

STANDARD TERMS AND CONDITIONS

These standard terms and conditions (the “Agreement”) are incorporated within the Master Vendor Agreement executed between Company and the Customer named therein. This Agreement incorporate in whole the Order Form and Terms of Service (available at <https://fitprotracker.com/terms-of-service>).

1. Definitions.

“**Third Party**” or “**Third Parties**” means any person or entity not employed by the Company.

“**Administrator**” means the Authorized User(s) designated by Customer who are responsible for administering the Subscription Service and who are issued an Administrator login.

“**Agreement**” means these terms and conditions, the Exhibits attached hereto and any other statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.

“**Authorized Users**” means individuals who are authorized by Customer to use the Subscription Service, for whom subscriptions to a Subscription Service have been purchased and who have been supplied user identifications and passwords by Customer. As set forth in the Master Vendor Agreement, each Franchisee is an Authorized User.

“**Customer**” means the Customer entity that has executed this Agreement and is authorized to use the Subscription Service.

“**Customer Content**” shall mean any materials uploaded by Customer onto the Subscription Service or by a third party on Customer’s behalf at any time, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text. This includes content owned by any equipment manufacturer, supplier or service provider of the Company. Customer assumes sole responsibility for ensuring that the Customer Content does not infringe or violate any right of any third party. Notwithstanding the foregoing, the Company reserves the right, in its sole discretion, to exclude or remove from the Subscription Service any Content uploaded by Customer which, in the Company’s sole reasonable discretion, may violate any law or third party rights or which otherwise exposes or potentially exposes Company to civil or criminal liability or public ridicule.

“**Customer Data**” means all electronic data or information submitted, uploaded, imported, processed through, collected from, made available by, produced by or resulting from Customer’s use of the Subscription Service or its Authorized Users including administrative users, employees, managers, manager users, and Third Parties regardless of whether or not the Customer Data is owned by Customer during the Term. Customer Data includes: (i) Customer records, data files, input materials, reports, forms and other such items that may be received, computed, processed, or stored by Company, in the performance of the Subscription Service under this Agreement; or (ii) any information relating to an identified or identifiable natural person including a Third Party defined as an identifiable person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity. This includes administrative users, authorized users, and Third Parties. Customer Data may include name, email addresses, telephone numbers, information related to logging in to the Subscription Service, birth dates, social security numbers, and personally identifiable information (PII) including financial information,

and protected health information covered under HIPAA. All Customer Data has been designed, created and provided solely by Customer or by Third Parties on its behalf without the participation or involvement of Company.

“Deliverables” means any copyrightable works, products, discoveries, developments, designs, work-product, deliverables, improvements, inventions, processes, techniques and know-how made, conceived, reduced to practice or learned by Company that result from Professional Services, including in any Order Form or Statement of Work, as provided to Customer hereunder.

“Documentation” means the administrative and user manuals published by Company and provided by Company to Customer with the Subscription Service, which may be updated from time to time, but excluding any sales or marketing materials.

“Electronic Communications” means any information transmitted in whole or part, electronically received and/or transmitted through the Subscription Service.

“Professional Services” means services provided to Customer other than the Subscription Services performed by Company as set forth and described in any Order Form or Statement of Work.

“Subscription Service” means the Company’s web-based hosted platforms including, but not limited to online marketing, leasing, resident services platform, and various add-on components and services which are made available by Company as a software as a service (SaaS) offering via a Customer log-in to a web access designated by Company.

“Subscription Term” means the term of authorized use of the Subscription Service established and governed by this Agreement. All Subscription Terms, regardless of Order Form execution date, will be eligible for renewal within the dates and term established by this Agreement pursuant to Paragraph 10.

“Third Party Integrated Services” means applications or services that are provided and managed by third party service providers, and interoperate with the Subscription Service including but not limited to any third party that enables the Subscription Service to act as a conduit to send Customer Data or any type of information to the intended party.

