



Terms of Use

KEY TERMS AND CONDITIONS

- A. Use and/or viewing of The BRAINING™ Center (TBC) software, POWER BRAINING™ Programs, and related training content is strictly prohibited unless authorized in writing to do so by TBC. Any individual or organization utilizing or viewing TBC software, Programs and training content does so with the strict understanding that they are bound by these Terms of Use.
- B. TBC has and retains all rights, title, and interest in and to the Program(s), the Intellectual Property, and the Program Resources as the same are defined in the Additional Terms and Conditions herein.
- C. TBC Programs, Program Resources and Intellectual Property shall not be altered, copied, distributed, offered for resale, or reproduced, in whole or in part, nor passed to any third party, without the prior written approval of TBC.
- D. TBC Programs, Program Resources and Intellectual Property may only be used as authorized and only for the purposes and at the pre-authorized locations as expressed by TBC.
- E. TBC certifies instructors to conduct classes of the Program(s) pursuant to an Instructor Agreement.
- F. The Licensed User agrees to keep confidential all pricing and other negotiated terms of agreement.

ADDITIONAL TERMS AND CONDITIONS

1. **Definitions.** In this Agreement, the following terms are defined as follows:
 - Agreement* means this Terms of Use document and any other negotiated terms of agreement;
 - Certified Instructor* means an Instructor who has been certified, and is currently certified, by TBC in relation to specified Programs in accordance with this Agreement, and who is engaged by the Licensed User to instruct Programs at the Location(s);
 - Class(es)* means each separate class taught by a Certified Instructor that makes up a Program;
 - Goodwill* means all goodwill in, attaching to or arising from or in connection with the use of any of the Programs, Intellectual Property, Program Resources or Improvements;
 - Improvements* means all improvements, developments, enhancements, derivations, alterations or other modifications made to or based on the Programs or Intellectual Property or Program Resources;
 - Instructor Agreement* means the written agreement as provided by TBC to an individual trained and certified to instruct participants in POWER BRAINING™ classes.

Intellectual Property means all intellectual property rights and interests (including common law rights and interests) created, developed or used by TBC in relation to the Programs whether existing at the date of this Agreement or subsequently created, developed or used by TBC, and that TBC authorizes the Licensed User to use. Intellectual Property includes, without limitation:

- (i) the Trademarks, names and/or other devices used by TBC to identify and promote itself and/or the Program(s) and that TBC authorizes the Licensed User to use;
- (ii) know-how, trade secrets, Program Resources, Tracks, technical/business or other information or experience or materials devised, developed or acquired by TBC and/or applied to the development and marketing of the Program(s) and that TBC authorizes the Licensed User to use;
- (iii) copyright, including copyright licenses, held by TBC, in any written material, routines or other works relating to the Program(s) and that TBC authorizes the Licensed User to use;
- (iv) patents, registered and unregistered designs held by TBC and that TBC authorizes the Licensed User to use; and
- (v) Improvements which TBC decides to include within the Intellectual Property licensed to the Licensed User under this Agreement;

Licensed User means the specific individual home user or organization authorized in writing by TBC and that is licensed to use the Program(s);

Licensed Rights means intellectual property rights for which TBC has obtained a license from third parties to use in connection with the Program(s);

Location means a single physical home or facility at which the Licensed User operates;

Organization means a group, center, club or other organization such as a senior and assisted living center, an active adult and/or retirement community, a wellness and rehabilitation and long-term care center, a health and/or fitness club, a public or private school or college, an amateur or professional athletic club, a youth sports league or academy, or a health maintenance organization interested in obtaining a license to use the Program(s);

Participant means any individual who uses the POWER BRAINING program for home use, is formally affiliated with a Licensed User (for example, a resident of an active adult and/or retirement community, a member of a health and/or fitness club, etc.) and is authorized to participate in any Class that is part of a Program;

Participant Agreement means the Participant acknowledgment and liability waiver and release agreement substantially in the form set out in Attachment 1;

Program means the TBC program(s) authorized for use by TBC, as amended from time to time by TBC, each of which consists of forms of physical, cognitive, and autonomic system entrainment techniques and exercises designed by TBC, as may be modified or changed by TBC from time to time;

Program Resources means the materials, information and assistance relating to the Programs that TBC will make available to the Licensed User and Certified Instructors, including certification guidelines, exercise Tracks, Training Workshops, demonstration tools, and audio visual presentations, as modified from time to time by TBC.

