

Terms of Use

These Terms of Use apply to all websites and services that are owned, operated, and maintained by or for Kinetix ML, LLC, a Delaware corporation, and its affiliates (collectively, “we,” “us,” or “our”) including [kinetixml.com], [swingml.com], the Swing ML mobile app and Kinetix ML API (the “API”), and other websites on which these Terms of Use are linked (“Sites”) as well as your use of the services we provide, our mobile application, and other transactions and engagements you might have with us including interactions via social media (collectively, “Services”).

General Provisions

THESE TERMS OF USE TOGETHER WITH THE [PRIVACY POLICY](#), AND ANY SUPPLEMENTAL TERMS, CONDITIONS, OR RULES POSTED TO A SPECIFIC AREA OF THE SITES AND SERVICES (COLLECTIVELY, “TERMS”) SET FORTH THE LEGALLY BINDING TERMS GOVERNING YOUR USE OF THE SITE AND SERVICES.

By entering the Sites or using the Services, you acknowledge and agree to all terms, conditions, and rules stated in these Terms. You are not permitted to use the Sites or the Services if you do not agree to be legally bound by these Terms. Please read these Terms carefully. The Sites and Services are intended for use only by citizens and legal permanent residents of the United States of America residing within the United States of America 13 years of age or older. If you are not a member of the intended audience, you are prohibited from accessing the Sites or using the Services.

We may, in our sole discretion, modify the Terms from time to time and we reserve the right to make changes at any time, without notice or obligation, to the Sites or Services. If a change is material, as determined by us in our sole discretion, we will provide at least fourteen (14) days’ notice prior to the effective date of the change via a post on the Sites. By not terminating your relationship with us prior to the effective date of the change, you acknowledge and agree that you will be bound by the updated Terms and/or Sites or Services. We suggest periodically visiting this page of the Sites to review these Terms.

You represent and warrant that you are the person you claim to be in your interactions with us, the Sites, and Services. You will use the Sites and Services in compliance with all applicable laws and regulations and you will not use them to defraud, harm, or impersonate another person.

Billing, Payment, Cancellation

Subscription Plans. We offer subscription plans that allow individual users to use certain features of the Site and/or Services such as obtaining analysis of

athletic performance and receiving educational information. We may offer different variations of plans and payment options. You agree to carefully read the disclosures provided to you prior to purchase regarding the features of the Site and/or Services that you will receive access to as part of your subscription. There is no minimum purchase obligation.

Automatic Renewal. Your plan subscription will continue and automatically renew until canceled by you or us. We will charge your payment method on the renewal date the then-current price (plus tax, if any). If the renewal date occurs on a weekend or holiday, we will charge your payment method on the first business day after the weekend or holiday. To avoid being charged for renewal, you must cancel your subscription at least three (3) business days prior to your renewal date.

Free/Reduced Cost Trial Period. Your plan may begin a free or reduced cost trial period. At the end of the trial period your plan will automatically renew at the then-current standard price (plus tax, if any). To avoid being charged at renewal, you must cancel your subscription at least three (3) business days prior the last day of the trial period.

Payment Methods. You will be required to place on file with us or our payment processor at least one credit or debit card as a payment method. If your primary payment method is declined or expired, you authorize us to charge any secondary payment method on file. You remain responsible for any uncollected amounts. If payment is not successfully settled due to card expiration, insufficient funds, or otherwise, we may reattempt the charge up to three (3) more times over the following seven (7) days from the original attempt. If payment remains unsuccessful, we may suspend or cancel your subscription. You are responsible for any fees charged to you by your card issuer. If you make your purchase through the Apple App Store or our iPhone/iPad app, your purchase will be subject to Apple's applicable payment policies.

Cancellation. You may cancel your subscription at any time. If you cancel your subscription, you will continue to have access until the period for which you have paid expires.