2. Access; Limited Rights

2.1 Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, the Company hereby grants to Customer and Customer accepts from the Company, a limited, revocable, non-exclusive, non-transferable license (the “License”) to access and use the Subscription Service solely for the internal business operations of Customer and its Affiliates during the Term submitted by Customer and accepted by the Company. The Subscription Service shall not be used by Customer or by Authorized Users for, or on behalf of, third parties that are not authorized under this Agreement. Customer shall use its best efforts to ensure that the Authorized Users use the Subscription Service in accordance with the terms and conditions of this Agreement. Customer acknowledges that its right to use the Subscription Service will be web-based only pursuant to the terms of this Agreement and that the Subscription Service will not be installed on any servers owned or controlled by Customer or otherwise provided to Customer without the Company’s consent.

2.2 Authorized Users: Passwords, Access, and Notification. Customer, through its Administrator, shall authorize access to and assign unique passwords and user names for all employees authorized to access

the Subscription Service. Authorized User logins are for designated Authorized Users and cannot be shared or used by more than one Authorized User. Customer is solely responsible for the confidentiality and use of Authorized User's passwords and user names. The Company will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service and shall promptly notify the Company of any unauthorized access or use of the Subscription Service and any loss or theft or unauthorized use of any Authorized User's password or name and/or Subscription Service account numbers.

2.3 Use of the Subscription Service. Customer represents, covenants, and warrants that Customer will use the Subscription Service only in compliance with the Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Company has no obligation to monitor Customer's use of the Subscription Service, and the Company may do so and may prohibit any use of the Subscription Service it believes may be (or alleged to be) in violation of the foregoing. Customer is solely responsible for its Authorized Users' compliance with this Agreement and the Terms of Service which are incorporated herein, and for all activities and Electronic Communications conducted by its Authorized Users, including the content of all Customer Data. Customer will not: (a) sell, lease, license or sublicense the Subscription Service; (b) introduce into or transmit through the Subscription Service any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents, or programs; (c) transmit or store infringing material in the Subscription Service; (d) send any Electronic Communication from the Subscription Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Subscription Service may be copied, republished, displayed in any form or by any means. Customer agrees not to access the Subscription Service by any means other than through the interfaces that are provided by the Company.

2.4 Customer Equipment. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Subscription Service, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

2.5 Third Party Integrated Services. The Company allows third party vendors, third party service providers, software developers and information systems companies to provide applications, websites and/or features via the Subscription Service ("Integrated Service" or "Integrated Services"). The Company may offer Integrated Services by either (i) licensing technology from a third party and embedding it in the Subscription Service; or (ii) establishing a connection or conduit with third party providers' software platform or information system enabling the Subscription Service to send Customer Data or any type of information to the intended party. (i) and (ii) are collectively the "Embedded Technology").

Customer consents to use the Embedded Technology with the Subscription Service. In order to use and subscribe to Embedded Technology, Customer may be required to agree to additional terms and conditions specific to that Embedded Technology.

Integrated Services. Customer acknowledges that: (i) in order to use certain Integrated Services, there may be additionally applicable terms and conditions including those which may establish a direct contractual relationship between Customer and an Integrated Services third party provider; and (ii); Uptime (as defined in the attached Service Terms), availability and support of Integrated Services are

excluded from the attached Service Terms but may be provided by an Integrated Services third party provider. If subscribed for Integrated Services, Customer agrees Company may allow the provider(s) of such Integrated Services to access Customer's Data as required for the interoperation of that Integrated Service with the Subscription Service. Customer acknowledges Company is not responsible for any disclosure, modification or deletion of Customer's Data resulting from access by an Integrated Service within the Subscription Service. The Company does not warrant or support Integrated Services, whether or not they are designated as "certified" or otherwise, except as specified in an Order Form or a specific addendum related to the Integrated Service.

Embedded Technology will be used among other ways to collect data and information ("Third Party Information") from various systems: (i) to identify opportunities in the third party information to be utilized by Customer while using the Subscription Service; (ii) to make improvements to the software underlying the Subscription Service; and (iii) to measure Key Performance Indicators (KPIs). Company has no duty to verify the accuracy or reliability of all such third party information and KPIs and shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, or claim caused by Customer or any third party's reliance on any such third party information and KPIs.

