doctrine of forum non conveniens, or the like.

10.2 The rights and remedies granted herein, and any other rights or remedies which the *Parties* may have, either at law or in equity, are cumulative and not exclusive of others.

10.3 If any provision of this **Agreement** is held to be invalid, illegal, or unenforceable, the balance of this **Agreement** shall remain in full force and effect, and

the provision in question shall be interpreted so as to best accommodate the interests of the **Parties**.

11. General Provisions

11.1 This **Agreement**, together with any written agreements executed simultaneously herewith, contain the entire **Agreement** between the **Parties** and shall not be changed, modified, or discharged in whole or in part except by an agreement in writing signed by **Licensee** and **Licensors**.

11.2 There are no oral understandings, terms, or conditions, and neither **party** has relied upon any representation, expressed or implied, not contained in this **Agreement** or in written agreements, if any, executed simultaneously therewith. All prior understandings, terms or conditions are deemed merged in this **Agreement**.

11.3 It is expressly understood and agreed that no agency, employment, partnership, or joint venture relationship is hereby created between the **Parties**. Neither **party** shall make any representations that would create an apparent agency, employment, partnership, or joint venture relationship between the **Parties**. No provision of this **Agreement** nor any act of the **Parties** pursuant to the **Agreement** shall be construed to express or imply agency, employment, partnership, joint venture, or relationship other than licensor and **Licensee** of the **Software** in the **Licensed Field of Use** described in this **Agreement**, and neither has power to obligate or bind the other in any manner whatsoever. Neither **party** shall have the power or authority to act for the other **party** in any manner to create obligations or debts binding upon the other **party**. Unless amended by further writing, the relationship of the **Parties** hereto shall be that of independent contractors.

11.4 Either **Party** shall be excused from performance under this **Agreement** while and to the extent it is unable to perform by reason of any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, rebellion, insurrection, action of the elements, labor disputes, total or partial failure of transportation or delivery facilities, shortage of labor, raw materials or supplies, interruption of power and any act of government or military authorities. Neither **Party** shall be excused if delay in performance attributable to a **Party's** financial circumstance. Either **Party** seeking excuse must submit written notice of the delay promptly after the occurrence of the delay.

11.5 The failure of either **Party** at any time to require performance by the other **party** of any provision of this **Agreement** shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either **Party** of a breach of any provision(s) hereof be held or taken to be a waiver of the provision(s).

11.6 The headings for the Sections set forth in this **Agreement** are strictly for the convenience of the **Parties** hereto, and shall not be used in any way to restrict the meaning and/or interpretation of the substantive language of this **Agreement**.

11.7 **Licensors** reserves the right, at any time and from time to time, to update, revise, supplement and otherwise modify this **Agreement** and to impose new or

additional terms, policies, rules and / or conditions on **Licensee's** use of the **Software**. Such revisions, updates, supplements, modification, and additional terms, policies, rules and / or conditions (hereinafter referred to collectively as "**Additional Terms**") will be effective immediately and incorporated into this **Agreement**. **Licensee's** continued use of the **Software** will be deemed to constitute **your** acceptance of any and all such **Additional Terms**. All **Additional Terms** are hereby incorporated into this **Agreement** by this reference.

11.8 "Virus" shall mean (a) program code or programming instruction or set of instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (b) other code typically described as a virus or by similar terms, including Trojan horse, worm or backdoor. Each **Party** represents and covenants that it will use commercially reasonable efforts to ensure that no Viruses are coded or introduced into any systems used in connection with the **Software**. If a Virus is found to have been introduced into any such systems, the discovering Party will inform the other and the Parties agree to cooperatively work to reduce the effect of the Virus.

11.9 All notices, requests, demands, and determinations under this **Agreement** (other than routine operational communications), shall be in writing and shall be deemed duly given (i) when delivered by hand, (ii) one (1) day after being given to an express, overnight courier with a reliable system for tracking delivery, (iii) when sent by confirmed facsimile or electronic mail with a copy sent by another means specified in this Section 11.9 (and the effective date of such notice shall be governed by the terms set forth herein relating to such other means), or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. The address and contact information of **Licensee** is understood to be that provided and maintained by **Licensee** in the account information or billing details, and the address and contact information of **Licensor** is that provided and maintained on this website.

11.10 Licensor and Licensee agree to not hire any current or former employees of the other during the term of this agreement and for a period of two years thereafter.

11.11 Licensee hereby acknowledges that it has read and understood this **Agreement** and agrees to be bound by all terms.