Block Purchase Plans. Outside of a bona fide block purchase arrangement made directly with us ("Block Purchase Plans"), no one may resell any Services. Payment terms of Block Purchase Plans are set forth in each Block Purchase arrangement. Purchasers of Block Purchases are responsible for all taxes, including federal, state, and municipal. Purchasers of Block Purchases must communicate to and receive affirmative acknowledgement from each downstream user that the user's use of the Services is subject to these Terms of Service and the Privacy Policy.

Changes to Price and Plans. We reserve the right to change our purchase plans or adjust pricing for any of our Services at any time in our sole discretion. If we make a material change to the Services or any features of a purchase plan,

we will provide notice as described above. If we adjust the price of a plan or Service to which you subscribe, we will notify you via email at least thirty (30) days prior to the effective date of the price change, except that pricing changes for Bulk Purchases may become effective upon notice. Unless you cancel, you will be charged the new price beginning at your first renewal or first Bulk Purchase after the price change effective date.

No Refunds. Plan fees are fully earned upon payment and are non-refundable. If you cancel your plan prior to its natural expiration, you will not be entitled to a prorated refund.

Device Requirements

To utilize our app on your smartphone or other device, your device must meet the specific system requirements outlined on in the Apple App Store descriptions of the app.

User Guidelines

You agree that you will not use the Sites or Services to transmit communications that defame, abuse, harass, stalk, threaten, or otherwise violate the rights of any other person. You also agree that you will not use the Sites or Services to transmit communications containing material that is unlawful, harassing, defamatory, abusive, indecent, threatening, harmful, vulgar, obscene, pornographic, or discriminatory. You will not use the Sites or Services to commit fraud, engage in criminal activity, or interfere with the use of the Sites or Services by others. You will not tamper with, interfere with, or otherwise hinder anyone's use of the Sites or Services. We reserve the right, but are under no obligation, to review your communications and without notice terminate your access to and use of the Sites or Services if we determine, based on our sole discretion, that you violated the foregoing user guidelines. Further, you will not reproduce, decompile, reverse engineer, or otherwise engage in any activity with the intent or effect of recreating or transferring to yourself or any third-party all or a portion of the Sites or Services.

User Data

We will maintain certain data that you transmit as part of the Services for purposes of managing the Services and providing the Services to you. We do not warrant that we will retain your data for any period of time or at all. You should retain copies and backups of all data you provide to us. You agree that we will have no liability to you for any loss or corruption of data you provide to us or that we store associated with your use of the Services.

Termination

We may suspend or terminate your use of the Sites or Services at any time for any reason and without notice to you. Upon termination, we may, but are under no obligation to, delete any and all information stored by us related to your use of the Sites or Services. If we terminate your use of the Sites or Services due to a violation of these Terms by you, as determined by us in our sole discretion, you will not be entitled to a refund of any fees paid by you to us.

Disclaimer of Warranties

The Sites and Services are provided to you on an "AS IS" and "AS AVAILABLE" basis, and AT YOUR OWN RISK TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. WE DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES REGARDING SECURITY, CURRENCY, CORRECTNESS, QUALITY, ACCURACY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, OR CONTINUED AVAILABILITY WITH RESPECT TO THE SITE AND SERVICES. We expressly disclaim, to the fullest extent permitted by applicable law, any warranties with respect to any downtime, delays or errors in the transmission or delivery of any communications, information, materials, or services through the Sites or Services. To the extent a jurisdiction does not allow the exclusion of certain warranties, some of the above exclusions may not apply. You understand and agree that the action or inaction of third parties is outside of our control and that we do not guarantee any third party will take any action or refrain from taking any action.

We do not warrant, endorse, guarantee, or assume responsibility for any third-party product or service recommended, advertised, or offered for sale on or through the Sites or Services or any website linked to the Sites or Services.

Our Intellectual Property

All copyrights, trademarks, trade dress, other intellectual property and materials, including images, text, illustrations, formats, logos, designs, icons, photographs, programs, music clips, video clips, and written and other materials on or part of the Sites and Services (collectively, the "IP") are owned, controlled or licensed by us and are protected by U.S. and international trademark and copyright laws. The absence of our name or logo does not constitute a waiver of our trademark or other intellectual property rights relating to such name or logo. All other product names, company names, marks, logos, and symbols appearing on the Sites or Services may be the trademarks and the property of their respective owners. Software used as part of the Sites and

Services is our property or our suppliers' property and is protected by U.S. and international copyright laws.

