

THE FIT LAB APP USER AGREEMENT

These terms and conditions create a contract between the person in whose name the account is created (**you**) and LSCH Group Pty Ltd ACN 612 175 612 trading as The Fit Lab (**TFL/we/us/our**), which is comprised of these terms and our **Privacy Policy** (collectively the **Agreement**). Please read the Agreement carefully. Permission for the person nominated as the user (the **User**) to use the application is conditional upon you agreeing to the terms and conditions set out below. If you do not wish to accept these terms and conditions, you must not click "I Agree" and the User must not use the application. Notwithstanding the foregoing, any use by the User will be considered to be in accordance with the terms and conditions of this Agreement. To confirm your understanding and acceptance of the Agreement, click "I Agree."

You acknowledge and understand that physical training, exercise and nutrition programs involve inherent risks, including risks of bodily harm, injury and illness, including death. It is the sole responsibility of you and the User to ensure that the User is physically able to perform all training and exercise activities in which the User participates and to obtain any needed medical clearances by an appropriately qualified physician or medical/health specialist. To this end, we strongly recommend that the User seeks independent medical advice from a qualified specialist prior to commencing use of the Services.

1. THE SERVICES

- 1.1 The TFL "**Services**" are, collectively, physical training, exercise and nutrition programs made available through our online portal and/or application (the **Programs**) and any services, content, and features made available by us through the portal, the application or the Programs (the **Content**).
- 1.2 TFL grants to you, and you accept, a non-exclusive, non-transferable, limited licence for the User to use the Services strictly in accordance with this Agreement.
- 1.3 The licence provided under this Agreement is personal to you and the User and you must not re-sell, sub-license, rent, lease or otherwise distribute the Services. All other rights in respect of the Services are reserved to us.
- 1.4 The User may only use the Services, the Programs and the Content for personal, non-commercial purposes.
- 1.5 To use our Services, the User needs compatible hardware, software (latest version recommended and sometimes required) and internet access (fees may apply). Our Services' performance may be affected by these factors.
- 1.6 You acknowledge that the terms of agreement with the User's respective internet and/or mobile network provider (**Network Provider**) will continue to apply when using the Services. As a result, the User may be charged by the Network Provider for access to network connection services for the duration of the connection while accessing the Services or any such third party charges as may arise. You accept responsibility for any such charges that arise. If you are not the bill payer for the mobile telephone or device being used to access the Services, you will be assumed to have received permission from the bill payer for using the Services.
- 1.7 Your right for the User to use the Services is subject to your ongoing compliance with all provisions of this Agreement.
- 1.8 If you are not the User, you are responsible for and liable for ensuring that the User complies with all provisions of this Agreement, as if they were named as you in it.
- 1.9 We may add to, alter, change, temporarily suspend or withdraw partially or completely any parts of the Services, the Programs and/or the Content at any time without notice to you, in our sole discretion

2. THE FEES

- 2.1 You agree to pay the fees for the provision of the Services by TFL to the User, as specified by us at the time at which you complete the User's registration to obtain the Services (the **Fees**).
- 2.2 All fees exclude any applicable taxes (including goods and services tax) unless otherwise stated.
- 2.3 TFL may use various billing service providers to collect the Fees. When using their services, you agree to their terms and conditions.

3. TERM OF THE AGREEMENT

- 3.1 In this clause, the word, '**Term**' means the period during which the User will have access to the Services, as specified by us at the time at which you complete the User's registration to obtain the Services.
- 3.2 This Agreement will commence immediately upon you clicking on the "I Agree" button and will continue until the end of the Term or until otherwise terminated by us.
- 3.3 TFL may terminate this Agreement at any time by written notice to you if we cease to offer the Services or if you or the User breach any term or condition of this Agreement.
- 3.4 TFL may suspend the User's access to the Services if any Fees are not paid when they fall due.

4. ADDITIONAL LIMITATIONS OF LIABILITY

- 4.1 The following limitations of liability apply subject to and in addition to the limitations of liability contained in the Terms and Conditions of Membership (if the User is a Fit Lab member):
 - (1) you warrant that if you are not the User, that you accept all responsibility and liability for the User's use of the Services, subject to the terms of this Agreement;

