

**Hescott Nutrition Services, LLC Terms of Use**  
**Last Update: 04/24/2023**

Welcome! Hescott Nutrition Services LLC (“HNS,” “we,” “us,” or “our”) invites you to access and use our website located at <https://hescottwellness.com> (the “Website”), subject to the following terms and conditions (the “Terms of Use”). BY ACCESSING AND/OR USING OUR WEBSITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE LEGALLY BOUND BY THESE TERMS OF USE AND OUR PRIVACY POLICY (THE “PRIVACY POLICY”), WHICH IS HEREBY INCORPORATED INTO THESE TERMS OF USE AND MADE A PART HEREOF BY REFERENCE (COLLECTIVELY, THE “AGREEMENT”). IF YOU DO NOT AGREE TO ANY OF THE TERMS IN THE AGREEMENT, YOU MAY NOT ACCESS OR USE THE WEBSITE.

We may change these Terms of Use from time to time with or without notice to you. If we modify these Terms of Use, we will post the modification on the Website. Please check these Terms of Use periodically for changes. Your continued use of the Website following the posting of the modified Terms of Use will mean you accept those changes.

If you are accessing and using the Website on behalf of a legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the terms “you” or “your” refers to such entity, in addition to you in your individual capacity.

In addition to the freely available content on our Website, we may offer fee-based products and services (“Paid Products”). We provide access to and use of our Paid Products pursuant to commercial agreements, associated with the applicable Paid Products made available to you at the time of purchase (the “Commercial Agreement”). If there is a conflict between these Terms of Use and terms and conditions of the applicable Commercial Agreement associated with the Paid Product you are purchasing, the terms and conditions of the Commercial Agreement will take precedence with respect to the use of or access to such Paid Products.

Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

**THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.**

**1. ACCESS AND USE.**

Eligibility. The Website is available only to individuals aged 16 years or older, and intended for users located within the United States. If you are 16 or older, but under the age of majority in your jurisdiction, you should review these Terms of Use with your parent or guardian to make sure that you and your parent or guardian understand them. If you are under the age of 16, you may not use the Website. We reserve the right, in our sole and absolute discretion, to deny you access to the Website, or any portion thereof, including by closing or disconnecting your account, without notice and without reason.

## **2. COMMUNITY GUIDELINES**

By accessing and/or using the Website you hereby agree to comply with the following guidelines:

- You will not use the Website for any unlawful purpose;
- You will not access or use the Website to collect any market research for competing businesses;
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not decompile, reverse engineer, or disassemble any software or other data or processes accessible through the Website;
- You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features on the Website;
- You will not circumvent, remove, alter, deactivate, degrade, or thwart any of the protections in the Website;
- You will not use automated means, including spiders, robots, crawlers, data mining tools, or the like to download or scrape data from the Website, directly or indirectly, except for Internet search engines (e.g., Google) and non-commercial public archives (e.g., archive.org) that comply with our robots.txt file;
- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure; and
- You will not interfere with or attempt to interrupt the proper operation of the Website through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Website through hacking, password or data mining, or any other means.

We reserve the right, in our sole and absolute discretion, to deny you (or any device) access to the Website, or any portion thereof, without notice.

## **3. INTELLECTUAL PROPERTY**

The Website and all information and materials available on the Website are protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms of Use, HNS and its licensors exclusively own all right, title, and interest in and to the Website, including all associated intellectual property rights. You will not remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying any Website.

You may view all content on the Website (the “Content”) for your own personal or internal business use and not for any other use, including any commercial use, without the prior written consent of HNS. We, and our licensors, retain all right, title, and interest, including all intellectual property rights, in and to the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce,

display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. If you would like to re-post or link to the Content on any other website, social media page, or in a networked computer environment, please ask us first. Using the Content without our prior written permission is expressly prohibited.

If you violate any part of this Agreement, your permission to access the Website automatically terminates, and you must immediately destroy any copies you have made of any Website.