2.6 Hosting Center Facilities. The hosting center facilities supporting the Subscription Service, all related applications and the Third Party Integrated Services where applicable and delivered by Company for usage by the Customer shall be provided for and managed by a third party vendor ("third party vendor") not a party to this Agreement. Company shall not be liable in respect of any breach or error in delivery, loss, damage or interruption to the Subscription Service, related applications, or Third Party Integrated Services during the Subscription Term of this Agreement caused by the third party vendor. Customer shall immediately notify Company in writing of any such error, loss, breach, damage or interruption. Company shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, defect or interruption to the Subscription Service caused by the third party vendor.

2.7 Security. Each party will use commercially reasonable measures to maintain and enforce physical and logical security procedures to prevent unauthorized access to and/or use of the Subscription Service and the Customer Data. Company will use commercially reasonable measures to secure and defend the Subscription Service against "hackers" and others who may seek to modify or access the Subscription Service or the Customer Data without authorization. Company will use commercially reasonable efforts to remedy any breach of security or unauthorized access. Company shall not be responsible or liable for the disclosure of or unauthorized access to Customer Data caused by Customer, its Authorized Users, Customer's affiliates, or the employees, agents or contractors of any of the foregoing.

2.7 Transmission of Data. The Subscription Service allows Customer to send and receive Electronic Communications and Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Subscription Service. Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Company. Company is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data across networks not owned and/or operated by Company, including but not limited to, the Internet and Customer's local network.

2.8 Service Terms. Company's commitment to the service terms of the Subscription Service and related matters are specified on the "Service Terms" attached hereto as Exhibit A (the "Service Terms"), which is hereby incorporated by reference.

2.9 Implementation Services. Implementation and training services will be performed in accordance with the Company's customary practices for the level of services purchased. Implementation is performed remotely unless otherwise specified.

3. Customer Content and Data.

3.1 Content. Customer shall not place nor cause to be placed on the Subscription Service any Content that contains any content or materials which is obscene, threatening, malicious, which infringe on or violate any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes the Company to civil or criminal liability. Further, Customer represents and warrants that (a) Customer Content does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of any third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other party right, and (b) Customer owns the Customer Content or otherwise has the right to use the Customer Content.

3.2 Ownership of Customer Content. Customer represents to Company and unconditionally guarantees that the Customer Content, including any elements of text, graphics, photos, designs, trademarks, or other artwork uploaded onto the Subscription Service are owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend the Company from any claim or suit arising from the use of such elements furnished by the Customer.

3.3 Ownership of Customer Data.

Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data entered, submitted, uploaded and imported into the Subscription Service. The Company assumes no responsibility for the accuracy, propriety, or usefulness to Customer of the Customer Data. The Company shall not be liable to Customer or any third-parties for any loss, damage or expense whatsoever and howsoever arising from any Customer Data entered into the Subscription Service by Customer or by an entity on its behalf. Customer acknowledges that Company will rely on the accuracy of the Customer Data provided to Company by Customer as it performs its requested functions under this Agreement. Customer acknowledges that it owns all of the Customer Data or has all rights to grant such licenses to Company to use such Information in furtherance of providing the Subscription Service without infringement or violation of any third party rights. The Company provides no warranties, representations or indemnification to Customer for its access to, and use of the Customer Data.

3.4 Limited License to Customer Data. Subject to the terms and conditions of this Agreement, Customer grants Company the limited, non-exclusive, non-transferable terminable license to copy, store, record, transmit, maintain, display, view, print, or otherwise use Customer Data, but only to the extent reasonably necessary to provide the Subscription Service to Customer and to improve the Subscription Service. The Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Subscription Service and related systems and technologies (including, without limitation, information concerning Customer Data and data derived

therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Subscription Service and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

3.5 Company's and Customer's Use of Customer Data. Subject to the license grant in Section 3.4, both Company and Customer pursuant to the Subscription Service shall collect, process, and store the Customer Data only to the extent necessary in use of the Subscription Service. Company shall collect, process, and store the Customer Data as set forth in Company's Privacy Policy available at <https://fitprotracker.com/privacy-policy>. Both parties shall: (a) keep and maintain the Customer Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose the Customer Data solely and exclusively in the use of the Subscription Service and to improve the Subscription Service; (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available the Customer Data to third parties except if necessary to provide the Subscription Service to Customer and to improve the Subscription Service; and (d) ensure that it uses the Customer Data solely and exclusively in the use of the Subscription Service.

