



# ATRS Netpulse Gateway Upgrade Privacy Impact Assessment

Project Code	PC0596
Submission Date	Feb 9, 2016
Organization	University of Victoria
Unit and Service Owner	Athletics and Recreation Services
Contact	Jan Misovic, Senior Desktop Support Analyst, University Systems
Reviewed By	[[The CIO or designate responsible for reviewing this PIA. Provide name, title, and contact information]]
Review Date	[[Date of review – can be filled in by PMO or Reviewer]]

# 1.0 Privacy Context

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## 1.1 Description of Systems and Linkage to Legislation

The Netpulse Media Network installed in health and fitness facilities provides a rich, interactive entertainment experience for members working out on cardiovascular fitness equipment. The Netpulse equipment is dependent on continuous electrical power and Internet connectivity supplied by the facility to function properly.

The Netpulse Media Network is comprised of three major elements that correspond to where components are installed and operate continuously:

1. **Netpulse compatible screens:** These are the interactive touch screen displays mounted on or inside the cardio equipment used by members. They deliver interactive, on-demand content (music videos, TV shows, movie trailers, etc.), iPod integration, cable TV, and workout data.
2. **Netpulse Gateway:** This device connects the Netpulse compatible screens to the Internet (for user login, workout data and playlist data transfer) and streams locally stored content on demand to the screens. It is generally located near the facility's Internet router in a secured server room or electrical closet.
3. **Network Infrastructure:** This includes the physical plant of Ethernet cabling, wireless access points (if wireless option is selected), switches, electrical power, TV/coax cabling, and associated pathways and enclosures to ensure network connectivity and power to all Netpulse-related hardware. This is present throughout the facility.

A Netpulse Gateway was provided by the vendor, Matrix Fitness, as part of the provisioning of new cardio fitness equipment for the CARSA building and was installed in a secure data room by Network Services. The equipment provides touch displays with graphical user interfaces for access to apps that run on top of the Windows 7 Embedded operating system. The cardio fitness equipment is Netpulse compatible and connects to the Netpulse Gateway over the network. The Netpulse Gateway provides DHCP addressing, storage for streaming media content, and provides an Internet connection to the cardio equipment. Currently, the Gateway's Internet connection (WAN port) is blocked because it uses an end-of-life operating system (Ubuntu 10.04) and because the service has not been through a privacy review. Users currently must logon as "Guests" and do not have access to the other features of the equipment including fitness tracking, social media, and entertainment. A new Gateway has since been delivered which includes a newer supported version of the operating system (Ubuntu 14.04) to replace the existing Gateway. This version of the operating system is supported by Ubuntu until April 2019. The Gateway requires Internet access to be able to pick up nightly video programming updates, application updates, user interface updates, and for members to be able to register for and use the online features of Netpulse.

Use of this service may have implications relating to BC's Freedom of Information and Protection of Privacy Act (FIPPA). Data transmitted electronically to Netpulse is stored outside of Canada. This privacy Impact Assessment (PIA) has been developed alongside the Project Plan to detail the risks and mitigation procedures associated with the use of this service at the University of Victoria.

## 1.2 Use of System

### Member Usage

The Netpulse system will allow members of CARSA (students, faculty, staff and the public) to:

- Register for a Netpulse account
- Sign on with a Netpulse account (or optionally link their Facebook or Twitter account for sign on purposes)
- Play on-demand music and videos that are stored locally on the Gateway

- Track their workout history and statistics, set goals, participate in fitness challenges, and create music playlists
- Link their Netpulse account with other popular health and fitness apps
- Use the MyFitnessPal, Facebook, Twitter, and Weather apps (can be hidden from the menu if access to these apps is not desired)

Use of cardio fitness equipment in CARSA is limited to student athletes and members of CARSA who have a valid fitness membership. Users can self-register using the cardio fitness equipment and have access to and control over their own Netpulse account.

Users can choose to make information about their activities and achievements via the Netpulse Services available to other members of Netpulse Services. By choosing to share that information, that information is made “public” within the Netpulse Services. Only people who are Netpulse members will be able to view, and make comments about public information via the Netpulse Services.

Public information includes: name, gender, profile picture, home club, activities (such as workout types, challenges or goals), achievements (such as workout duration, goals met or challenges completed), favorites (such as your favorite workout routine or music to listen to during workout), and other users’ comments.

If you do not want to share your information with other members of Netpulse Services, you can simply select to make your information “private”. This setting will not allow other members to view your information. The default setting is “public”.

Users who do not wish to disclose any personal information can sign on to the cardio fitness equipment as “Guests” and will have access to limited media content but will not be able to track or save their workout information.

### **Facility Usage**

The Netpulse system will allow:

- Authorized staff to make a configuration change (e.g. disable an app) on one of the machines and push it out to all connected cardio fitness equipment over the network
- Connected cardio fitness equipment to receive automatic software updates and new media content

### 1.3 Custody and Control

Information collected through the use of Netpulse Services, such as user account information and workout data, will be in the custody and control of Netpulse and subject to the Netpulse Terms of Service and Privacy policies (see Appendix C and D). The primary goals in collecting information are to provide and improve the Netpulse Services, to administer the use of the Netpulse Services, and to enable users to enjoy and easily navigate the Netpulse Services. The University of Victoria would not possess records related to the service nor have the power or authority to manage the records. The University of Victoria would provide the necessary network infrastructure and Internet access for the Netpulse Media Network to operate. No integration or information exchange will be required with any other University of Victoria information system. Personally Identifiable Information related to Netpulse is not disclosed to, shared with, accessed by, controlled by, processed by or stored at the University of Victoria.

In compliance with FIPPA section 26 (c) the information collected relates to and is necessary for CARSA to offer a level of service that is competitive with other modern fitness facilities and to provide a rich, interactive workout experience for its members. As related to FIPPA section 26 (d), with respect to personal information collected for a prescribed purpose, the individuals the information is about must have consented in the prescribed manner to that collection, and (ii) a reasonable person would consider that collection appropriate in the circumstances. In this case, personal information is entered into Netpulse directly by the user and they must consent to the Netpulse Terms of Service and Privacy policies in order to complete the registration process. This collection is voluntary in order to access the additional features of the

cardio fitness equipment. Users can logon as “Guests” and registration is not required to use the basic functionality of the equipment so users can opt out of providing personal information. All data is collected directly from the individual the information is about in accordance the FIPPA section 27. No UVic staff or other persons are involved in the collection or input of personal information into the system on behalf of others.

In compliance with FIPPA section 33.1, individual users must be informed and consent to the transmission of personally identifiable information outside of Canada. The Netpulse Terms of Service informs users that their data may cross outside of Canada. The Netpulse Terms of Service are presented during registration process on fitness machines so users can review and accept the terms to complete the registration process.

#### 1.4 Personally identifiable information Data Types and Information Flows

Netpulse-connected equipment utilizes the xID user identification system, a universal numeric user ID for fitness equipment, mobile apps, and websites. Members can create a 10-14 digit xID and a <sup>Sec. 15</sup> passcode on Netpulse-connected equipment or using the Netpulse website (<https://one.netpulse.com>). The system allows users to create a secure, individualized login that personalizes their display. They can setup their favorite playlists, automatically login to their Facebook, Twitter, and/or MyFitnessPal account.

A minimal amount of personal information is collected during registration to allow for sign on and to provide accurate fitness tracking results:

- 10-14 digit xID number
- <sup>Sec. 15</sup> passcode
- Email Address
- Gender
- Date of Birth
- Weight

Users are automatically signed-out of the Netpulse service at the end of their workout. A workout ends when a user presses the “Stop” button or if the equipment is paused (idle) for a preset amount of time. If a person presses the “Stop” button then the person is logged off and a workout summary is displayed before returning to the home screen. If a person walks away from the equipment without ending their workout, the workout is paused and a countdown timer is initiated. Once the timer reaches zero, the workout is ended in the same manner as above and the user is automatically logged out. The countdown timer can be configured from the service menu with a value of 1 to 10 minutes. The default value is 5 minutes but this could be reduced to as low as 1 minute to reduce the risk of someone else accessing another person’s account if they did not end their workout properly.

#### Gateway

Sec. 15



Sec. 15



The media Gateway is connected to a local Internet source, and Ethernet cabling is run to each machine individually, using a switch to source all of the connections.

Sec. 15



## 2.0 Privacy Threshold Analysis

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1	Has a Privacy Impact Assessment ever been performed for this project or program?	N
2	<p>What is the information classification level of information collected, maintained, or shared in any identifiable form as part of this project or service? Select all classification levels that apply. See <a href="#">University Policy IM7800</a> for detailed definitions.</p> <input type="checkbox"/> Highly Confidential <input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Internal <input type="checkbox"/> Public <input type="checkbox"/> Don't Know <input type="checkbox"/> Information is not collected, maintained, or shared in any identifiable form as part of this project or service	
3	What are the type(s) of personal, critical, or sensitive information collected, maintained, or shared by this project? Please be specific about the data elements.	