- (2) you warrant that you have advised us of any medical, physical or dietary conditions or issues (or any other matter which reasonably could be considered to be relevant to the User's use of the Services) which the User has or might have. It is your responsibility to update us regarding any changes to these matters in relation to the User, as soon as you become aware of any change;
 - (3) you acknowledge and agree that physical training, exercise and nutrition programs involve an inherent risk of bodily harm, injury or illness (including death) and that in providing the Services, TFL will not be liable for monitoring or supervising the User's use of the Services, the Content and/or the Programs and to this end, TFL accepts no responsibility or liability for any injury, illness or death that results directly or indirectly from the use or misuse of the Services, the Content and/or the Programs by the User or any other party, to the fullest extent permitted by law;
 - (4) you knowingly and voluntarily assume all risk of any bodily harm or injury (including death) which relates in any way to the provision of the Services, the Content and/or the Programs;
 - (5) you acknowledge and agree that TFL will not be liable to you, the User or any other persons for:
 - (a) any loss or damage of any kind that is directly or indirectly caused by or results from your wrongful, wilful or negligent act or omission; or
 - (b) any direct, incidental, special or consequential damages, including loss or profits or anticipated profits, even if notified of the possibility of that potential loss or damage;
 - (6) you release TFL from any liability or claims relating, but not limited to:
 - (a) any personal injury, illness or death caused to the User or any other person; and
 - (b) any breach of your obligations;except to the extent arising from the wilful or negligent acts or omissions of TFL;
 - (7) TFL does not represent or guarantee that the Services will be free from loss, corruption, attack, viruses, interference, hacking, or other security intrusion, and you hereby release TFL from any liability relating thereto;
 - (8) you assume full responsibility for backing-up and/or otherwise protecting the User's data in the Services against loss, damage or destruction; and
 - (9) TFL is not responsible for data charges the User may incur in connection with their use of the Services.
- 4.2 You acknowledge and agree that this Agreement's limitations of liability in clause 4.1 are essential to TFL and TFL would not have entered into this Agreement in their absence.
- 4.3 You indemnify TFL for:
- (1) all losses and expenses we incur (including legal costs on an indemnity basis) we; and
 - (2) all liabilities we incur;
- directly or indirectly caused by, or resulting from any breach of this Agreement or from any wrongful, wilful or negligent act or omission by you or the User.
- 4.4 Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.
- 4.5 Despite clause 4.3, nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on you by the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 4.6 To the fullest extent permitted by law, our liability for a breach of a non-excludable condition or warranty is limited to, at our option:
- (1) the supply of the Services provided for under this Agreement; or
 - (2) the payment of the cost or having the services supplied again.

5. INTELLECTUAL PROPERTY

- 5.1 You agree that the Services, including but not limited to the Programs, the Content, graphics, user interface, audio clips, video clips, editorial content, and the scripts and software used to implement the Services, contain proprietary information and material that is owned by TFL and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Services for personal, non-commercial uses in compliance with this Agreement.
- 5.2 No portion of the Services, the Programs or the Content may be reproduced in any form or by any means, except as expressly permitted by this Agreement. You agree not to modify, rent, loan, sell, or distribute the Services, the Content or the Programs in any manner, and you shall not exploit the Services, the Content or the Programs in any manner not expressly authorised. This clause does not modify, restrict or exclude any additional rights you may have under applicable laws that cannot be so modified, restricted or excluded.
- 5.3 The Fit Lab name and logo are registered trademarks of TFL in Australia. You are granted no right or license with respect to any of these trademarks.
- 5.4 If you believe that any Programs or Content available through the Services infringes the copyright claimed by you, please contact TFL.

6. GENERAL PROVISIONS

- 6.1 You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to the User's use of the Services. The User's use of the Services may also be subject to other laws.

- 6.2 You hereby grant TFL the right to take steps TFL believes are reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement. You agree that TFL has the right, without liability to you, to disclose any data and/or information to law enforcement authorities, government officials, and/or a third party, as TFL believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to TFL's right to cooperate with any legal process relating to your use of the Services, the Programs or the Content, and/or a third-party claim that the User's use of the Services, the Programs or Content is unlawful and/or infringes such third party's rights).
- 6.3 A party waives a right under this Agreement only if it does so in writing. We do not waive a right simply because we fail to exercise the right, we delay exercising the right or only exercise part of the right. A waiver of one breach of a term of this Agreement does not operate as a waiver of another breach of the same term or any other term.
- 6.4 If a provision in this Agreement is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of the provision that is invalid or enforceable must, to that extent, and in that jurisdiction, be treated as deleted from this Agreement. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction. If you are a qualified public educational or government institution and any part of this Agreement is invalid or unenforceable against you because of applicable local, national, state or federal law, then that portion shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law.
- 6.5 We may assign or otherwise deal with the benefit of any contract made pursuant to this Agreement without your consent.
- 6.6 TFL may subcontract with one or more affiliates or third parties to provide any service required to be provided by TFL under this Agreement, provided that no such use of subcontractors shall relieve TFL of its obligations under this Agreement.
- 6.7 You may not assign your rights and obligations under this Agreement under any circumstances without first obtaining our written consent to do so. Any purported assignment not undertaken in accordance with this clause will be invalid.
- 6.8 All contracts made between us and you shall be governed by and construed in accordance with the laws of the State of Queensland. You agree to submit to the exclusive jurisdiction of the Queensland courts for all purposes of or in connection with such contracts.