The information or Customer Data collected by Customer's use of the Subscription Service shall remain the sole and exclusive property of the Customer unless Company is requested by a government agency or authority, subpoena or court order to produce the both the Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. The Company will not use the Customer Data for any purpose other than to provide the Services to Customer and to improve the Subscription Service.

4. Confidentiality

4.1 Confidential Information. For purposes of this Agreement, "**Confidential Information**" shall include the terms of this Agreement, Customer Data, each party's proprietary technology, software, code, business processes and technical product information, designs, issues, all communication between the Parties regarding the Subscription Service and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; (5) is independently developed by the Receiving Party without use of or reference to the Confidential Information, or (6) is aggregated, de-identified data that does not contain any personally identifiable or Customer-specific information. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of the Company includes non-public information regarding the features, functionality and performance of the Subscription Service including the source code and the underlying Software used to provide the Subscription Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information

after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 Non-Disclosure Obligations. Each party agrees: (a) not to use or disclose Confidential Information except to the extent reasonably necessary to perform its obligations or exercise rights under this Agreement or as directed by the disclosing party; (b) to protect the confidentiality of Confidential Information in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information), and (c) to make Confidential Information available to authorized persons only on a “need to know” basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or a regulation.

5. Ownership and Intellectual Property

5.1 Ownership of the Subscription Service and Additional Services. Customer agrees that all rights, title and interest in and to all intellectual property rights in the Subscription Service and Additional Services and Documentation (including without limitation the software used to provide the Subscription Service) are retained and owned exclusively by the Company or its licensors. In addition, Company shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Subscription Service and Additional Services and its other product and service offerings any ideas, suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the operation of the Subscription Service and associated services. Any rights not expressly granted herein are reserved by Company.

5.2 Trademarks. The Company service marks and trademarks, logos and product and service names are marks of the Company (the “Fit Pro Marks”). Customer agrees not to display or use the Fit Pro Marks in any manner without the Company’s express prior written permission. The trademarks, logos and service marks of owners of the Integrated Services and of the Embedded Technology (collectively, “Third Party Marks”) are the property of such third parties. Customer is not permitted to use these Third Party Marks without the prior written consent of such third party who may own the Third Party Marks. Except the right to use the Subscription Service, as expressly provided herein, this Agreement does not grant to Customer any rights to, or in, patents, copyrights, personal database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Subscription Service or the software used to provide the Subscription Service. Customer shall not attempt, or directly or indirectly allow any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Subscription Service in any form or media or by any means.

5.3 Ownership of Deliverables and License Grant. If Professional Services are included in any Order Form and mutually agreed upon Statement of Work (a “Statement of Work”) to create any derivative versions (“Deliverables”) of the Subscription Service, Customer acknowledges and agrees that Company

owns all of the intellectual property rights in the Deliverables and Documentation including without limitation any pre-existing materials and Confidential Information supplied by Customer for incorporation into such Deliverable and the software used to provide the Deliverables. Any modification, enhancement, derivative work, or other improvement of or based upon the Subscription Service, which includes a Deliverable, whether developed by or for Company or Customer, will be Company's exclusive property and Customer hereby irrevocably and in perpetuity assigns to Company all worldwide rights, title, and interest therein.

The Company grants to Customer a revocable, royalty-free, non-exclusive, non-transferable, non-assignable right to use any Deliverable if an Order Form has been executed, to the extent necessary to permit Customer to use the Deliverable in connection with the Subscription Service during the Term the Agreement. The Company grants to Customer a revocable, royalty-free, non-exclusive, non-transferable, non-assignable right to use any Deliverable if an Order Form has been executed, to the extent necessary to permit Customer to use the Deliverable in connection with the Subscription Service during the Term until such time that the Agreement ends or is terminated then Customer shall cease using any enhancements, modifications, adaptations and derivative works made by or for Customer and Customer shall return all such products to the Company immediately. Customer acknowledges that nothing in this Agreement will restrict or limit Company from performing similar services and creating similar Deliverables for any third party.