<p>Examples include, but are not limited to information about students, employees, donors, alumni, credit cards, health information, etc. See Appendix A of <a href="#">University Policy IM7800</a> for more examples.</p>										
	<table border="1"> <tr> <td><b>Highly Confidential</b></td> <td> <ul style="list-style-type: none"> <li>• [[Add a new bullet point for each data element]]</li> </ul> </td> </tr> <tr> <td><b>Confidential</b></td> <td> <ul style="list-style-type: none"> <li>• Email Address</li> <li>• Gender</li> <li>• Date of Birth</li> <li>• Weight</li> </ul> <p>See Netpulse Privacy Policy - Information We [Netpulse] Collect and How We Use It (Appendix D). The University of Victoria does not maintain custody or control of any Netpulse related user data.</p> </td> </tr> <tr> <td><b>Internal</b></td> <td> <ul style="list-style-type: none"> <li>•</li> </ul> </td> </tr> <tr> <td><b>Don't Know</b></td> <td> <ul style="list-style-type: none"> <li>•</li> </ul> </td> </tr> </table>	<b>Highly Confidential</b>	<ul style="list-style-type: none"> <li>• [[Add a new bullet point for each data element]]</li> </ul>	<b>Confidential</b>	<ul style="list-style-type: none"> <li>• Email Address</li> <li>• Gender</li> <li>• Date of Birth</li> <li>• Weight</li> </ul> <p>See Netpulse Privacy Policy - Information We [Netpulse] Collect and How We Use It (Appendix D). The University of Victoria does not maintain custody or control of any Netpulse related user data.</p>	<b>Internal</b>	<ul style="list-style-type: none"> <li>•</li> </ul>	<b>Don't Know</b>	<ul style="list-style-type: none"> <li>•</li> </ul>	
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4	<p>Does this project or program involve the implementation of a new electronic system or use of a new application/ software to support the creation, collection, storing, backing-up or disposition of personal, sensitive, or critical information?</p>	New								
5	<p>Does the project apply new or additional information technologies that have substantial potential for privacy intrusion?</p> <p>Cloud platforms, social media, mobile applications, profiling.</p>	Y								
6	<p>Will the project involve the collection or creation of new information about individuals?</p> <p>User account information and workout data.</p>	Y								
7	<p>Will personal information about individuals or sensitive/critical information be disclosed to organizations, programs, processes or people who have not previously had routine access to the information?</p> <p>Netpulse and its subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information. These parties are subject to appropriate confidentiality and security measures.</p>	Y								
8	<p>Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?</p> <p>To allow users of CARSA to track their workouts, stream media and use fitness and social media apps on fitness equipment.</p>	Y								
9	<p>Will the project collect, use, or disclose PII or sensitive/critical information for research purposes?</p>	N								
10	<p>Will the project require that individuals are contacted in ways that they may perceive to be intrusive?</p> <p>Email notification settings can be changed to disable notifications for goals, challenges and system messages.</p>	N								
11	<p>Is any of the information owned by another organization?</p> <p>Netpulse, Inc.</p>	Y								
12	<p>Does the project involve new or significantly changed consolidation, inter-linking, cross-referencing or matching of personal data from multiple sources?</p>	Y								

	If you choose to connect your Netpulse account with your accounts on other websites, including social media websites, some of your information may be shared through this connection depending on your privacy settings.	
13	Does this project collect, access or use Social Insurance Numbers (SIN)?	N
14	How many user records containing PII or sensitive/critical information will be stored, accessed or used? [1-1000],[1001-5000],[5,001-50,000],[50,001-100,000],[100,000+]	This depends on how many users in CARSA register for a Netpulse account over the lifetime of the service
15	Where will the information be stored?  Providers outside of Canada.	
16	Will a third party (e.g. vendor or service provider) have access to the information?  Netpulse and its subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information. These parties are subject to appropriate confidentiality and security measures.	Y
17	Is any of the information being accessed from outside of Canada?  For the purposes of maintaining the service or to comply with law enforcement.	Y
18	Does the IT system connect, receive, or share information in identifiable form, or PII or sensitive/critical information with any other IT systems?  See Netpulse Privacy Policy – Information Sharing (Appendix D)  Netpulse is not interconnected and does not share information with other information systems at the University of Victoria.	Y
19	If there is external sharing, is it pursuant to new or existing information sharing agreements?  See Netpulse Privacy Policy – Information Sharing (Appendix D)	Existing

### 3.0 Privacy & Security Risks

ID	Risk Description	Probability (1-5)	Impact (1-5)	Risk Mitigation Measures (reduce probability and/or impact)
1	Lack of legal authority to collection, use or disclose PII	1	2	Users self-register for a Netpulse account. Users must consent to the Netpulse Terms of Service to register for a Netpulse account. PII collected through the use of Netpulse Services (user account information and workout data) by members of CARSA will be in the custody and control of Netpulse and subject to the Netpulse Terms of Service and Privacy policies (see Appendix C and D). The University of Victoria will not have the ability to use or disclose any PII.
2	Unauthorized collection of PII by authorized individuals/processes/systems	1	2	PII entered into Netpulse is submitted directly to Netpulse by the user of whom the information is about and constitutes a voluntary disclosure between the individual and Netpulse.
3	Excessive collection of PII by authorized individuals/processes/systems	1	2	Registration for and use of Netpulse is not required for basic use of the fitness equipment and users can choose to logon as "Guests". A minimal amount of PII is collected during registration to allow for sign on and to provide accurate fitness tracking results.
4	Inappropriate or unauthorized use of PII by authorized individuals/processes/systems	2	2	Netpulse takes reasonable and appropriate security measures to protect the information collected from or about users against unauthorized access, use, alteration, disclosure or destruction. Users are automatically signed-out of the Netpulse service at the end of their workout.
5	Unauthorized disclosure by individuals/processes/systems	2	2	Netpulse takes reasonable and appropriate security measures to protect the information collected from or about users against unauthorized access, use, alteration, disclosure or destruction. Users are automatically signed-out of the Netpulse service at the end of their workout.
6	Creation of new PII by data matching	3	2	Users who register for a Netpulse account can make their information private within the system and choose to not link to any third party social media or fitness apps.
7	Unauthorized tracking of individuals through transaction monitoring	1	2	Although Netpulse is not obligated to monitor access to, or use of, the Netpulse Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Netpulse Services, to ensure compliance with these TOS, or to comply with applicable law or other legal requirements. Use of "cookies" and server logs can also be used to track user interaction with the system. See Netpulse Privacy Policy - Information We Collect and How We Use It (Appendix D).
8	Data stored outside of Canada and in the public cloud	5	1	Users provide consent during registration.

9	Data retention beyond prescribed timeline	3	1	Users may cancel their Account at any time via the "Cancel Account" feature of the Services or by sending an email to <a href="mailto:support@netpulse.com">support@netpulse.com</a> . Netpulse will take steps to delete user information as soon as is practicable, but some information may remain in archived/backup copies for records or as otherwise required by law.
10	Risk of increased surveillance	1	2	Sec. 15
11	Unauthorized use as a records repository	1	1	Accounts are self-managed by the users and subject to the Netpulse Terms of Service and Privacy Policy.
12	Public perception	1	2	Netpulse is the leading digital platform for health clubs and fitness centers. The company partners with some of the top fitness equipment manufacturers and integrates with popular fitness apps.
13	Use of existing PII data in a new system or business process	3	1	Netpulse is not interconnected and does not share information with other information systems at the University of Victoria. Users can choose to link their Netpulse account with other third party fitness and social media apps in which case some information may be exchanged between Netpulse and the apps depending on privacy settings such as profile picture (Facebook), workout duration, calories, distance, weight, and achievements.

## Consultation Checklist

### IT Projects

The following leaders in each functional area can refer you to an appropriate subject matter expert to help develop the technical elements of your project plan and ensure it is complete.

Service Area	Impact? (Y/N)	Leader	Expert Consulted	Date of Consultation
Office of the CIO		Paul Stokes		
Systems General Office		Trish Kearley		
Client Technologies	Y	Lance Grant	Lance Grant	Jan 28, 2016
Desktop Support Services	Y	David Street	David Street	Jan 25, 2016
Computer Help Desk		Marcus Greenshields		
Academic & Admin Services	Y	Nav Bassi	Nav Bassi	Jan 29, 2016
Client Account Managers		Garry Sagert		
Production and Technical Support		Scott Thompson		
Development Services		Dave Wolowicz		
Identity Services		Corey Scholefield		
UVic Online		Garry Sagert		
Data Centre Services		Kim Lewall		
Network Services	Y	Jane Godfrey	Jane Godfrey	Feb 9, 2016
Infrastructure Services		Ron Kozsan		
Information Security Office	Y	Eric van Wiltenburg	Eric van Wiltenburg	Jan 29, 2016
Project Management Office	Y	Chandra Beaveridge	Chandra Beaveridge	Jan 29, 2016

### Sponsor

The project sponsor or system owner must be consulted in the creation of the Privacy Impact Assessment. Use this table to document consultation with the project sponsor or service owner.

Name	Comments	Date of Consultation
Michelle Peterson	See "PC0596 - Sign off from Michelle Peterson.msg"	Feb 11, 2016

### Other Projects

[[Please include a table like the above for any other subject matter experts that you believe should provide input for this PIA.]]

Department/Unit	Leader	Expert Consulted	Date of Consultation

### Revision History

[[As the PIA is distributed between the sponsor, stakeholders, and SMEs, update this table to indicate changes between document versions.]]

Version	Date	Author	Comments
Draft	Jan 18, 2016	Jan Misovic	
1.0	Feb 5, 2016	Jan Misovic	Feedback from SMEs
1.1	Feb 9, 2016	Jan Misovic	Additional feedback
1.2	Feb 12, 2016	Jan Misovic	Sponsor consultation

## Appendix A – Privacy Controls

ID	PRIVACY CONTROLS
AP	<b>Authority and Purpose</b>
AP-1	<p><b>Authority to Collect</b></p> <p>The organization determines and documents the legal authority that permits the collection, use, maintenance, and sharing of personally identifiable information (PII), either generally or in support of a specific program or information system need.</p> <p><b>Response:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 18.00, 19.00</p>
AP-2	<p><b>Purpose Specification</b></p> <p>The organization describes the purpose(s) for which personally identifiable information (PII) is collected, used, maintained, and shared in its privacy notices.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 16.00, 17.00</p>
DM	<b>Data Minimization and Retention</b>
DM-1	<p><b>Minimization of Personally Identifiable Information</b></p> <p>Identifies the minimum personally identifiable information (PII) elements that are relevant and necessary to accomplish the legally authorized purpose of collection; Limits the collection and retention of PII to the minimum elements identified for the purposes described in the notice and for which the individual has provided consent.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 19.00</p>
DM-2	<p><b>Data Retention and Disposal</b></p> <p>Retains each collection of personally identifiable information (PII) for [Assignment: organization-defined time period] to fulfill the purpose(s) identified in the notice or as required by law; Disposes of, destroys, erases, and/or anonymizes the PII, regardless of the method of storage, in accordance with a NARA-approved record retention schedule and in a manner that prevents loss, theft, misuse, or unauthorized access; and Uses [Assignment: organization-defined techniques or methods] to ensure secure deletion or destruction of PII (including originals, copies, and archived records).</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 20.00, 25.00</p>
DM-3	<p><b>Minimization of PII Used in Testing, Training, and Research</b></p> <p>Develops policies and procedures that minimize the use of personally identifiable information (PII) for testing, training, and research; and Implements controls to protect PII used for testing, training, and research</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 20.00, 21.00, 22.00</p>
IP	<b>Individual Participation and Redress</b>