Subject to your strict compliance with these Terms, we grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to access, view, download, and print the materials displayed on the Sites and Services for your use and access only; provided, however, that you (i) retain all copyright, trademark or other proprietary designations or watermarks contained on all IP; (ii) do not modify or alter the IP in any way; and (iii) do not provide or make available the IP to any third party in a commercial manner. Other than this limited license, no license, right, title, or interest in any IP is transferred to you as a result of your use of the Sites or Services or your accessing, viewing, downloading, or printing of the IP. You may not reproduce (except as noted above), publish, transmit, distribute, display, modify, create derivative works from, reverse engineer, sell or participate in any sale of, or exploit in any way, in whole or in part, any of the IP, the Sites, Services, or any related software.

Digital Millennium Copyright Act Notice

If you believe that any material on the Sites infringes your copyright rights, please contact our designated agent for Digital Millennium Copyright Act notices at:

Kinetix ML, LLC.

Attn: Copyright Manager

support@kinetixml.com

In your notice, please include:

- Your physical or electronic signature;
- Identification of the copyrighted work you claim to have been infringed, or, if there are multiple copyrighted works, a list of such works;
- Identification of the material that you claim to be infringing, and where the material is located on the Sites or Services;
- Your address, telephone number, and email address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by you or the law; and
- A statement, under penalty of perjury, that the information in your notice is accurate.

If the notice is submitted by someone else on your behalf, the notice must also contain a statement that, under penalty of perjury, the person submitting the notice is authorized to act on your behalf.

Limitation of Liability

IN NO EVENT WILL WE OR OUR AFFILIATES, OFFICERS, DIRECTORS, OWNERS, EMPLOYEES, OR AGENTS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES OR LOST REVENUE, LOST PROFITS, LOST DATA, LOSS OF GOODWILL/REPUTATION, OR LOST ANTICIPATED BUSINESS (EVEN IF WE HAVE BEEN ADVISED OF OR COULD HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THESE TERMS, THE SITE, OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY. OUR AGGREGATE LIABILITY FOR ANY LIABILITIES, LOSSES, COSTS, DAMAGES, AND EXPENSES ASSOCIATED WITH ANY CLAIM OR ACTION RELATED TO, IN CONNECTION WITH, OR ARISING UNDER THESE TERMS, THE SITE, OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, WILL NOT EXCEED THE GREATER OF (1) THE AMOUNT PAID BY YOU TO US IN THE SIX MONTHS PRECEDING YOUR CLAIM OR (2) ONE HUNDRED DOLLARS (\$100). TO THE EXTENT A JURISDICTION DOES NOT ALLOW THE LIMITATION OF SOME LIABILITIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

Dispute Resolution

Any controversy, claim or dispute arising out of or related to these Terms, the Sites, and/or the Services, including, but not limited to, alleged violations of state or federal statutory or common law rights or duties (a "Dispute") will be solely and exclusively resolved according to the procedures set forth in this paragraph. If the parties are unable to resolve any Dispute through informal means, either party may initiate binding arbitration of such Dispute by sending notice demanding arbitration to the other party. The demand for arbitration will be made within a reasonable time after the Dispute has arisen, but in no event will it be made more than one year from when the aggrieved party knew or should have known of the controversy, claim or facts forming the basis of the Dispute. The arbitration will be initiated and conducted according to American Arbitration Association rules and procedures for commercial arbitration, including provisions for the resolution of consumer disputes (the "Arbitration Rules"). The arbitration will be conducted in Los Angeles County, California before a single neutral arbitrator appointed in accordance with the Arbitration Rules. The decision of the arbitrator will be final without option to appeal. To the fullest extent permitted by law, the arbitrator will not have the power to award punitive, special, consequential, or indirect damages against any party. Arbitration costs and fees will be divided equally between the parties. Each party will be responsible for paying its own attorneys' fees, costs, and expenses, regardless of which party prevails, but a party may recover any or all