The trademarks, service marks, and logos of HNS (the “HNS Trademarks”) used and displayed on the Website are registered and unregistered trademarks or service marks of HNS. Other company, product, and service names located on the Website may be trademarks or service marks owned by others (the “Third-Party Trademarks,” and, collectively with HNS Trademarks, the “Trademarks”). Nothing on the Website should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any website is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of HNS Trademarks inures to our benefit.

Elements of the Website are protected by trade dress, trademark, unfair competition, and other state and federal laws. They may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. None of the Content may be retransmitted without our express, written consent which attributes HNS in each and every instance.

#### **4. FEEDBACK**

We welcome and encourage you to provide feedback, comments, and suggestions for improvements to the Website and our products and services (“Feedback”). Although we encourage you to e-mail us, or use our contact form, we do not want you to, and you should not, provide us any content that contains confidential information. With respect to any Feedback you provide, we shall be free to use and disclose any ideas, concepts, know-how, techniques, or other materials contained in your Feedback for any purpose whatsoever, including, but not limited to, the development, production and marketing of products and services that incorporate such information, without compensation or attribution to you.

#### **5. DOWNLOADED CONTENT AND ATTRIBUTION**

Our Website contains links to healthy meal plans and other digital content which you may purchase and download from our Website. Such digital content is part of the Paid Products we offer, and its purchase is governed by the Commercial Agreement made available to you at the time of purchase.

By downloading any data or information from our Website (“Downloaded Data”), you agree to the following: (i) Downloaded Data is licensed, not sold, to you for your personal or internal use only under the terms and conditions of this Agreement. HNS reserves all rights in and to the Downloaded Data not expressly granted to you in this Agreement; and (ii) you shall retain all branding, trademark and copyright notices, attributions, and identification of authors that appear on the Downloaded Data delivered to you. Further, you agree you shall not: (i) remove, obscure or modify any proprietary marking or restrictive legends placed on the Downloaded Data, copyright or other notices, trademark, source identifiers, or other designations; (ii) sell or commercialize the Downloaded Data or charge others a fee to view the Downloaded Data, or sell advertising specifically against it, without our prior written consent; or (iii) directly or indirectly, to create, implement, or enhance, engage or participate in any activity or course of action that could diminish or tarnish the image or reputation of the Downloaded Content or HNS, including fraud or cause confusion as to the ownership of the Downloaded Content, including by means of misrepresentation.

## **6. DISCLAIMERS AND LIMITATION OF LIABILITY**

THE WEBSITE, AND INFORMATION AND CONTENT PROVIDED ON THE WEBSITE, INCLUDING DOWNLOADED DATA ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND NEITHER HNS NOR ITS LICENSORS MAKE ANY WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, AND HNS HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HNS MAKES NO WARRANTIES REGARDING THE ACCURACY, COMPLETENESS, OR CURRENTNESS OF ANY CONTENT AVAILABLE ON THE WEBSITE, OR ANY DOWNLOADED DATA. HNS PROVIDES ALL CONTENT AND DOWNLOADED DATA FOR INFORMATIONAL PURPOSES AND YOU MUST EXERCISE YOUR OWN JUDGEMENT WITH RESPECT TO YOUR USE OF SUCH CONTENT OR DOWNLOADED DATA. TO THE EXTENT THAT HNS AND ITS SUPPLIERS MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE WEBSITE, THE CONTENT OR ANY DOWNLOADED DATA, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE WEBSITE, THE CONTENT OR ANY DOWNLOADED DATA SHALL BE LIMITED TO FIFTY DOLLARS (\$50).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU.

NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.

THE WEBSITE, THE CONTENT, AND THE DOWNLOADED DATA MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS, OR OMISSIONS. UNLESS REQUIRED BY APPLICABLE LAWS, WE ARE NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS LISTED ON ANY OF THE WEBSITE, THE CONTENT, AND ANY DOWNLOADED DATA. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE WEBSITE, THE CONTENT, AND ANY DATA PREVIOUSLY DOWNLOADED BY YOU, AT ANY TIME WITHOUT NOTICE.