ID	PRIVACY CONTROLS
IP-1	<p><b>Consent</b></p> <p>Provides means, where feasible and appropriate, for individuals to authorize the collection, use, maintaining, and sharing of personally identifiable information (PII) prior to its collection;  Provides appropriate means for individuals to understand the consequences of decisions to approve or decline the authorization of the collection, use, dissemination, and retention of PII;  Obtains consent, where feasible and appropriate, from individuals prior to any new uses or disclosure of previously collected PII; and  Ensures that individuals are aware of and, where feasible, consent to all uses of PII not initially described in the public notice that was in effect at the time the organization collected the PII.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 18.00</p>
IP-2	<p><b>Individual Access</b></p> <p>Provides individuals the ability to have access to their personally identifiable information (PII) maintained in its system(s) of records;</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 29.00, 32.00</p>
IP-3	<p><b>Redress</b></p> <p>Provides a process for individuals to have inaccurate personally identifiable information (PII) maintained by the organization corrected or amended, as appropriate; and  Establishes a process for disseminating corrections or amendments of the PII to other authorized users of the PII, such as external information-sharing partners and, where feasible and appropriate, notifies affected individuals that their information has been corrected or amended.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 30.00, 31.00, 33.00</p>
IP-4	<p><b>Complaint Management</b></p> <p>The organization implements a process for receiving and responding to complaints, concerns, or questions from individuals about the organizational privacy practices.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 34.00</p>
SE	<p><b>Security</b></p>
SE-1	<p><b>Inventory of Personally Identifiable Information</b></p> <p>Establishes, maintains, and updates [Assignment: organization-defined frequency] an inventory that contains a listing of all programs and information systems identified as collecting, using, maintaining, or sharing personally identifiable information (PII); and  Provides each update of the PII inventory to the CIO or information security official [Assignment: organization-defined frequency] to support the establishment of information security requirements for all new or modified information systems containing PII.</p>

ID	PRIVACY CONTROLS
SE-2	<p><b>Privacy Incident Response</b></p> <p>Develops and implements a Privacy Incident Response Plan; and Provides an organized and effective response to privacy incidents in accordance with the organizational Privacy Incident Response Plan.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, Procedures for responding to a Privacy Incident or Privacy Breach</p>
UL	<b>Use Limitation</b>
UL-1	<p><b>Internal Use</b></p> <p>The organization uses personally identifiable information (PII) internally only for the authorized purpose(s) identified in the Privacy Act and/or in public notices.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 17.00, 20.00, 21.00, 22.00m 23.00, 24.00, 31.00</p>
UL-2	<p><b>Information Sharing with Third Parties</b></p> <p>Shares personally identifiable information (PII) externally, only for the authorized purposes identified in the Privacy Act and/or described in its notice(s) or for a purpose that is compatible with those purposes; Where appropriate, enters into Memoranda of Understanding, Memoranda of Agreement, Letters of Intent, Computer Matching Agreements, or similar agreements, with third parties that specifically describe the PII covered and specifically enumerate the purposes for which the PII may be used; Monitors, audits, and trains its staff on the authorized sharing of PII with third parties and on the consequences of unauthorized use or sharing of PII; and Evaluates any proposed new instances of sharing PII with third parties to assess whether the sharing is authorized and whether additional or new public notice is required.</p> <p><b>Control(s) / Compliance:</b></p> <p>GV0235 Protection of Privacy Policy, section(s) 17.00, 20.00, 21.00, 22.00m 23.00, 24.00, 31.00,</p>

## Appendix B – Security Controls

ID	SECURITY CONTROLS
AC-2	<p><b>Account Management</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• Identifies and selects the following types of information system accounts to support organizational missions/business functions: organization-defined information system account types;</li> <li>• Assigns account managers for information system accounts;</li> <li>• Establishes conditions for group and role membership;</li> <li>• Specifies authorized users of the information system, group and role membership, and access authorizations (i.e., privileges) and other attributes (as required) for each account;</li> <li>• Requires approvals by [Assignment: organization-defined personnel or roles] for requests to create information system accounts;</li> <li>• Creates, enables, modifies, disables, and removes information system accounts in accordance with organization-defined procedures or conditions;</li> <li>• Monitors the use of information system accounts;</li> <li>• Notifies account managers:               <ul style="list-style-type: none"> <li>• When accounts are no longer required;</li> <li>• When users are terminated or transferred; and</li> <li>• When individual information system usage or need-to-know changes;</li> </ul> </li> <li>• Authorizes access to the information system based on:               <ul style="list-style-type: none"> <li>• A valid access authorization;</li> <li>• Intended system usage; and</li> <li>• Other attributes as required by the organization or associated missions/business functions;</li> </ul> </li> <li>• Reviews accounts for compliance with account management requirements [Assignment: organization-defined frequency]; and</li> <li>• Establishes a process for reissuing shared/group account credentials (if deployed) when individuals are removed from the group.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• Account Management is governed by the following institutional policies and procedures:               <ul style="list-style-type: none"> <li>• IM7200 – Acceptable use of electronic information resources policy <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7200_6030_.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7200_6030_.pdf</a></li> <li>• IM7800 – Information Security and related procedures <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7800.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7800.pdf</a></li> </ul> </li> <li>• Account Management is subject to the operating procedures and processes of the University.</li> </ul> <p>Netpulse members self-register for a Netpulse account. The University of Victoria does not maintain custody or control of any PII or any other user data. Accounts are self-managed by the users and subject to the Netpulse Terms of Service and Privacy Policy.</p>
AC-3	<p><b>Access Enforcement</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• The information system enforces approved authorizations for logical access to information and system resources in accordance with applicable access control policies.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See AC-4, SC-7</li> </ul> <p>Only members of CARSA with a valid fitness pass will be able to access the service on the cardio fitness equipment, although anyone is free to sign up for an account online through the Netpulse website (one.netpulse.com). The Netpulse Gateway will only be access ble by authorized members from University Systems. The vendor may occasionally be permitted to access the Gateway remotely through the VPN connection for support purposes only.</p>

ID	SECURITY CONTROLS
AC-4	<p><b>Information Flow Enforcement</b></p> <p><b>Control:</b></p> <p>The information system enforces approved authorizations for controlling the flow of information within the system and between interconnected systems based on organization-defined information flow control policies.</p> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See SC-7</li> </ul> <p>The Gateway does not allow any incoming connections on the port facing the Internet. The Gateway does not store any user related data. When a client registers or signs on with a Netpulse xID account on cardio fitness equipment, the data is transmitted using SSL encryption. The University of Victoria will take reasonable and appropriate steps to secure the Gateway and fitness equipment and isolate them from the rest of the network using dedicated Virtual Local Area Networks (VLANs), Access Control Lists (ACLs), and other methods as required. The Gateway will be located in a secure data room with access managed by University Systems.</p>
AC-8	<p><b>System Use Notification</b></p> <p><b>Control:</b></p> <p>Displays to users an organization-defined system use notification message or banner before granting access to the system that provides privacy and security notices consistent with applicable federal laws, Executive Orders, directives, policies, regulations, standards, and guidance.</p> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• Organization-defined systems use policy will: <ul style="list-style-type: none"> <li>• Primarily positive and explanatory (and not just a list of “don’ts”).</li> <li>• Encourage usage by providing positive examples and suggestions.</li> <li>• Require that content be office-appropriate.</li> <li>• Require that personally identifiable information is not used.</li> <li>• Include links to University of Victoria policies and training resources</li> </ul> </li> <li>• Organization-defined systems use policy will include reference to and compliance with: <ul style="list-style-type: none"> <li>• IM700 – Acceptable use of electronic information resources policy <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7200_6030_.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7200_6030_.pdf</a></li> <li>• GV0235 – Protection of Privacy <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/GV0235.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/GV0235.pdf</a></li> <li>• IM7800 – Information Security and related procedures <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7800.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7800.pdf</a></li> <li>• IM7700 – Records Management and related procedures, including Fair Dealings guidelines <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7700.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7700.pdf</a></li> <li>• Canadian Copyright Act <a href="http://www.canlii.org/en/ca/laws/stal/rsc-1985-c-c-42/latest/rsc-1985-c-c-42.html">http://www.canlii.org/en/ca/laws/stal/rsc-1985-c-c-42/latest/rsc-1985-c-c-42.html</a></li> </ul> </li> </ul> <p>Netpulse does not display an organization-defined system use notification message or banner before granting access to the system. Users who register for a Netpulse account are able to view the Netpulse Terms of Service and Privacy policy and must provide consent to complete the registration process.</p>

ID	SECURITY CONTROLS
AC-19	<p><b>Access Control for Mobile Devices</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>Establishes usage restrictions, configuration requirements, connection requirements, and implementation guidance for organization-controlled mobile devices; and</li> <li>Authorizes the connection of mobile devices to organizational information systems</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>University of Victoria recommends for all users and requires for Exchange users the use of: <ul style="list-style-type: none"> <li>an encrypted mobile device</li> <li>a password protected mobile device</li> <li>device wipe on failed login attempts</li> </ul> </li> </ul> <p>Although Netpulse offers club branded mobile apps, creation of a mobile app is out of scope for this project.</p>
AC-20	<p><b>Use of External Information Systems</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>The organization establishes terms and conditions, consistent with any trust relationships established with other organizations owning, operating, and/or maintaining external information systems, allowing authorized individuals to: <ul style="list-style-type: none"> <li>Access the information system from external information systems; and</li> <li>Process, store, or transmit organization-controlled information using external information systems.</li> </ul> </li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>See CP-9, PE-3, SC-7, SI-8</li> </ul> <p>PII entered into Netpulse is submitted directly to Netpulse by the user of whom the information is about and constitutes a voluntary disclosure between the individual and Netpulse. The information is not accessed, controlled, processed or stored by the University of Victoria.</p>
AC-21	<p><b>Information Sharing</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>Facilitates information sharing by enabling authorized users to determine whether access authorizations assigned to the sharing partner match the access restrictions on the information for organization-defined information sharing circumstances where user discretion is required and</li> <li>Employs organization-defined automated mechanisms or manual processes to assist users in making information sharing/collaboration decisions.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>See AC-20</li> </ul> <p>See Netpulse Privacy Policy – Information Sharing (Appendix D)</p>
AC-22	<p><b>Publicly Accessible Content</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>Designates individuals authorized to post information onto a publicly accessible information system;</li> <li>Trains authorized individuals to ensure that publicly accessible information does not contain nonpublic information;</li> </ul>