5.4 No Work Made for Hire.

(a) *Work Product is Not a Work Made for Hire.* Customer agrees that no Work Product will be developed from a Deliverable as a "work made for hire." As such, copyright and all other intellectual property rights vest with Company when the Deliverable is fixed in a tangible medium of expression. In the event that Customer is ever determined to own copyrights or other intellectual property rights in the Deliverable, Customer hereby: (i) irrevocably assigns to Company all rights, title, and interest that Customer might have in the Deliverable; (ii) agrees to execute all documents necessary to implement and confirm the letter and intent of this Section; and (iii) irrevocably appoints Company as Customer's attorney-in-fact to execute any ownership documents to perfect such ownership interests of Company, such right being coupled with an interest.

(b) *Deliverable as Confidential Information.* The Deliverables are deemed to be Company's Confidential Information hereunder and, except as permitted herein, must not be disclosed by Customer without Company's express written approval. Customer may use the Deliverable for any internal business purpose and Customer may disclose the Deliverable to any contractor or vendor of Customer that assists Customer with its internal business affairs and operations, provided that Customer first binds such third party contractor or vendor to the same restrictions on use and disclosure of the Deliverable contained here. Any other disclosure or publication of any Deliverable requires Company's prior written consent.

6. Payment Terms

6.1 Fees. The fees for the Services provided pursuant to this Agreement (the "Subscription Fees") shall be payable monthly in advance. The Subscription Fees are set forth on the Order Form.

6.2 Your Fee payments are due in accordance with our standard billing procedures. Should collection proceedings become necessary, you agree to pay all reasonable costs and attorney fees incurred in enforcing collection. You may request additional services for additional monthly service fees. Should additional services be added, they will automatically become incorporated in this Agreement, and the

additional service fees will be added to the monthly invoice. We maintain the right to increase our Fees at any time by giving notice of each increase to you. We have the right to restrict the access of any and all users from the Subscription Service should you fall in arrears on any Fees. We have the right to terminate any or all Subscription Services in the event you are delinquent thirty (30) days or more on payment of any Fees without notice. In the event of termination, any and all rights, licenses, and access to use the Subscription Service, and any add-on components and services shall immediately terminate. All Subscription Fees are non-refundable. For the avoidance of doubt, you acknowledge and agree that you are responsible for all payments to Company regardless of any failure to pay or receive funds from any Authorized User or account status.

6.3 Late Payments. The Company also reserves the right to charge Customer a collection administration expense fee of \$25 per property per month. Customer shall not offset any amounts owed under an Order Form or Statement of Work against any other Order Form or Statement of Work.

6.4 Adjustment to Fees. The Company reserves the right to increase its fees under an Order Form by providing Customer with written notice of such price increase delivered not less than 90 days prior to the expiration of the initial term or any renewal term as established by Section 10 of this Agreement.

6.5 Special Exclusion: Adjustment to Fees Outside of Company's Control. From time to time, regulatory, tax, industry-mandated, vendor specific or other charges or fees impacting products and services provided by Company may change, requiring Company to include new charges or fees in the Subscription Fee in order to continue providing services. These charges and fees may take place at any time and Company reserves the right to pass these fees along to Customer as they occur. Company will make commercially reasonable efforts to communicate fee changes in advance in a timely manner.

6.6 Taxes. All Fees payable under the applicable Order Form are net amounts and do not include taxes or duties of any kind. Customer will be responsible for, and will promptly pay, any applicable duties, sales tax, use tax, and value added taxes (VAT) or other similar taxes, if any, associated with this Agreement or Customer's receipt or use of the Subscription Service, excluding taxes based on Company's gross or net income or franchise taxes. In the event that Company is required to collect or pay any tax for which Customer is responsible, Customer will pay such tax directly to Company. If Customer is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Customer will provide Company with any required documentation to verify its tax-exempt status with the applicable taxing authorities.

7. Warranties

7.1 Warranty of Subscription Service Functionality. Company warrants that (i) each Subscription Service will achieve in all material respects the functionality described in the Documentation and Service Terms applicable to such Subscription Service purchased by Customer, and (ii) such functionality of the Subscription Service will not be materially decreased during the Subscription Term. Customer's sole and exclusive remedy for Company's breach of this warranty shall be that Company shall be required to use commercially reasonable efforts to modify the Subscription Service to achieve in all material respects the functionality described in the Documentation and if Company is unable to restore such functionality, Customer shall be entitled to terminate the applicable subscription to use the Subscription Service and receive a prorated refund of any prepaid subscription fees paid under this Agreement for its use of the Subscription Service for the remaining terminated portion of the Subscription Term. Company shall have no obligation with respect to a Subscription Service warranty claim unless notified of such claim within

sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to Company Customer Support. The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Subscription Service has been utilized in accordance with this Agreement and applicable law.