Representative means a representative of a party including its employees, agents, contractors, sub-contractors, directors or officers;

TBC means Headstrong USA, LLC d/b/a The Braining Center, and any of its affiliated companies.

TBC Brand Guidelines means the brand guidelines contained in the Program Resources or as otherwise provided by TBC to the Licensed User from time to time.

TBC Merchandise means any clothing, merchandise, goods or other items incorporating any Intellectual Property;

Tracks means the physical, cognitive, and autonomic system entrainment techniques and exercises that TBC mixes and matches to create unique Classes for and within each Program;

Trademarks means any registered or unregistered trademarks, service marks, or trade names of TBC used in relation to the Program(s) and that TBC authorizes the Licensed User to use;

Training Workshop means the mandatory training clinics conducted by TBC on a recurring basis for Certified Instructors to maintain their certification status.

2. **Rights Granted to the Licensed User.** TBC grants to the Licensed User the non-exclusive right to use the Program(s) and Intellectual Property and Program Resources at the Location(s) set forth in this Agreement.
3. **Location(s).** The Licensed User shall not use the Program(s) or Intellectual Property or Program Resources outside the Location(s) unless:
 - (a) TBC gives prior written consent; and
 - (b) the use relates to an exhibition of the Program(s) for the purpose of promoting the Program(s).
4. **Rights Reserved.** TBC, in its sole and absolute discretion, may change the type and content of the Program(s), the Intellectual Property, and/or the Program Resources at any time without notice.
5. **RESERVED.**
6. **Certification.** TBC will certify an individual to conduct a Program(s) as a Certified Instructor when, in the reasonable opinion of TBC, the individual has satisfied the certification guidelines contained in the Program Resources and after the Licensed User has paid the Instructor Training and Certification Fee.
7. **Training Workshops.** The Licensed User must ensure that each Certified Instructor attends and completes the recurring Training Workshops as required by TBC and to TBC's reasonable satisfaction. TBC reserves the right to charge the Licensed User a reasonable fee for Certified Instructors to attend Training Workshops to maintain certification status.
8. **Certified Instructors.** The Licensed User will ensure each of its nominees to become Certified Instructors enters into an Instructor Agreement with TBC before training to become a Certified Instructor or having access to the Program Resources. The Licensed User will ensure each Certified Instructor complies with the terms of the Instructor Agreement. The Licensed User will only conduct Programs using Certified Instructors. To protect the safety of its participants, the Licensed User will ensure its Certified Instructors conducting TBC's Classes are fully informed about the physical and cognitive needs and limitations of Class participants, are capable and qualified to lead fitness classes of this nature, and will maintain a reasonable Instructor to participant ratio.
9. **Notification and Consent.** If the Licensed User is approached by a Certified Instructor who previously instructed Classes for another User licensed by TBC to use the Program(s), and such Certified Instructor now wishes to instruct Classes for the Licensed User, the Licensed User will notify TBC and only allow that Certified Instructor to instruct Classes or have access to the Program Resources following written consent of TBC, which consent shall not be unreasonably withheld.
10. **Assistance to Licensed User.** If, following request from the Licensed User, TBC makes a Representative available at any Location to provide assistance to the Licensed User, then the Licensed User will pay to TBC:
 - (a) all reasonable travel and accommodation expenses incurred by the Representative; and

(b) TBC's standard rate for any consultancy assistance, as modified from time to time.