ID	SECURITY CONTROLS
	<ul style="list-style-type: none"> <li>• Reviews the proposed content of information prior to posting onto the publicly accessible information system to ensure that nonpublic information is not included; and</li> <li>• Reviews the content on the publicly accessible information system for nonpublic information [Assignment: organization-defined frequency] and removes such information, if discovered.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See AC-4, AC-21, IA-2, IA-8</li> </ul> <p>See Netpulse Terms of Use – Content and Content Rights (Appendix C)</p>
AT-2	<p><b>Security Awareness Training</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• The organization provides basic security awareness training to information system users (including managers, senior executives, and contractors): <ul style="list-style-type: none"> <li>• As part of initial training for new users;</li> <li>• When required by information system changes; and</li> <li>• Organization-defined frequency thereafter.</li> </ul> </li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• Privacy training will be required for new users to ensure compliance with FIPPA.</li> </ul> <p>Training on the use of the system will be offered to V kes Recreation staff at CARSA. Relevant information pertaining to FIPPA, including transmission of personal information outside of Canada, will be communicated during training.</p>
AU-6	<p><b>Audit Review, Analysis, and Reporting</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Reviews and analyzes information system audit records for indications of defined inappropriate or unusual activity.</li> <li>• Reports findings to the Chief Privacy Officer and Chief Information Officer</li> </ul> <p><b>Response:</b></p> <p>See Netpulse Terms of Use – Conduct (Appendix C)</p>
CA-3	<p><b>System Interconnections</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Authorizes connections from the information system to other information systems through the use of interconnection Security Agreements;</li> <li>• Documents, for each interconnection, the interface characteristics, security requirements, and the nature of the information communicated; and</li> <li>• Reviews and updates Interconnection Security Agreements [Assignment: organization-defined frequency].</li> </ul> <p><b>Response:</b></p> <p>Netpulse is not interconnected and does not share information with other information systems at the University of Victoria.</p> <p>See Netpulse Privacy Policy – Information Sharing (Appendix D)</p>
CM-3	<p><b>Configuration Change Control</b></p>

ID	SECURITY CONTROLS
	<p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Determines the types of changes to the information system that are configuration-controlled;</li> <li>• Reviews proposed configuration-controlled changes to the information system and approves or disapproves such changes with explicit consideration for security impact analyses;</li> <li>• Documents configuration change decisions associated with the information system;</li> <li>• Implements approved configuration-controlled changes to the information system;</li> <li>• Retains records of configuration-controlled changes to the information system for [Assignment: organization-defined time period];</li> <li>• Audits and reviews activities associated with configuration-controlled changes to the information system; and</li> <li>• Coordinates and provides oversight for configuration change control activities through the: organization-defined configuration change control that convenes organization-defined configuration change conditions.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• System configuration settings and changes are managed using the University systems Change Management processes and Change Advisory Board (CAB).</li> </ul> <p>System configuration settings and changes are managed by Athletics and Recreation Services and Netpulse. Any configuration changes that require support from University Systems will be subject to University Systems Change Management processes and Change Advisory Board. The University of Victoria is not responsible for testing any patches or releases.</p>
CM-8	<p><b>Information System Component Inventory</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• Develops and documents an inventory of information system components that: <ul style="list-style-type: none"> <li>• Accurately reflects the current information system;</li> <li>• Includes all components within the authorization boundary of the information system;</li> <li>• Is at the level of granularity deemed necessary for tracking and reporting; and</li> <li>• Includes [Assignment: organization-defined information deemed necessary to achieve effective information system component accountability]; and</li> </ul> </li> <li>• Reviews and updates the information system component inventory.</li> </ul> <p><b>Response:</b></p> <p>Athletics and Recreation Services are responsible for maintaining an inventory of all cardio fitness equipment. University Systems will document information required to support the Gateway on the network.</p>
CM-10	<p><b>Software Usage Restrictions</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Uses software and associated documentation in accordance with contract agreements and copyright laws;</li> <li>• Tracks the use of software and associated documentation protected by quantity licenses to control copying and distribution; and</li> <li>• Controls and documents the use of peer-to-peer file sharing technology to ensure that this capability is not used for the unauthorized distribution, display, performance, or reproduction of copyrighted work.</li> </ul> <p><b>Response:</b></p> <p>See Netpulse Terms of Use – Conduct (Appendix C)</p>

ID	SECURITY CONTROLS
CP-2	<p><b>Contingency Plan</b></p> <p><b>Control:</b></p> <p>The organization develops a contingency plan for the information system.</p> <p><b>Response:</b></p> <p>Netpulse is not required for basic use of the equipment (the ability to perform a workout). In the event of an outage, the equipment will continue to provide basic workout functionality until the outage is resolved. The Netpulse service is not critical to the operation of CARSA and an outage would have minimal impact.</p>
CP-9	<p><b>Information System Backup</b></p> <p><b>Control:</b></p> <p>Conducts backups of user-level information contained in the information system. Conducts backups of system-level information contained in the information system. Conducts backups of information system documentation including security-related documentation; and Protects the confidentiality, integrity, and availability of backup information at storage locations.</p> <p><b>Response:</b></p> <p>Netpulse is responsible for all backup of user-level information in the information system.</p>
IA-2	<p><b>Identification and Authentication (organizational Users)</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• The information system uniquely identifies and authenticates organizational users (or processes acting on behalf of organizational users).</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See SC-8</li> </ul> <p>Netpulse-connected equipment utilizes the xID user identification system, a universal numeric user ID for fitness equipment, mobile apps, and websites. Members can create a 10-14 digit xID and a 4-digit passcode on Netpulse-connected equipment or using the NetpulseOne website (one.netpulse.com). The system allows users to create a secure, individualized login that personalizes their display.</p>
IA-8	<p><b>Identification and Authentication (non-organizational users)</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• The information system uniquely identifies and authenticates non-organizational users (or processes acting on behalf of non-organizational users).</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See SC-8</li> </ul> <p>Netpulse-connected equipment utilizes the xID user identification system, a universal numeric user ID for fitness equipment, mobile apps, and websites. Members can create a 10-14 digit xID and a 4-digit passcode on Netpulse-connected equipment or using the NetpulseOne website (one.netpulse.com). The system allows users to create a secure, individualized login that personalizes their display.</p>
MP-2	<p><b>Media Access</b></p> <p><b>Control:</b></p>

ID	SECURITY CONTROLS
	<ul style="list-style-type: none"> <li>The organization restricts access to organization-defined types of digital and/or non-digital media] to personnel or roles.</li> </ul> <p><b>Response:</b></p> <p>The Netpulse system controls what digital content can be played on cardio fitness equipment. Streaming of music and videos is limited to content that is stored on the Gateway.</p> <p>See Netpulse Privacy Policy - Information We Collect and How We Use It (Appendix D)</p>
PE-3	<p><b>Physical Access Control</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>Enforces physical access authorizations, controls and audits exist.</li> </ul> <p><b>Response:</b></p> <p>Access to the cardio fitness equipment is restricted to members of CARSA. Sec. 15</p> <p>Sec. 15</p>
PL-4	<p><b>Rules of Behavior</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>Establishes and makes readily available to individuals requiring access to the information system, the rules that describe their responsibilities and expected behavior with regard to information and information system usage;</li> <li>Receives a signed acknowledgment from such individuals, indicating that they have read, understand, and agree to abide by the rules of behavior, before authorizing access to information and the information system;</li> <li>Reviews and updates the rules of behavior; and</li> <li>Requires individuals who have signed a previous version of the rules of behavior to read and resign when the rules of behavior are revised/updated</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>See AC-8, CM-10</li> </ul> <p>Netpulse users must agree to the Netpulse Terms of Service and Privacy Policy during registration. Additionally, all members in CARSA must adhere to the Vikes Recreation – Campus Recreation Policies.</p> <p>See Netpulse Terms of Use – Conduct (Appendix C)  See Vikes Recreation – Campus Recreation Policies  (<a href="http://vikesrec.ca/sports/2015/4/15/facilities_0415152309.aspx">http://vikesrec.ca/sports/2015/4/15/facilities_0415152309.aspx</a>)</p>

ID	SECURITY CONTROLS
RA-3	<p><b>Risk Assessment</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Conducts an assessment of risk, including the likelihood and magnitude of harm, from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information system and the information it processes, stores, or transmits;</li> <li>• Documents risk assessment results in [Selection: security plan; risk assessment report; [Assignment: organization-defined document]];</li> <li>• Reviews risk assessment results [Assignment: organization-defined frequency];</li> <li>• Disseminates risk assessment results to [Assignment: organization-defined personnel or roles]; and</li> <li>• Updates the risk assessment [Assignment: organization-defined frequency] or whenever there are significant changes to the information system or environment of operation (including the identification of new threats and vulnerabilities), or other conditions that may impact the security state of the system.</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>• See sections 1.4 and 3.0 of this document.</li> </ul> <p>[[Add additional relevant information as required.]]</p>
SC-7	<p><b>Boundary Protection</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• Monitors and controls communications at the external boundary of the system and at key internal boundaries within the system;</li> <li>• Implements subnetworks for publicly accessible system components that are physically and logically separated from internal organizational networks; and</li> <li>• Connects to external networks or information systems only through managed interfaces consisting of boundary protection devices arranged in accordance with an organizational security architecture.</li> </ul> <p><b>Response:</b></p> <p>Sec. 15</p>
SC-8	<p><b>Transmission Confidentially and Integrity</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>• The information system protects the confidentiality and; integrity of transmitted information.</li> </ul> <p><b>Response:</b></p> <p>Data transmission of account information in Netpulse is handled via Sec. 15</p>
SI-8	<p><b>SPAM Protection</b></p> <p><b>Control:</b></p> <p>The organization:</p> <ul style="list-style-type: none"> <li>• Employs spam protection mechanisms at information system entry and exit points to detect and take action on unsolicited messages; and</li> <li>• Updates spam protection mechanisms when new releases are available in accordance with organizational configuration management policy and procedures</li> </ul>