7.2 Beta Versions. Any program, feature, service, or portion thereof that is provided as a “beta” version or similar designation is provided “as is” and without any warranties, notwithstanding anything to the contrary herein, and Company has no obligation to provide support, maintenance, upgrades, modifications or new releases therefor.

7.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 2 AND 7.1, ALL MATERIALS AND SERVICES, INCLUDING THE SUBSCRIPTION SERVICE, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES, ARE PROVIDED “AS-IS” AND “AS AVAILABLE.” THE COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

TO THE EXTENT PERMITTED BY LAW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES, OR SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

8. Limitations of Liability. CUSTOMER ASSUMES THE ENTIRE COST OF ANY DAMAGES RESULTING FROM CUSTOMER’S USE OF SUBSCRIPTION SERVICE, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES (THE “SERVICES”), THE INFORMATION CONTAINED IN OR COMPILED IN THE SERVICES, THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE WHETHER PROVIDED BY COMPANY OR A THIRD PARTY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT WILL COMPANY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, EXEMPLARY, INDIRECT, RELIANCE, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, BUSINESS OPPORTUNITIES, LOSS OR CORRUPTION OF BUSINESS INFORMATION OR ANY PERSONAL OR CUSTOMER DATA, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION, IMPAIRMENT OR FAILURE, REPAIR COSTS, TIME VALUE OR OTHER PECUNIARY LOSS, OR LOSS OF LIFE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE SERVICES, OR THE INCOMPATIBILITY OF THE SERVICES WITH ANY HARDWARE, SOFTWARE OR USAGE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. TO THE EXTENT PERMITTED BY LAW THE

EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, OR SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION OR ARBITRATOR AND COMPANY BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED COMPANY'S TOTAL LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE TOTAL AMOUNT PAID IN SUBSCRIPTION FEES TO COMPANY UNDER THIS AGREEMENT FOR THE THREE MONTHS PRIOR TO A CLAIM OF DAMAGES BEING BROUGHT BY CUSTOMER WHETHER IN CONTRACT, TORT OR OTHERWISE.

9. Indemnification

9.1 Company's Indemnity. The Company shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Subscription Service, as used in accordance with the terms and conditions of this Agreement, infringes the copyrights, trade secrets, patents or trademarks of such third party and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim. Excluded from these indemnification obligations are Claims to the extent arising from: (a) use of the Subscription Service in violation of this Agreement or applicable law, (b) use of the Subscription Service after Company notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Subscription Service not made by Company, or (d) use of the Subscription Service in combination with any software, application or service not provided by Company. If a Claim is brought or threatened, Company shall, at its sole option and expense, use commercially reasonable efforts either: (a) to procure for Customer the right to continue using the Subscription Service without cost to Customer; (b) to modify or replace all or portions of the Subscription Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if the remedies described in (a) and (b) above are not commercially feasible, terminate the Agreement and provide to the Customer any pro-rata refund of the Subscription Service subscription fees pre-paid under the Agreement for the remaining terminated portion of the Subscription Term. The rights and remedies granted to Customer under this Section 9.1 state Company's entire liability, and Customer's sole and exclusive remedy, with respect to any claim of infringement of the intellectual property rights of any third party. For the avoidance of doubt, Company does not and will not indemnify Customer from or against any Claims or losses of any kind related to any beta program, feature, service, or portion as described in Section 7.2.

9.2 Customer's Indemnity. Customer shall, at its own expense, defend and hold harmless Company from and against any and all Claims, Damages, Losses or Lawsuits alleging: (i) the Customer Data, Customer Content or any Customer trademarks or service marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party; (ii) Customer's use and misuse of the Subscription Service; and (iii) Customer's failure to pay all applicable taxes associated with Customer's use of the Subscription Service. Customer shall defend and hold Company harmless from and against liability for any Losses to the extent based upon such Claims.