11. **Inspection.** Subject to the Licensed User's reasonable security requirements, TBC may at any time visit a Location to inspect Classes conducted at the Licensed User to ensure compliance with this Agreement.

12. **TBC Obligations.** TBC will:

- (a) ensure that all initial and ongoing training is delivered to TBC's high standards of professionalism;
- (b) provide Program Resources that are of high quality; and
- (c) communicate with the Licensed User on a regular basis and keep the Licensed User updated with information regarding the Program(s).

13. **Supply and Use of Program Resources.** The Licensed User will ensure that each Certified Instructor is using the most current release of Program Resources for which applicable fees have been paid to TBC and will prohibit any copying of the Program Resources. The Licensed User is permitted to, and must ensure that its Certified Instructors are permitted to, use the Program Resources only:

- (a) for the purpose of having Programs conducted at the Licensed User's facility;
- (b) in accordance with this Agreement;
- (c) in accordance with any directions given by TBC from time to time; and
- (d) in accordance with all laws and regulations that are applicable in the Location where the Programs are conducted.

14. **Use of Materials.** The Licensed User is permitted to, and must ensure that its Certified Instructors are permitted to, copy, distribute, or use any of the Program Resources or any Intellectual Property only:

- (a) for the purpose of having Programs/Classes conducted at the Licensed User's facility or promoting the Programs;
- (b) in accordance with this Agreement;
- (c) in accordance with TBC Brand Guidelines and any directions given by TBC from time to time; and
- (d) in accordance with all laws and regulations that are applicable in the Location where the Programs are conducted.

15. **Customization.** The Licensed User may only customize any of the Program Resources or Intellectual Property with the prior written permission of TBC.

16. **Participant On-Boarding.** The Licensed User will ensure each Participant completes and signs a Participant Agreement prior to the Participant taking part in any Class, and any other Program paperwork that may be required by TBC from time to time, and will provide all Program paperwork to TBC.

17. **Conduct of Classes.** The Licensed User will maintain the highest standards and ensure the Classes are conducted:

- (a) by a Certified Instructor who has completed their initial training and has the consent of TBC to conduct the Program classes;
- (b) in compliance with this Agreement;
- (c) to TBC's high standards of professionalism;
- (d) in accordance with the Program Resources; and
- (e) in a way that is not likely to damage, dilute, or diminish the reputation of the Programs and/or TBC.

18. **Notification of Problems.** The Licensed User will immediately notify TBC any time a Participant registers dissatisfaction with a Class or Program, or if any problems are encountered regarding the performance of Certified Instructors or the delivery of the Program Resources (for example, the delivery of exercise Tracks from TBC's cloud-based SaaS platform).
19. **Sale of Merchandise.** The Licensed User may purchase TBC Merchandise only from persons approved and/or licensed by TBC.
20. **RESERVED.**
21. **Payment Default.** Without limiting TBC's rights, the Licensed User will pay TBC interest, if demanded, on any amount due but not paid, from the due date until the date of payment at the rate of 1.0% per month.
22. **No Direct Debit.** Where the Licensed User is unable or unwilling to pay the Monthly License Fee or any other amount payable to TBC by direct debit, TBC may charge the Licensed User a reasonable administration charge.
23. **Ownership of Intellectual Property.** The Licensed User acknowledges and agrees that:
- (a) as between the Licensed User and TBC, all right, title and interest in and to the Programs, Intellectual Property, Improvements, and Program Resources is (and will be) owned exclusively by TBC, regardless of the media in which embodied, now or in the future;
 - (b) except as specifically set forth in this Agreement, the Licensed User does not have, and will not acquire or claim, any right, title or interest in or to the Programs, Intellectual Property, Improvements, Program Resources or the Goodwill; and
 - (c) all Goodwill will inure for the exclusive benefit of TBC.
24. **Assignment of Rights.** If, as a result of this Agreement or otherwise, the Licensed User has, or ever acquires, any right, title or interest in or to any of the Programs, Intellectual Property, Improvements, Program Resources or Goodwill (collectively, the "Rights"), then the Licensed User holds those Rights on trust for TBC. The Licensed User:
- (a) assigns all its existing Rights (TBC may itself assign or modify these Rights) and (to the extent possible) all the future Rights to TBC;
 - (b) (to the extent that the Licensed User's future Rights are not capable of assignment now) assigns all future Rights (TBC may itself assign or modify those Rights) immediately on those Rights coming into existence; and
 - (c) will promptly execute all documents and do all things immediately on TBC's request necessary to achieve, confirm or perfect that assignment.
25. **No Challenge or Registration.** The Licensed User will not do anything inconsistent with TBC's exclusive ownership of the Programs, Intellectual Property, Improvements, Program Resources or the Goodwill or rights to the Licensed Rights and the Licensed User will:
- (a) not in the future use (except as permitted by this Agreement), and not at any time register or attempt to register; and
 - (b) not object to, oppose or prevent TBC's use of (itself or by licensees), applications to register, or registration of,
any of the Programs, Intellectual Property, Improvements or Program Resources or any trademark, brand, business name, trading name, company name, domain name, logo or stylisation, design or work