ID	SECURITY CONTROLS
	<p><b>Response:</b></p> <p>Netpulse users can choose to disable emails from Netpulse related to goal, challenge, or system messages.</p>
SI-12	<p><b>Information Handling and Retention</b></p> <p><b>Control:</b></p> <ul style="list-style-type: none"> <li>The organization handles and retains information within the information system and information output from the system in accordance with applicable federal laws, Executive Orders, directives, policies, regulations, standards, and operational requirements</li> </ul> <p><b>Response:</b></p> <ul style="list-style-type: none"> <li>Use policy states that all users must comply with IM7700 – Records Management and related procedures, including Fair Dealings guidelines  <a href="http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7700.pdf">http://www.uvic.ca/universitysecretary/assets/docs/policies/IM7700.pdf</a></li> </ul> <p>Information collected through the use of Netpulse Services (user account information and workout data) by members of CARSA will be in the custody and control of Netpulse and subject to the Netpulse Information Handling and Retention polices.</p> <p>Users may cancel their Account at any time via the “Cancel Account” feature of the Services or by sending an email to support@netpulse.com. Netpulse will take steps to delete user information as soon as is practicable, but some information may remain in archived/backup copies for records or as otherwise required by law.</p>

## Appendix C – Netpulse Terms of Use

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<http://www.netpulse.com/terms-of-use>

Welcome to Netpulse. Please read these Terms of Service (the “TOS”) carefully because it is an agreement between you and Netpulse, Inc. (“Netpulse”, which term will include affiliates of Netpulse, Inc.) and governs your use of our website located at [www.netpulse.com](http://www.netpulse.com) and any related domains or subdomains (collectively, the “Site”), our personalized entertainment and workout tracking services accessible via the Site and via use of exercise equipment that contains Netpulse-enabled content or controls, to the extent that such use relates to hardware, software or services provided by Netpulse, and our mobile device application (“App”). The Site, our services and App are collectively called the “Netpulse Services.”

### 1. Acceptance of Terms

By accessing and using the Netpulse Services, you accept and agree to be bound by these TOS. If you do not agree to these TOS and our Privacy Policy, do not use the Netpulse Services.

### 2. Changes to Terms or Services

We may modify the TOS at any time, in our sole discretion. If we do so, we’ll let you know either by posting the modified TOS on the Site or through other communications. It’s important that you review the TOS whenever we modify them because if you continue to use the Netpulse Services after we have posted modified TOS on the Site, you are indicating to us that you agree to be bound by the modified TOS. If you don’t agree to be bound by the modified TOS, then you can’t use the Netpulse Services anymore.

Netpulse is always striving to make the Netpulse Services better and because the Netpulse Services are evolving over time, Netpulse may change, add new features, or discontinue all or any part of the Netpulse Services. This change may happen at any time and without notice.

### 3. Registration and Account Information

You represent that you are (a) 18 years or older with the legal capacity to form a binding contract and be subject to these TOS under the laws of any applicable jurisdiction, and (b) not barred from using the Netpulse Services under applicable law.

If you want to use certain features of the Netpulse Services you’ll have to create an account. You can do this via the Site or through your account with certain third-party social networking services such as Facebook or Twitter (each, an “SNS Account”). If you choose the SNS Account option we’ll create your account by extracting from your SNS Account certain personal information such as your name and email address and other personal information that your privacy settings on the SNS Account permit us to access.

You also agree that you will provide true, accurate, current and complete information for your account as prompted by the Netpulse Service’s registration form, with updates, as applicable. If you provide any information that is untrue, inaccurate, not current or incomplete, or Netpulse has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Netpulse has the right to suspend or terminate your account and refuse to provide you any further access to any portion of the Netpulse Services.

You are responsible for maintaining the confidentiality of the password and account name or ID your register under, and are fully responsible for all activities that occur under your account. Netpulse is not liable for any

failure on your part to comply with the foregoing. You agree to immediately notify Netpulse of any unauthorized use of your password or account or any other breach of security.

#### **4. Health Disclaimer**

The Netpulse Services and the Site may provide physiological data about your body along with information applications and content published over the Internet and are intended only to assist our users with respect to the users' personal health, fitness and wellness efforts. Netpulse is not a medical organization and Netpulse does not and cannot give you medical advice or diagnoses. Nothing transmitted or contained in the Netpulse Services, the Site or through the network of content and exercise-related information provided by Netpulse ("Netpulse Network") should be construed as medical advice or a diagnosis. Any data or reports generated through use of the Netpulse Services should not be interpreted as a substitute for physician consultation, evaluation, or treatment. Netpulse urges you to seek the advice of a qualified physician before beginning any health, fitness & wellness related effort or regimen.

#### **5. Privacy Policy**

Please refer to our Privacy Policy ([www.netpulse.com/privacy-policy/](http://www.netpulse.com/privacy-policy/)) for information on how we collect, use and disclose information from our users.

#### **6. Content and Content Rights**

For purposes of these TOS: (i) "Content" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Netpulse Services; and (ii) "User Content" means any Content that Netpulse account holders (including you) provide to be made available through the Netpulse Services. Content includes without limitation User Content.

Netpulse does not claim any ownership rights in any User Content that you make available through the Netpulse Services and nothing in these TOS will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, Netpulse and its licensors exclusively own all right, title and interest in and to the Netpulse Services and Content, including all associated intellectual property rights. You acknowledge that the Netpulse Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Netpulse Services or Content.

By making any User Content available through the Netpulse Services you hereby grant to Netpulse a non-exclusive, transferable, sublicenseable, worldwide, royalty-free license to use, copy, modify (formatting purposes only), publicly display, publicly perform and distribute your User Content in connection with operating and providing the Netpulse Services and Content to you and to other Netpulse account holders.

You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these TOS. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Netpulse Services, nor any use of your User Content by Netpulse on or through the Netpulse Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You can remove your User Content by specifically deleting it. However, in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.

Subject to your compliance with these TOS, Netpulse grants you a limited, non-exclusive, non-transferable, non-sublicenseable license to access and view the Content solely in connection with your permitted use of the Netpulse Services and solely for your personal and non-commercial purposes.

## 7. Conduct

You understand that all User Content, whether publicly posted or privately transmitted, is the sole responsibility of the person from whom such User Content originated. You understand that by using the Netpulse Services, you may be exposed to Content that is offensive or objectionable. Under no circumstances will Netpulse be liable in any way for any User Content, including, but not limited to, any errors or omissions in any User Content, or any loss or damage of any kind incurred as a result of the use of any User Content posted, emailed, transmitted or otherwise made available via the Netpulse Services.

We ask that you respect the Netpulse community of users and our desire for all users to feel safe when using the Netpulse Services, including any Content. Accordingly, you agree you will not use the Netpulse Services to:

- upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright, privacy, publicity or other proprietary rights of any party;
- upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Netpulse Services or the Netpulse Network;
- upload, post, email, transmit or otherwise make available any material that contains software viruses, "Trojan horses" or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- interfere with or disrupt the Netpulse Services or servers or networks connected to the Netpulse Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Netpulse Services, including using any device, software or routine to bypass our robot exclusion headers;
- intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity.;
- "stalk" or otherwise harass anyone; and/or

- collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs 1 through 10 above.

Although Netpulse is not obligated to monitor access to, or use of, the Netpulse Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Netpulse Services, to ensure compliance with these TOS, or to comply with applicable law or other legal requirements. Netpulse reserves the right, but is not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these TOS. Netpulse has the right to investigate violations of these TOS or conduct that affects the Netpulse Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

You acknowledge, consent and agree that Netpulse may access, preserve and disclose your account information if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce these TOS (iii) respond to your requests for customer service; or (v) protect the rights, property or personal safety of Netpulse, its users or the public.

You understand that the Netpulse Services and software embodied within the Netpulse Services may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Netpulse and/or content providers who provide Content to the Netpulse Services. You may not attempt to override or circumvent any of the usage rules embedded into the Netpulse Services. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Netpulse Services, in whole or in part, is strictly prohibited.

## **8. Rights and Terms for Apps**

Subject to your compliance with these TOS, Netpulse grants you a limited non-exclusive, non-transferable, non-sublicensable license to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal non-commercial purposes. If you would like to install the App on any additional device of yours, you will need to download the App again for the additional device. Netpulse reserves all rights in and to the App not expressly granted to you under these TOS.

### **Additional Terms for App Store Apps**

If you download the App through or from any app store or distribution platform (like the Apple App Store or Google Play) where the App is made available (each, an “App Provider”), then you acknowledge and agree that:

These TOS are concluded between you and Netpulse, and not with the App Provider, and that Netpulse (not the App Provider), is solely responsible for the App.

The App Provider has no obligation to furnish any maintenance and support services with respect to the App.

In the event of any failure of the App to conform to any applicable warranty, you may notify the App Provider, and the App Provider will refund the purchase price for the App to you (if applicable) and to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the App. Any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Netpulse.

The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

In the event of any third party claim that the App or your possession and use of that App infringes that third party's intellectual property rights, Netpulse will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these TOS.

The App Provider and its subsidiaries are third party beneficiaries of these TOS as related to your license of the App, and that, upon your acceptance of the terms and conditions of these TOS, the App Provider will have the right (and will be deemed to have accepted the right) to enforce these TOS as related to your license of the App against you as a third party beneficiary thereof.

You must also comply with all applicable third party terms of service when using the App.