expenses from another party if the arbitrator, applying applicable law, so determines. No disputes may be arbitrated on a class or representative basis and the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. BY AGREEING TO THESE TERMS, EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO JOIN CLAIMS OR DISPUTES WITH THOSE OF OTHERS IN THE FORM OF A CLASS ACTION, CLASS ARBITRATION, OR SIMILAR PROCEDURAL DEVICE; AND WAIVES ANY RIGHT IT MAY HAVE TO PRESENT ITS CLAIM OR DISPUTE IN A COURT OF LAW. Judgment on the award rendered by the arbitrator(s), if any, may be entered for enforcement purposes in any court having jurisdiction thereof.

Governing Law

The Terms are governed according to the laws of the State of New York, without regard to its conflicts of law principles. Subject to the dispute resolution process described above, all claims, disputes, and suits must be brought solely in the state or federal courts located in New York City, New York.

Indemnity

You will defend, indemnify, and hold us and our affiliates, officers, directors, owners, employees, and agents harmless from and against any and all claims, governmental investigations, demands, actions, and proceedings, real or threatened, and all losses, judgments, awards, settlements, damages, fines, injuries, penalties, and costs (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Losses") arising out of or related to (i) any breach or alleged breach of these Terms by you; (ii) your violation of any applicable law or regulation; or (iii) your negligence or willful misconduct.

Links

The Sites or Services may contain links to or be accessed through links that are owned and operated by independent third parties to which these Terms do not apply. We provide links as a convenience and the inclusion of the link does not imply that we endorse or accept any responsibility for the content on those sites. We are not responsible for content including but not limited to advertising claims, special offers, illustrations, names or endorsements on any other sites to which the Sites or Services may be linked to or from which the Sites or Services may be accessed. Further, we are not, directly or indirectly, implying any approval, association, sponsorship, endorsement, or affiliation with the linked site, unless specifically stated therein. Your linking to any other off-site pages or other sites is at your own risk. We recommend that you review any terms of use statement and privacy policy before using any other linked site.

Force Majeure

We will be excused from failures or delays in delivery or performance of the Sites and/or Services, if such failure or delay is attributable to causes our reasonable control such as weather, acts of God, natural disaster, war, terrorist attack, disease, epidemic/pandemic, criminal activity, riot, civil unrest, strike, or utility failure.

Feedback

We always welcome and appreciate your feedback and suggestions. You understand that we cannot necessarily respond to or implement feedback or suggestions. You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information provided by you to us are yours personally and not owned by a commercial entity. You grant us a worldwide, unrestricted, royalty-free license to distribute, publish, modify, edit, or otherwise use your submissions for any purpose, commercial or otherwise, without any acknowledgement of or compensation to you.

California Website Ownership Disclosure

Under California Civil Code Section 1789.3, California residents are entitled to the following information: The provider of the Site is Kinetix ML, LLC. To file a complaint regarding the Site or Services or to receive further information about the Site or Services, please contact us. You may also contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, California 95834 or by telephone at (800) 952-5210.

Miscellaneous

The Terms constitute the entire agreement and understanding between you and us. Our failure to exercise or enforce any right or provision of the Terms will not operate as a waiver of such right or provision. If any provision of the Terms is determined to be unlawful, void, or unenforceable, the parties intend that the offending provision be modified to the minimum extent necessary to be lawful and enforceable. Portions of the Terms which by their nature would survive termination of your use of the Sites or Services (e.g., disclaimer of warranties, limitation of liability, indemnification) will be deemed to survive. Headings are provided as a convenience and should not be used as interpretive aids. The Terms do not create any joint venture, partnership, employment, or agency relationship between the parties. You agree that ambiguities in the Terms will not be construed against us by attribution of drafting. We may assign any of our rights or obligations to others at any time without notice to you. You may not assign any of your rights or obligations to others without our prior written consent.

Contact Information

Kinetix ML, LLC.

support@kinetixml.com

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