9.3 Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section 9, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's expense, with the

indemnifying party in the investigation and defense of such Claim. The indemnification obligations under this Section 9 are expressly conditioned upon the indemnified party's compliance with this Section 9.3.

10. Subscription Term and Termination.

10.1 Term. The Initial Subscription Term ("Initial Term") of this Agreement shall be one year from the Effective Date of the Subscription Service described in an executed Order Form and shall be automatically renewed for successive thirty days (each, a "Renewal Term," and together with the Initial Term, the "Term") until this Agreement is terminated as outlined in section 10 of this agreement.

10.2 Termination by Customer. In the event of any termination of this Agreement for any reason, all provisions of this Agreement whose meaning require them to survive shall survive the expiration or termination of this Agreement, including, but not limited to, any payment obligation accrued by Customer hereunder. Any licenses granted hereunder and all services shall terminate effective upon the date of termination. Should Customer terminate this agreement prior to the renewal period and/or the expiration of the current agreement period, Customer shall be obligated to pay the remaining balance of monies to Company for all active franchised locations and for all remaining months of the current agreement. Upon proper notice of termination and non-renewal of the Master Vendor Agreement, if Customer desired to migrate its franchised locations away from Fit Pro Tracker, Customer shall pay the then current pricing of CRM data and Billing tokens (sometimes referred to as "exit files"). Pricing for CRM data and Billing tokens can be found at <https://fitprotracker.com/terms-of-service>

10.3 Termination By Company. Company shall have the right to terminate the Agreement if Customer is delinquent thirty (30) days or more on the payment of any Fees owed without notice. Company shall also have the right to terminate the Agreement if a Customer or any person or entity on its behalf misuses the Subscription Service or violates paragraph 5 of this Agreement. In the event of termination, any and all rights, licenses, and access to use the Subscription Service, and any add-on components and services shall immediately terminate.

10.4 Suspension of Subscription Service. Notwithstanding any other provision contained in this Agreement, if Customer fails to pay any Fees when due, then in addition to any other rights and remedies available to Company hereunder or at law or in equity, Company may suspend the Subscription Service or Professional Services under any and all Order Forms and Statements of Work then in effect until all outstanding past due amounts are received by Company. Customer will continue to be charged for monthly subscription, transaction, Customer and any associated late fees during any period of suspension. Company also reserves the right to impose a service reconnection fee in the amount of \$250per property in the event that any service is suspended and thereafter reactivated.

11. Non-Solicitation. Customer agrees that during the Term and for a period of twelve (12) months thereafter, neither Customer nor any of its Affiliates shall solicit any employee or subcontractor of Company to leave his/her/its employment or engagement with Company, or hire or engage as an employee, consultant, independent contractor or in any other capacity, any employee or subcontractor of Company, without the prior written consent of Company. In the event that Customer violates the foregoing, it shall pay liquidated damages to Company in an amount equal to the first year's compensation to such individual following such hire or engagement in violation of this provision. General recruitment activities which are in no way targeted at the employee's or former employees of Company shall not be deemed a prohibited solicitation under this Section.

12. General Provisions.

12.1 Compliance with Laws. Customer agrees to, and will be solely responsible for: (i) compliance by Customer with all laws and governmental regulations affecting Customer's business, (ii) using the Subscription Services in a manner to assist it in complying with same, and (iii) the content and accuracy of all reports and documents prepared in whole or in part by using the Subscription Services. Customer will review any calculations made by using the Subscription Service and satisfy itself that those calculations are correct. The Subscription Service is not a substitute for the advice of an attorney and does not include any legal, regulatory, accounting or tax advice and Customer and its affiliates will rely solely upon their own advisors with respect to any such advice. Customer agrees and acknowledges that Company is not a law firm, does not provide legal advice or representation, and that no attorney-client relationship exists or will be formed between Company and Customer.

12.2 Survival. Sections 2, 4, 5, 7, 8, 9, 10, and 12 and any other provisions necessary to interpret the respective rights and obligations of the parties hereunder will survive any termination or expiration of this Agreement, regardless of the cause of such termination or expiration.

12.3 Notices. Notices between the parties will be by personal delivery, courier, facsimile transmission, or certified or registered mail, return receipt requested, and will be deemed given upon receipt at the address of the recipient party or ten (10) days after deposit in the mail. Addresses used will be the ones set forth above or such other address as a party hereto will notify the other in writing.