## **7. EXTERNAL WEBSITE**

The Website may contain links to third-party websites (“External Website”), but we do not endorse and are not responsible for the maintenance or content of any linked External Website. Please refer to the terms of use and privacy policies of the External Website for more information.

## **8. INDEMNIFICATION**

You will indemnify, defend, and hold HNS and its shareholders, members, officers, directors, employees, agents, and representatives (collectively, “HNS Indemnitees”) harmless from and against any and all damages, liabilities, losses, costs, and expenses, including reasonable attorney’s fees (collectively, “Losses”) incurred by any HNS Indemnitee in connection with a third-party claim, action, or proceeding (each, a “Claim”) arising from (i) your breach of this Agreement; (ii) your misuse of the Website, Content and/or the Downloaded Data; or (iii) your violation of any third-party right, including without limitation any intellectual property or privacy right; provided, however, that the foregoing obligations shall be subject to our: (i) promptly notifying you of the Claim; (ii) providing you, at your expense, with reasonable cooperation in defense of the Claim; and (iii) providing you with sole control over the defense and negotiations for a settlement or compromise.

## **9. TERMINATION**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate the Agreement and/or your access to all or any part of the Website, Content, and the Downloaded Data, at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Website, Content and/or the Downloaded Data at any time without prior notice or liability.

## **10. BINDING ARBITRATION**

In the event of a dispute arising under or relating to this Agreement, the Website, Content and the Downloaded Data (each, a “Dispute”), such dispute will be finally and exclusively resolved by binding arbitration governed by the Federal Arbitration Act (“FAA”). NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator selected jointly by the parties, whose decision will be final, except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by JAMS pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website [www.jamsadr.com](http://www.jamsadr.com). Each party will be responsible for paying any JAMS filing, administrative, and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States’ county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after the commencement of the arbitration. As set forth in the “Equitable Relief” Section below, nothing in this Agreement will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

## **11. CLASS ACTION WAIVER**

You agree that any arbitration or proceeding shall be limited to the Dispute between you and us individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action basis

or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

## **12. EQUITABLE RELIEF**

You acknowledge and agree that in the event of a breach or threatened violation of our intellectual property rights and confidential and proprietary information by you, we will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement. We may, without waiving any other remedies under this Agreement, seek from any court having jurisdiction any interim, equitable, provisional, or injunctive relief that is necessary to protect our rights and property pending the outcome of the arbitration referenced above. You hereby irrevocably and unconditionally consent to the personal and subject matter jurisdiction of the federal and state courts in the State of New York for purposes of any such action by us.

## **13. MISCELLANEOUS**

If the Agreement is terminated in accordance with the “Termination” Section above, such termination shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: “Intellectual Property,” “Feedback,” “Disclaimers and Limitation of Liability,” “Indemnification,” “Termination,” “Binding Arbitration,” “Class Action Waiver,” and “Miscellaneous.” These Terms of Use constitute the entire agreement between the parties, and supersedes all prior and contemporaneous written or oral agreements, proposals, or communications with respect to the subject matter herein between you and HNS. The section headings in these Terms of Use are for convenience only and must not be given any legal import. In the event that any portion of these Terms of Use is held to be invalid or unenforceable, then such portion shall be construed in accordance with the applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of these Terms of Use shall remain in full force and effect. You may not assign these Terms of Use. No waiver shall be effective unless in writing. Neither the course of conduct between parties nor trade practice shall act to modify any provision of these Terms of Use. These Terms of Use shall be governed by and construed in accordance with the laws of the State of New York. Except for proceedings commenced by HNS to protect its intellectual property or confidential information, which may be brought in any court of competent jurisdiction, the parties mutually agree that any and all disputes arising hereunder shall be resolved exclusively by state or federal courts located in the State of New York. Each party irrevocably submits to the exclusive jurisdiction of such courts in any suits, actions, or proceedings arising out of or relating to this Agreement.

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