(or anything of a similar nature to any of these things) that is identical to, confusingly similar to, or incorporates any of the Programs, Intellectual Property, Improvements, Program Resources or Trademarks anywhere in the world or assist or permit any other person to do any of these things.

Without limitation, the Licensed User will not at any time directly or indirectly:

- (c) do or permit to be done any act or thing which may in any way impair the rights of TBC in or to the Intellectual Property, Programs, Improvements, Program Resources or Trademarks; or
- (d) challenge or call into question the validity of TBC's ownership of the Programs, Intellectual Property, Improvements, Program Resources or Trademarks, or TBC's right to use or register any of the foregoing.

26. Use of Intellectual Property. The Licensed User will (and will ensure that its Representatives) use the Intellectual Property, Programs, Improvements and Program Resources only as expressly permitted under this Agreement or otherwise approved by TBC in writing. In particular, without limitation, the Licensed User must (and must ensure that its Representatives):

- (a) comply strictly with all stipulations, requirements or guidelines in the Program Resources or otherwise advised to the Licensed User by TBC regarding the use of the Intellectual Property, Programs or Improvements;
- (b) not alter or attempt to alter in any way the Programs, Improvements, Program Resources or Intellectual Property, including without limitation the appearance of any imagery, graphic device or logo; and
- (c) not copy or reproduce in whole or in part in any way any of the Programs, Improvements, Program Resources or Intellectual Property except as permitted under this Agreement or approved by TBC.

27. Infringement and Other Parties. The Licensed User must immediately notify TBC of any suspected or actual infringement of TBC's Intellectual Property rights by third parties of which the Licensed User is aware, in particular any copying of the Program Resources. The Licensed User must immediately notify TBC of any claims or threatened claims made by any other parties that the Intellectual Property infringes or violates any other party's intellectual property rights.

28. Indemnity. The Licensed User indemnifies TBC for any physical, direct and indirect/consequential damage, loss or cost (including attorneys fees and costs) to TBC or any other person, and will protect TBC from any claim against TBC, to the extent caused or contributed to by the Licensed User in respect of this Agreement, the Intellectual Property or the Program(s), including without limitation any claims of physical harm caused by the Licensed User's use of the Program(s).

29. Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TBC IS NOT A MEDICAL PROVIDER, AND DOES NOT DIAGNOSE, PREVENT, TREAT OR CURE ANY MEDICAL CONDITION. THE LICENSED USER WILL MAKE NO REPRESENTATIONS OR WARRANTIES ON BEHALF OF TBC WITHOUT TBC'S EXPRESS WRITTEN CONSENT, INCLUDING, WITHOUT LIMITATION, THE QUALITY OF THE PROGRAMS, RESULTS OR ANTICIPATED RESULTS OF THE EXERCISE ROUTINES, FITNESS RESULTS OR WEIGHT LOSS. REGARDLESS OF HOW PARTICIPANTS MAY INTERPRET INFORMATIONAL AND MARKETING MATERIALS ASSOCIATED WITH THE PROGRAM(S), NO IDENTIFIABLE AND QUALITATIVE "RESULTS" IN THE FORM OF ENHANCED COGNITIVE FUNCTION AND IMPROVED HEALTH AND PHYSICAL PERFORMANCE/FITNESS OF BRAIN AND BODY ARE GUARANTEED BY TBC. ANY BENEFITS RESULTING FROM PARTICIPATION IN THE PROGRAM(S) WILL VARY FOR EACH PARTICIPANT BASED ON PARTICIPANT GENETICS AND ENVIRONMENTAL/BEHAVIORAL TRAITS INCLUDING SLEEP, DIET,

AND LIFESTYLE, AND TBC DISCLAIMS ANY “RESULTS” ASSERTED BY PARTICIPANTS AS SUBJECTIVE PRONOUNCEMENTS THAT HAVE NOT BEEN EVALUATED BY INDEPENDENT THIRD-PARTY MEDICAL PROFESSIONALS.

30. **Limitation of Liability.** TBC’s liability for all claims arising out of this Agreement, whether in contract, tort or otherwise, will be limited to the amount of the fees paid by the Licensed User to TBC under this Agreement during the twelve (12) months preceding the claim.
31. **Insurance.** The Licensed User must have and maintain during the term of the Agreement valid and enforceable comprehensive business liability insurance policies covering the Location(s) and the use of the Program(s). The Licensed User must give TBC evidence of the insurance policies required under this Agreement when requested by TBC.
32. **Assignment.** TBC may assign this Agreement, which shall be binding on any successors and assigns. The Licensed User will not assign this Agreement without TBC’s prior written approval.
33. **Immediate Termination.** TBC may terminate this Agreement immediately on written notice to the Licensed User if:
- (a) the Licensed User is engaging in, or has engaged in, conduct that could damage, dilute, or impair the Intellectual Property;
 - (b) the Licensed User is in breach of this Agreement and has failed to rectify the breach within 7 days of written notification by TBC of such breach; or
 - (c) the Licensed User ceases to carry on its business; ceases to be able to pay its debts as they become due; any step is taken to enter into an arrangement between the Licensed User and its creditors; or any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person in respect of the Licensed User’s assets.
34. **Consequences of Termination.** Immediately upon the termination of this Agreement, the Licensed User will:
- (a) cease conducting the Program(s) or any exercise programs using a format or techniques which are substantially similar to the Program(s);
 - (b) cease using all Intellectual Property;
 - (c) cease using and destroy any Program Resources in its possession; and
 - (d) ensure that each of its Representatives also cease to do the matters referred to in (a), (b) and (c) above.
35. **Prior Breaches.** Termination of this Agreement does not effect the parties’ rights with respect to prior breaches.
36. **Obligations Survive Termination.** All obligations of the Licensed User, including confidentiality and intellectual property obligations, which are to be performed in whole or in part after the termination of this Agreement will survive termination.
37. **Government Taxes and Charges.** All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. The Licensed User will promptly pay and indemnify TBC against all taxes and duties assessed in connection with any such amounts, this Agreement and its performance by any authority except for taxes payable on TBC’s net income. In the event the Licensed User or the transactions contemplated by this Agreement are (or, after execution of this Agreement, become)

exempt from the foregoing, the Licensed User shall promptly provide to TBC, as evidence of such tax-exempt status, proper exemption certificates or other documentation acceptable to TBC.