You agree to comply with all U.S. and foreign export laws and regulations to ensure that neither the App nor any technical data related thereto nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the App you represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

You may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App; or (iv) make the functionality of the App available to multiple users through any means.

## **9. Interstate and International Nature of the Netpulse Services**

You acknowledge that in using the Netpulse Services you will be causing communications to be sent through Netpulse's computer networks, portions of which are located in California and other locations in the United States and portions of which may be located abroad. As a result, and also as a result of Netpulse's network architecture and business practices and the nature of electronic communications, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, you acknowledge that use of the Netpulse Services results in interstate data transmissions.

## **10. Contributions to Netpulse**

Netpulse welcomes feedback, comments, ideas, and suggestions for improvements to the Netpulse Services ("Contributions"). You can submit Contributions by emailing us at [feedback@netpulse.com](mailto:feedback@netpulse.com). By submitting Contributions to Netpulse, you acknowledge and agree that: (a) your Contributions do not contain confidential or proprietary information; (b) Netpulse is not under any obligation of confidentiality, express or implied, with respect to the Contributions; (c) Netpulse will be entitled to use or disclose (or choose not to use or disclose) such Contributions for any purpose, in any way, in any media worldwide; (d) Netpulse may have something similar to the Contributions already under consideration or in development; (e) your Contributions automatically become the property of Netpulse without any obligation of Netpulse to you; and (f) you are not entitled to any compensation or reimbursement of any kind from Netpulse under any circumstances.

You hereby assign and agree to assign any rights you may have in your Contributions to Netpulse.

## **11. DMCA/Copyright Policy**

Netpulse respects copyright law and expects its users to do the same. It is Netpulse's policy to terminate in appropriate circumstances Netpulse account holders who repeatedly infringe the rights of copyright holders. Please see Netpulse's Copyright and IP Policy at [www.netpulse.com/copyright-policy/](http://www.netpulse.com/copyright-policy/) for further information.

## **12. Indemnity**

You agree to indemnify, defend and hold Netpulse and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your access to or use of the Netpulse Services or Content, your User Content, your violation of these TOS, or your violation of any rights of another.

## **13. Advertisers**

Your dealings with, or participation in promotions of, advertisers or other third parties found on or through the Netpulse Services, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser or third party. You agree that Netpulse will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings with advertisers or third parties, or as the result of the presence of such advertisers on the Netpulse Network or through the Netpulse Services.

## **14. Links to Third Parties**

The Netpulse Services may contain links to third-party websites or resources. Netpulse provides these links only as a convenience. You acknowledge and agree that Netpulse is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources and agree that Netpulse will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any Content, goods or services available on or through any such website or resource.

## **15. Termination**

We may terminate your access to and use of the Netpulse Services or deactivate or cancel your account, at our sole discretion and without liability to you. You may cancel your Account at any time via the "Cancel Account" feature of the Services or by sending an email to us at [support@netpulse.com](mailto:support@netpulse.com). Upon any termination, discontinuation or cancellation of Netpulse Services or your account, the following provisions of these TOS will survive: sections 4, 6 (with respect to parts of your User Content which won't be deleted as noted in Section 6), 10, 12, 14, 16, 17, 18, 19, 20, 21 and 23.

## **16. Netpulse's Proprietary Rights**

You acknowledge and agree that the Netpulse Services, any necessary software used in connection with the Netpulse Services and Netpulse Network ("Software") and Content provided through the Netpulse Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in advertisements or information presented to you through the Netpulse Services or by advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly permitted by applicable law or as authorized by

Netpulse or the applicable licensor (such as an advertiser), you agree not to modify, rent, lease, loan, sell, distribute, transmit, broadcast, publicly perform or create derivative works based on the Netpulse Services, such Content or the Software, in whole or in part.

Netpulse grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Netpulse Services.

You agree that all of Netpulse's trademarks, trade names, service marks and other Netpulse logos and brand features, and product and service names (collectively, "Netpulse Marks") are trademarks and the property of Netpulse Inc. Without Netpulse's prior permission, you agree not to display or use in any manner the Netpulse Marks.

## **17. Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE NETPULSE SERVICES AND SOFTWARE ARE AT YOUR SOLE RISK. THE NETPULSE SERVICES, CONTENT, THE NETPULSE NETWORK AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, NETPULSE AND OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

NETPULSE AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE NETPULSE SERVICES OR SOFTWARE WILL MEET YOUR REQUIREMENTS; (ii) THE NETPULSE SERVICES, NETPULSE NETWORK OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE NETPULSE SERVICES, CONTENT, THE NETPULSE NETWORK OR SOFTWARE WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE NETPULSE SERVICES OR THE NETPULSE NETWORK WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE NETPULSE SERVICES, THE NETPULSE NETWORK OR SOFTWARE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM NETPULSE OR THROUGH OR FROM THE NETPULSE SERVICES OR SOFTWARE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

## **18. Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NETPULSE AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE, THE COST OF SUBSTITUTE SERVICES OR OTHER INTANGIBLE LOSSES (EVEN IF NETPULSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE NETPULSE SERVICES, CONTENT OR THE NETPULSE NETWORK; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE NETPULSE SERVICES; OR (e) ANY OTHER MATTER RELATING TO THE NETPULSE SERVICES.

IN NO EVENT WILL NETPULSE'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TOS OR FROM THE USE OF OR INABILITY TO USE THE NETPULSE SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID TO NETPULSE FOR USE OF THE NETPULSE SERVICES OR CONTENT OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO NETPULSE, AS APPLICABLE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NETPULSE AND YOU.

## **19. Exceptions to Disclaimers and Limitations**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 14 AND 15 MAY NOT APPLY TO YOU.

## **20. No Third Party Beneficiaries**

You agree that, except as otherwise expressly provided in this TOS, there will be no third-party beneficiaries to this agreement.

## **21. Dispute Resolution**

### Governing Law

These TOS and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions.

### Agreement to Arbitrate

You and Netpulse agree that any dispute, claim or controversy arising out of or relating to these TOS or the breach, termination, enforcement, interpretation or validity thereof or the use of the Netpulse Services or Content (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described

in the foregoing clause (ii), an “IP Protection Action”). The exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts. You acknowledge and agree that you and Netpulse are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and Netpulse otherwise agree in writing, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this “Dispute Resolution” section will be deemed void. Except as provided in the preceding sentence, this “Dispute Resolution” section will survive any termination of these TOS.

### Arbitration Rules

The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “AAA Rules”) then in effect, except as modified by this “Dispute Resolution” section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

### Arbitration Process

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_004175](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175) and a separate form for California residents at [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_015822](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_015822).) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

### Arbitration Location and Procedure

Unless you and Netpulse otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Netpulse submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

### Arbitrator’s Decision

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator’s decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator’s award of damages must be consistent with the terms of the “Limitation of Liability” section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant’s individual claim. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses, to the extent provided under applicable law. Netpulse will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys’ fees and expenses if it prevails in arbitration.

### Fees

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Netpulse will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

## Changes

Notwithstanding the provisions of the “Changes to Terms or Services” section above, if Netpulse changes this “Dispute Resolution” section after the date you first accepted these TOS (or accepted any subsequent changes to these TOS), you may reject any such change by sending us written notice (including by email to support@netpulse.com) within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or in the date of Netpulse’s email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Netpulse in accordance with the provisions of this “Dispute Resolution” section as of the date you first accepted these TOS (or accepted any subsequent changes to these TOS).

## 22. Notice

Netpulse may provide you with notices under these TOS, including those regarding changes to these TOS, including by but not limited to postings on the Netpulse Services, email, SMS, MMS, text message, regular mail or other reasonable means now known or hereafter developed. Such notices may not be received if you violate these TOS by accessing the Netpulse Services in an unauthorized manner. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

## 23. General

Entire Agreement. These TOS constitutes the entire agreement between you and Netpulse and governs your use of the Netpulse Services, superseding and replace any and all prior oral or written understandings or agreements between you and Netpulse with respect to the Netpulse Services and Content. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Netpulse services, affiliate services, third-party content or third-party software, or communicate with third parties such as advertisers

Choice of Law and Forum. You and Netpulse each agree that these TOS and the relationship between the parties will be governed by the laws of the State of California without regard to its conflict of law provisions and that any and all claims, causes of action or disputes (regardless of theory) arising out of or relating to these TOS, or the relationship between you and Netpulse, will be brought exclusively in the courts located in the county of San Francisco, California or the U.S. District Court for the Northern District of California. You and Netpulse agree to submit to the personal jurisdiction of the courts located within the county of San Francisco, California or the Northern District of California, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

Waiver and Severability of Terms. The failure of Netpulse to exercise or enforce any right or provision of these TOS will not constitute a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Netpulse. If any provision of these TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties’ intentions as reflected in the provision, and the other provisions of these TOS remain in full force and effect.

Remedies. Except as expressly set forth in these TOS, the exercise by either party of any of its remedies under these TOS will be without prejudice to its other remedies under these TOS or otherwise.

No Assignment. You may not assign or transfer these TOS, by operation of law or otherwise, without Netpulse's prior written consent. Any attempt by you to assign or transfer these TOS, without such consent, will be null and of no effect. Netpulse may freely assign or transfer these TOS without restriction. Subject to the foregoing, these TOS will bind and inure to the benefit of the parties, their successors and permitted assigns.

No Right of Survivorship and Non-Transferability. You agree that your Netpulse account is non-transferable and any rights to your Netpulse account or contents within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.

Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Netpulse Services or these TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles in these TOS are for convenience only and have no legal or contractual effect.

## **24. Violations**

Please report any violations of these TOS to Netpulse at [privacy@netpulse.com](mailto:privacy@netpulse.com).

## **25. Contact Information**

If you have any questions about these TOS or the Netpulse Services, please contact Netpulse at:

50 Osgood Place Suite 400  
San Francisco, CA 94133  
877-Netpulse ext 2

<http://www.netpulse.com/privacy-policy>

Last Updated: 6/27/2013

This Privacy Policy applies to all of the products and services offered by Netpulse Inc. (“Netpulse,” the “Company,” “we,” and “us,” which terms shall include affiliates of Netpulse, Inc.) via its website located at <http://www.netpulse.com/>, its mobile application and the websites that Netpulse powers for our third party business partners where this Privacy Policy is presented or made available to you. Please see also the Netpulse Terms of Service because capitalized terms not otherwise defined in this Privacy Policy shall have the meaning set forth in the Terms of Service. Protecting your privacy is very important to us. Please read this Privacy Policy carefully before you use the Netpulse Services.