12.4 Severability. In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement, and further agree to substitute for the invalid provision a mutually agreeable valid provision that most closely approximates the intent of the invalid provision.

12.5 No Export. Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

12.7 Relationship; No Third Party Beneficiaries. Each party hereto is an independent contractor, and neither party is, nor will claim to be, a legal representative, partner, franchisee, agent or employee of the other. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

12.8 Assignment. Customer shall not be permitted to assign any of its rights under this Agreement to any other entity (except the right to receive money) without the written consent of Company. Company shall be permitted to assign its rights under this Agreement to any successor entity of any kind.

12.10 Publicity. Company will not make other use of Customer's name, logo or trademarks or issue any public announcements or press releases regarding this Agreement without Customer's prior written consent.

12.11 Force Majeure. Neither party will be liable to the other for a failure or delay in its performance of any of its obligations under this Agreement (except for the payment of amounts due hereunder) to the extent that such failure or delay is caused by circumstances beyond its reasonable control or by events such as fire, riot, flood, labor disputes, natural disaster, regulatory action, internet or telecommunications failures, terrorist acts, or other causes beyond such party's reasonable control, provided that the non-performing party gives notice of such condition and continues or resumes its performance of such affected obligation to the maximum extent and as soon as reasonably possible.

12.12 Headings; Counterparts and Electronic Signatures; Entire Agreement. The headings in this Agreement are for convenience of reference only and have no legal effect. This Agreement may be executed in counterparts. A signature transmitted via facsimile, scanned original or third party e-signature system will be deemed an enforceable signature for the purpose of demonstrating the signing party's assent to the Agreement. This Subscription Agreement, and our Terms of Service– including all exhibits, schedules, and attachments to each of these – with Company constitute the sole and entire agreement between you and Company and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Subscription Service. In the event of a conflict between the foregoing terms and conditions and any Exhibits to this Agreement, the foregoing terms and conditions will control.

12.14 Governing Law/Arbitration. By using the Subscription Service, you agree that the laws of the State of Arizona, without regard to principles of conflict of laws, will govern this Agreement and any dispute of any sort that might arise between the parties.

EXHIBIT A –

SERVICE TERMS

IMPLEMENTATION AND TRAINING

Implementation and training services will be performed in accordance with Company's customary practices for the level of services purchased. Implementation is performed remotely unless otherwise specified.

SUPPORT

Normal business hours of operation: Monday – Friday from 7:00am until 6:00pm. **(Holidays include New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day)**

After Hours/Holiday support: Provided on an "hourly rate", Monday – Friday from 6:00pm until 10:00pm and Saturday and Sunday from 8:00am until 6:00pm.

UPGRADES AND CUSTOMIZATIONS

Any upgrades or additional services and customization not set forth in Agreement to the Software required by Customer will be the subject of a separate agreement and charged as consulting hours at the current prevailing rate at an agreed upon rate.

INSTALLATION

Customer is solely responsible for installation of the Subscription Service and any related Applications.

SYSTEM AVAILABILITY

Company strives to achieve System Availability (as defined below) of at least 99.5% during each calendar year of the Subscription Term. "System Availability" means the number of minutes in a year that the key components of the Subscription Service is operational as a percentage of the total number of minutes in such year, excluding downtime resulting from (a) scheduled maintenance, (b) events of Force Majeure in the SaaS Agreement), (c) malicious attacks on the system, (d) issues associated with the Customer's computing devices, local area networks or internet service Company connections, or (e) inability to deliver services because of acts or omissions of Customer or any user. Company reserves the right to take the Subscription Service offline for scheduled maintenance for which Customer has been provided reasonable notice and Company reserves the right to change its maintenance window upon prior notice to Customer.

CUSTOMER DATA

No later than two (2) months after termination of the Agreement, Customer shall have the right to export the Customer Data in an agreed upon format at its own cost and expense. Customer shall not be permitted to export any of its data unless all Fees have been paid in full unless Customer is entitled to the Customer Data pursuant to federal or state law whether or not the Fees have been paid. After two months, Company shall have the right to destroy all such Customer Data unless prohibited by law. All such protections in Paragraph 5 remain in force and effect after termination of this Agreement.