38. **Entire Agreement.** This Agreement contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.
39. **Amendments.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties.
40. **Waiver.** No waiver by either party of any breach of this Agreement by the other party will be considered as a waiver of any subsequent breach of the same or any other provision.
41. **Confidentiality.** The Licensed User must at all times keep confidential and secure any TBC property and information in its possession or within its control which is commercially sensitive or confidential (including this Agreement). The Licensed User may not issue any press release or information concerning this Agreement or its subject matter without the prior approval of TBC.
42. **Force Majeure.** If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, vandals, or hackers (a "force majeure event") the time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence; provided however, that the Licensed User will not be excused from the payment of any sums of money owed by the Licensed User to TBC, and provided further, however, that if a party suffering a force majeure event is unable to cure that event within 30 days, the other party may terminate this Agreement.
43. **Specific Performance.** Damages are unlikely to be an adequate remedy in relation to a breach of this Agreement by the Licensed User. The parties agree that specific performance and/or injunctive relief are the only adequate remedy and may be sought by TBC.
44. **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Virginia without regard to conflicts of law principles, and the parties submit to the non-exclusive jurisdiction of the courts in the Commonwealth of Virginia.
45. **Partial Invalidity.** If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain in force to the greatest extent permitted by law.
46. **RESERVED.**
47. **General Construction.** In this Agreement, unless the context otherwise requires:
 - (a) references to a party includes successors and permitted assigns;
 - (b) if the Licensed User comprises two or more persons their liability will be joint and several;
 - (c) a reference to a prohibition or restriction on the Licensed User doing anything includes a reference to the Licensed User not permitting, suffering or causing that thing to be done; and
 - (d) including and similar words do not imply any limitation.

ATTACHMENT 1

Participant Acknowledgment and Liability Waiver and Release Agreement

In consideration of being able to participate in a **POWER BRAINing™** fitness class/program and becoming a **POWER BRAINing™ Member**, and to the fullest extent permitted under applicable law, I, the Participant, hereby irrevocably:

1. Acknowledge that participation in the **POWER BRAINing™** fitness class/program presented by Headstrong USA, LLC d/b/a The Braining Center (“TBC”) will consist of various exercises designed to target brain and body systems and enhance the health and fitness of brain and body.
2. Acknowledge that: (i) participation in any type of physical exercise activity involves an inherent risk of personal injury, and that participation in the **POWER BRAINing™** fitness class/program is no exception; (ii) the **POWER BRAINing™** fitness class/program includes, but is not limited to, actions such as balance, spinning, cardiovascular exercise, mild flashing lights, etc., and that it is advisable to take reasonable precautions; (iii) TBC is not a medical provider, and does not diagnose, prevent, treat or cure any medical condition, and; (iv) it is advisable and highly recommended to consult with a physician before beginning any exercise program, and that the **POWER BRAINing™** fitness class/program is no exception.
3. Acknowledge that TBC may collect and track results of participant cognitive challenges and may use the results to enhance the **POWER BRAINing™** fitness class/program and market its product and service offerings, and that TBC may communicate with participants on a regular basis via periodic newsletters, email blasts, etc. to provide information relevant to the **POWER BRAINing™** fitness class/program, TBC services, and the health and fitness of brain and body.
4. Voluntarily agree to assume all risks of personal injury – whether or not such risks of personal injury are likely or unlikely, or reasonably or unreasonably expected – and waive any and all claims or actions I may have against TBC or the respective subsidiaries or affiliates of its respective officers, directors, members, managers, employees, agents, successors and assigns arising from participation in the **POWER BRAINing™** fitness class/program.
5. Release and agree to save harmless TBC and the respective subsidiaries or affiliates and any respective officers, directors, members, managers, employees, agents, successors and assigns from any and all claims I, or any third party, may have now or in the future as a result of, in connection with, relating to or incidental to by virtue of any claim that is the subject of the waiver and assumption of risk set forth in this *Participant Acknowledgment and Liability Waiver and Release Agreement* (the “Waiver and Release”).

I am of full legal age and have read this Waiver and Release and am fully familiar with its contents. By virtue of my participation in the Program, I agree to the terms of this Waiver and Release.