### **1. Information We Collect and How We Use It**

Our primary goals in collecting information are to provide and improve the Netpulse Services, to administer your use of the Netpulse Services (including your account, if you are an account holder), and to enable you to enjoy and easily navigate the Netpulse Services. You may use some of the Netpulse Services without registration or providing any personal information to Netpulse. In order to provide the full personalized range of the Netpulse Services, we may collect the following types of information:

Information you provide – When you sign up for a Netpulse account or other Netpulse Service that requires registration, we may ask you for personal information, which includes personally identifiable information about you (information that can be used to identify you, such as your name and email address). If you choose to create an account through one of your accounts with certain third-party social networking services such as Facebook or Twitter (each, an “SNS Account”), you may have to provide us with your username (or userID) so that your identity can be authenticated by the SNS Account. When the authentication is complete, we’ll be able to link your account with the SNS Account and access certain personal information, such as your name and email address, and other information that your privacy settings on the SNS Account permit us to access. We don’t receive or store passwords for any of your SNS Accounts.

We also collect some non-personally identifying information about you, which on its own cannot be used to identify you, such as your home club, gender, weight, the name of your personal trainer, workout schedule, your workout data (such as the length and intensity of a workout, time of workout, equipment used, calories burned, distance, average speed), other activity and physical data, and an account password.

You have the option to provide additional information, some of which is personally identifying information, such as postal address, phone number, your time zone, a picture for your profile and a short description about yourself, but these items are not required. We also record and store information of your entertainment preferences during your workout, such as your music playlist and favorite TV channels. We may combine your non-personally identifying information with the personally identifiable information you submit to improve our Netpulse Services to you.

Cookies – We collect certain information through the use of “cookies,” which are small text files that are saved by your browser when you access the Netpulse Services. We may use both session cookies and persistent cookies to identify that you’ve logged in to the Netpulse Services and to tell us how and when you interact with the Netpulse Services. We may also use cookies to monitor aggregate usage and web traffic routing on the

Netpulse Services and to customize and improve the Netpulse Services. Unlike persistent cookies, session cookies are deleted when you log off from the Netpulse Services and close your browser. Although most browsers automatically accept cookies, you can change your browser options to stop automatically accepting cookies or to prompt you before accepting cookies. Please note, however, that if you don't accept cookies, you may not be able to access all portions or features of the Netpulse Services. Some third-party services providers that we engage (including third-party advertisers) may also place their own cookies on your browser. Note that this Privacy Policy covers only our use of cookies and does not include use of cookies by such third parties.

Log information – When you access the Netpulse Services, information generated during your session will be automatically recorded and stored on our servers. These server logs may include information such as the webpages you visit within the Netpulse Services, the content you access, the

TV channels you watch and the date and time of your request to access the Netpulse Services.

Goals and challenges information – When you set your goals and/or join a fitness or exercise challenge through the Netpulse Services, we record and store your goal information (name, type, requirement, status, progress) and challenge information (challenges joined, completed, ranking leaderboard including the user names of other competing users).

Netpulse only processes personal information for the purposes described in this Privacy Policy. In addition to the above, such purposes include:

- The display of customized content and advertising;
- Auditing, research and analysis in order to maintain, protect and improve the Netpulse Services and the use of exercise equipment;
- Ensuring the technical functioning of the Netpulse Network;
- Protecting the rights and property of Netpulse or our users; and
- Developing new services.

## **2. Choices for Personal Information**

As noted above, when you sign up for a particular Netpulse Service that requires registration, we ask you to provide personal information. You can decline to submit personal information to any of the Netpulse Services, in which case Netpulse may not be able to provide those services to you. As appropriate, we will offer you a way to opt out of the use of personal information for some purposes.

## **3. Information Sharing**

Netpulse may share your personal information with other companies or individuals outside of Netpulse in the following circumstances:

We have your consent. For example, if you choose to connect your account in the Netpulse Services to other third-party and social networking sites and want to make your public information available on those third-party sites, you may request that we do so via the Netpulse Services. We provide such information to our subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information on our behalf. These parties are subject to appropriate confidentiality and security measures.

We may share some information, including your name, email address, Netpulse Services account ID and workout data (such as the length and intensity of a workout, time of workout, equipment used, calories burned, distance, average speed), with the home club (where you work out) and trainers (who you work out with) you

have designated. In addition, if you access the Netpulse Service via a Netpulse-powered third-party business partner website, that information may be shared with the Netpulse partner as well.

We have a good faith belief that access, use, preservation or disclosure of such information is reasonably necessary to (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, (b) enforce the Terms of Service, including investigation of potential violations thereof, (c) detect, prevent, or otherwise address fraud, security or technical issues, or (d) protect against harm to the rights, property or safety of Netpulse, its users or the public as required or permitted by law. If Netpulse becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, your personal information may be transferred in connection with such transaction, in which case we will use commercially reasonable efforts to ensure the confidentiality of any personal information involved in such transactions and provide notice when your personal information becomes subject to a different privacy policy.

From time to time, you may enter into a challenge or promotion offered via the Netpulse Services. If you do, we will share your name, email address, Netpulse Services account ID and workout data (such as the length and intensity of a workout, time of workout, equipment used, calories burned, distance, average speed) with your home club where the challenge or promotion takes place, so your home club can properly administer the challenge or promotion. We may share with third parties certain pieces of aggregated, non-personally identifying information, such as the number of users who viewed particular content, or the duration and intensity of a workout, for example, for industry analysis, demographic profiling and other similar research and marketing purposes. Such information does not identify you individually or personally. Please contact us as provided below for any additional questions about the management or use of your information.

#### **4. Advertisement**

We use third parties such as Google, Yahoo! and ZoomMedia/ClubCom to serve the advertisements on some of the pages of our website and to the Netpulse Services. Some of these companies and advertisers may place and access their cookies on your computer. Other companies' use of their cookies is subject to their own privacy policies, not ours. We do not share your personally identifiable information with any advertisers. We may use your non-personally identifying information or allow advertisers or companies that serve advertisements access to your non-personally identifiable information so we can better deliver promotional materials that are more relevant to you. This information may include your demographic information, geographic location, what content you access on our site, how you rate various content, language contained in your comments and other information.

#### **5. Privacy Settings**

##### **Public**

You can choose to make information about your activities and achievements via the Netpulse Services available to some other members of Netpulse Services. By choosing to share that information, you are making your information "public" within the Netpulse Services. Only people who are Netpulse members will be able to view, and make comments about, your public information via the Netpulse Services.

Your public information includes: your name, gender, profile picture, home club, your activities (such as workout types, challenges or goals), your achievements (such as workout duration, goals met or challenges completed), your favorites (such as your favorite workout routine or music to listen to during workout), and other users' comments.

##### **Private**

If you do not want to share your information with other members of Netpulse Services, you can simply select to make your information “private.” This setting will not allow other members to view your information.

## **6. Linking to Your Accounts on Third-Party Websites; Sharing Via Social Media**

The Netpulse Services may contain links to other websites and services. Any information that you provide on or to a third-party website or service, including but not limited to fitbit.com or mapmyfitness.com, is provided directly to the owner of the website or service and is subject to that party’s privacy policy. Our Privacy Policy does not apply to such websites or services and we’re not responsible for the content, privacy or security practices and policies of those websites or services. To protect your information we recommend that you carefully review the privacy policies of other websites and services that you access. If you choose to connect your account with your accounts on other websites, including social media websites, some or all of your public information may be shared through this connection.

## **7. Email Settings**

You are in control of the types of emails you will receive from us via the Netpulse Services. For example, you may choose how frequently you want to receive your workout report from us: after each workout, weekly summary, or monthly summary. You can also decide what types of notifications you want to receive from us: your goals, challenges, and/or system messages.

We may also email you newsletters, marketing or promotional materials and other information that may be of interest to you. If you decide at any time that you no longer wish to receive such communications from us, please follow the unsubscribe instructions provided in any of the communications or update your “user preferences” information.

## **8. Information Security**

We take reasonable and appropriate security measures to protect the information we collect from or about you against unauthorized access, use, alteration, disclosure or destruction. Please be aware, however, that no method of transmitting information over the Internet or storing information is completely secure. Accordingly, we cannot guarantee the absolute security of any information.

## **9. Accessing and Updating Personal Information**

When you use the Netpulse Services, we make good faith efforts to provide you with access to your personal information and either to correct this information if it is inaccurate or to delete information at your request if it is not otherwise required to be retained by law or for legitimate business purposes. Please feel free to let us know if you would like your personal information corrected or removed by e-mailing us at [privacy@netpulse.com](mailto:privacy@netpulse.com).

## **10. Unsubscribing Your Account**

You can permanently delete your account by sending us an email to [support@netpulse.com](mailto:support@netpulse.com) to unsubscribe from the Netpulse Services. We’ll take steps to delete your information as soon as is practicable, but some information may remain in archived/backup copies for our records or as otherwise required by law. Please note that we can only delete your information within the Netpulse Services. The information you have shared on 3rd party sites and services, such as your fitness progress shared on Facebook, is not stored in your account with us, even though you share it through Netpulse Services. Therefore this information will remain on those 3rd party sites and services even after you unsubscribe from us.

## **11. International Transfer**

Your personally identifiable information may be transferred to, and maintained on, computers located outside of your state, province, country or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction. If you're located outside the United States and choose to provide your personal identifiable information to us, we may transfer that information to the United States and process it there. Your use of the Netpulse Services and submission of any personal identifiable information represents your agreement to that transfer.

## **12. Our Policy toward Children**

Our Services are not directed to people under 13 and we do not knowingly collect personal identifiable information from children under 13. If we learn that we have collected personal identifiable information of a child under 13 we will take steps to delete such information from our files as soon as possible.

## **13. Changes to This Privacy Policy**

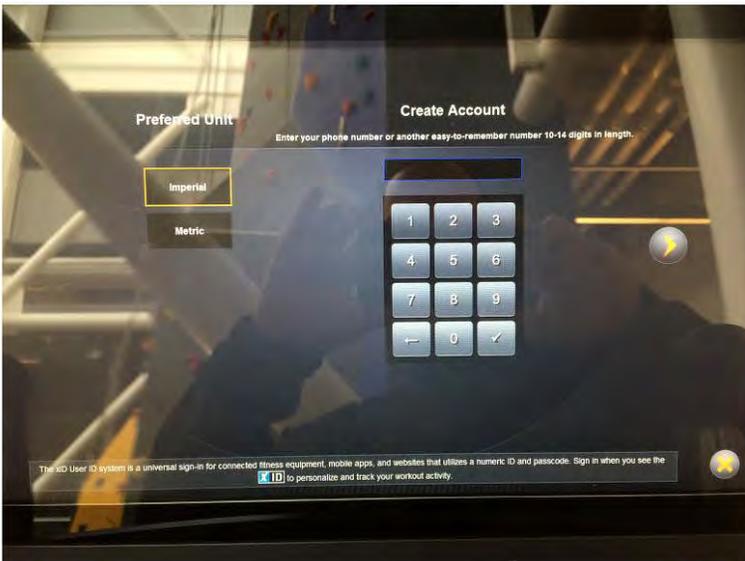
Please note that this Privacy Policy may change from time to time, and you should review it periodically.

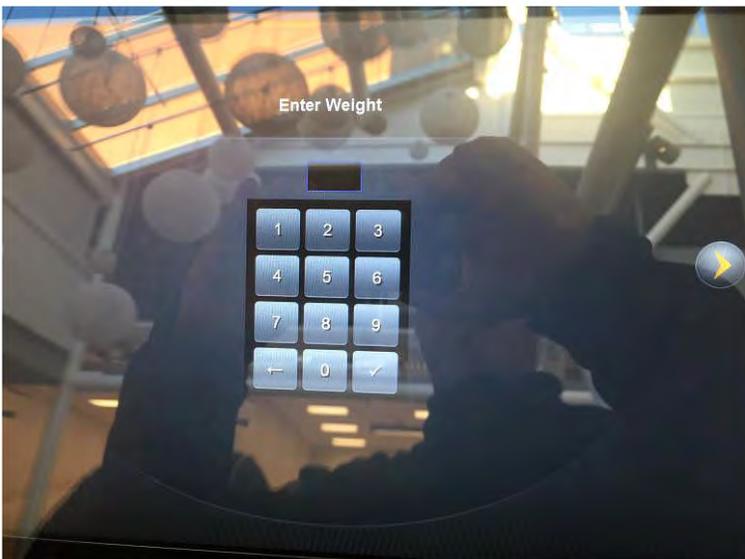
## **14. Questions**

Please feel free to direct any questions or concerns regarding this Privacy Policy or Netpulse's treatment of personal information by contacting us through the Site or by writing to us at:

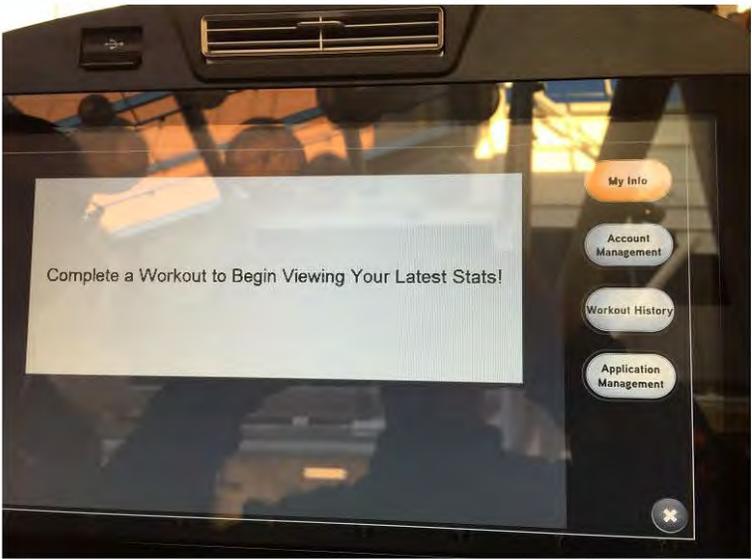
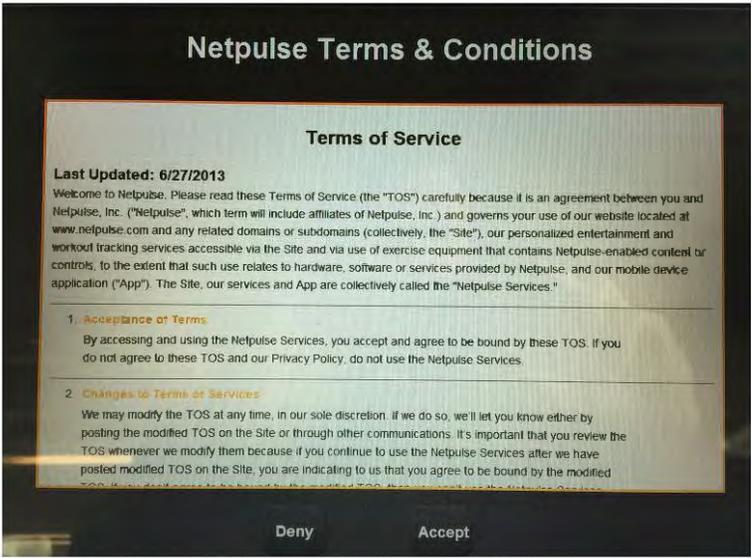
Privacy Matters  
c/o Netpulse  
50 Osgood Place Suite 400  
San Francisco, CA 94133  
privacy@netpulse.com

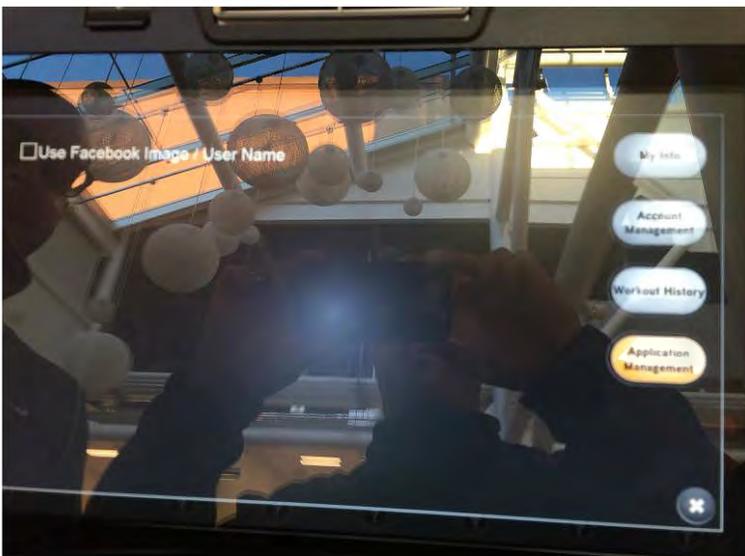
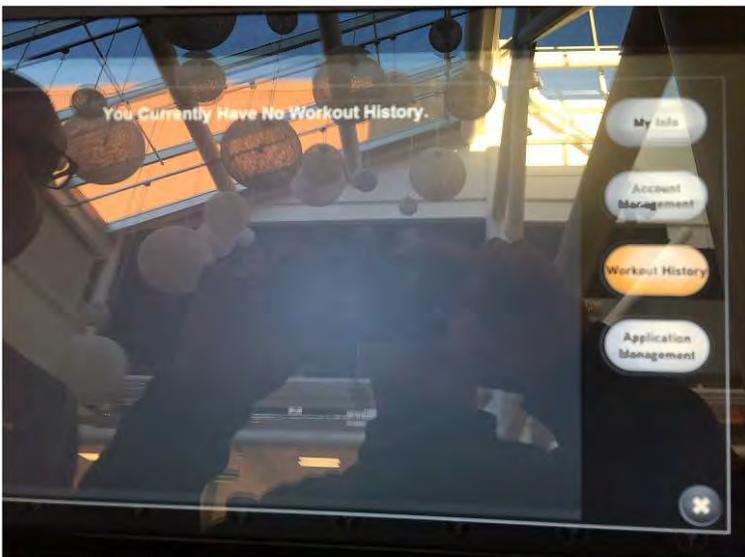
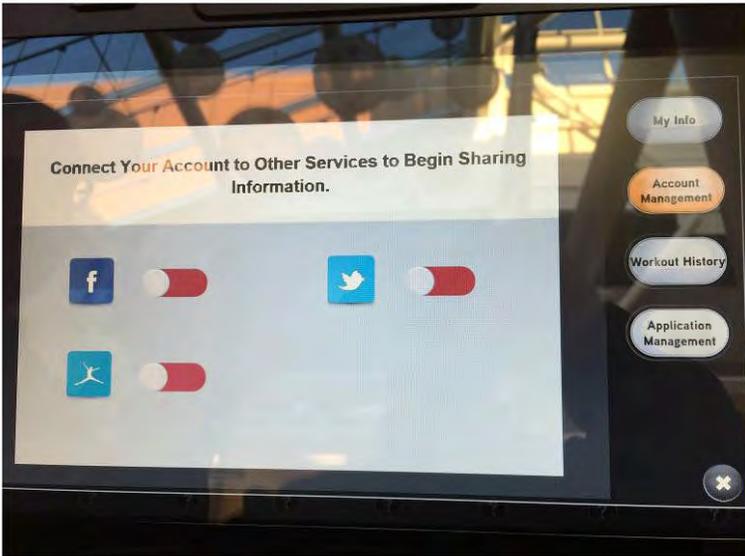
# Appendix E – Screenshots











## Appendix F – References

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The following documents were used in the creation of this PIA.

[1] [Netpulse Getting Connected Guide](#)

[2] [Netpulse Terms of Service](#)

[3] [Netpulse Privacy Policy](#)