

## FITUP SDN BHD – WEBSITE TERMS OF USE

### 1. Acceptance of Terms

The terms and conditions set out herein (“**Agreement**”) is effective as of **02/04/2019**.

Your use of and access to **FitUp Sdn. Bhd. (Company No. 1281051-H)** (“**Our**”, “**We**” or “**Company**”) Site (as defined below) shall constitute your agreement to accept and become bound by the terms and conditions of this Agreement. Therefore, please read the Agreement thoroughly and carefully. If you disagree with the Agreement, please discontinue using and/or accessing our online platform immediately.

FitUp may in its sole discretion amend this Agreement from time to time by posting an updated version on FitUp’s Site. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you read, understand and be familiar with the latest Agreement. You continue use of and access to FitUp’s Site following any amendment of the Agreement will signify your agreement to be bound by the revised Agreement.

### 2. Definition

“ <b>Account</b> ”	means a registered account which you may be required to create if you wish to access and use the full facilities and features offered by FitUp on the Site;
“ <b>Booking Fees</b> ”	means the fees to be paid by the Trainer to FitUp for the use of the Site to book for the premises of a Partner Gym;
“ <b>Client</b> ”	means the trainee who engages the User for the provision of professional personal training and fitness regime at a Partner Gym;
“ <b>Intellectual Property Rights</b> ”	means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to any business names, computer software, confidential information, copyright, designs, domain names, inventions, know-how, patents, trademarks, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right;
“ <b>Partner Gym</b> ”	means the participating gyms registered on FitUp which we have integrated our System to provide our Services;
“ <b>Party</b> ”	means either FitUp, the Partner Gym or the Trainer;
“ <b>Services</b> ”	means providing a gym management service by way of a System that will allow convenient, controlled, secure, safe access and usage for Users who are fitness professionals and their clients or trainees within a Partner Gym;
“ <b>Site</b> ”	means the FitUp website, mobile application and any other platform using electronic media or virtual applications owned and operated by FitUp from time to time including any ancillary facilities or features such as emails, SMS, newsletters, notifications or other means for providing

	Services;
<b>“System”</b>	means the gym management system owned and used by FitUp and agreed by the Partner Gym to provide the Services which may include a securely maintained User and client database, websites, mobile applications, and hardware such as CCTV’s or scanners;
<b>“Trainer”</b>	means the fitness professional engaged by the Client for the provision of professional personal training and fitness regime within a Partner Gym;
<b>“User”</b>	means individually a Partner Gym or a Trainer with a User ID registered on FitUp, or collectively as <b>“Users”</b> ;
<b>“User ID”</b>	means a unique name and/or password allocated to you to allow you to access and use certain parts of the Site;

### 3. Services and Functions

The Site is maintained and operated by FitUp as the provider of the Services. Our role on the Site is to simply provide the platform to connect the Users registered on FitUp. FitUp does not have control of, nor responsibility and liability for:

- (a) any acts or omissions including but not limited to any instructions, advice, assessment and recommendations in connection with or arising from any training services given by the Trainer to the Client, whether within or outside the vicinity of the Partner Gym. All Trainers shall be responsible for their own Clients and Trainers shall themselves agree to and procure the agreement of their Clients to the liability waivers and terms of the respective Partner Gyms selected via the Site;
- (b) any personal injury, illness, death or loss of personal property suffered by Clients or Trainers during any training services, whether within or outside the vicinity of the Partner Gym; and
- (c) the condition/state of machinery, equipment and amenities belonging to the Partner Gym.

FitUp does not guarantee the availability of particular Partner Gym, the location listings, experiences, inventory, spots or other features, and availability may change from time to time as may determine by FitUp at its sole discretion subject to the Partner Gym availability and commitments.

### 4. Representation

By using the Site, you represent, warrant and undertake that:

- (a) You are 18 years old and above;
- (b) You have the right, authority and capacity to accept and abide by the terms and conditions under this Agreement and to use the Services;
- (c) You will provide true, current and complete information in your dealings with us (including when setting up an account), and must promptly update any information as required so that the information remains true, current and complete;
- (d) Your participation and use of the Site and the Services do not violate any applicable laws in the jurisdiction where the website operates; and
- (e) You will only use the Services for lawful purpose and for the purpose it is intended to be used.

## 5. License to Access

FitUp grants you a non-exclusive, revocable license to use the online platform as set forth in this Agreement, provided that:

- (a) You will not act in a way, or use or introduce anything (including any virus, worm, Trojan Horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Site or any underlying IT system of FitUp, or otherwise attempt to damage or interfere with the Site and FitUp's underlying IT system;
- (b) You will neither collect or harvest any information or personally identifiable data (including but not limited to names and Account information) from the Site or FitUp's database, nor to use the communication systems provided by the Site for any commercial solicitation purposes;
- (c) You will not alter or modify any part of the Site or the underlying system of FitUp; and
- (d) You will not copy, disseminate or make derivative works of the Site in any medium or establish a link to our Site unless with prior written consent from FitUp.

## 6. User Account

You may generally use and browse the Site without registering or providing your personal details. If you wish to use and benefit from the full facilities and features of the Services, you may be required to create an Account. In creating your Account, you must provide us with your name, email address, a password or any additional information as may be required by FitUp from time to time.

You will be given a User ID upon the successful creation of your Account. You are solely responsible for safeguarding your User ID and password at all times. You are discouraged from allowing another person to use your account without permission. Having said that, you shall be solely responsible for all activity that occurs on your Account.

You shall notify FitUp immediately in the event of an unauthorized use of your Account or a suspected breach of security. In any event, FitUp shall not be liable for your losses caused by an unauthorized use of your Account.

You may close your Account at any time following the instructions in the Site.

## 7. Intellectual Property Rights

All intellectual property rights, whether registered or unregistered, in the Site, information content on the Site and all the website design, web app, iOS App and Android App design including, but not limited to, text, graphics, software, photos, video, music, sound, and their selection and arrangement, and all software compilations, underlying source code and software shall remain our property. The entire contents of the Platform are also protected by copyright as a collective work under Malaysia copyright laws and international conventions. All rights are reserved.

No Party shall use the other Party's Intellectual Property Rights other than in accordance with and for the purposes of this Agreement, unless the other Party provides its prior written consent to such use. Each Party undertakes that it shall ensure that its employees, agents (including subcontractors) or representatives shall not use in whole or in part any of the other Party's Intellectual Property Rights save and except for the purposes of carrying out its obligations under this Agreement.

Any Intellectual Property Rights existing prior to the Effective Date shall belong to the Party who owned such rights immediately prior to the Effective Date. Neither Party shall gain by virtue of this Agreement any rights of

ownership of or over any copyrights, patents, trade secrets, service marks, trademarks, brand, or any other intellectual property or proprietary rights owned by the other Party.

Each Party shall indemnify and keep the other Party indemnified from and against all and any claims, proceedings, actions, demands, loss, liability, costs, expenses, damages, penalties, fines, judgments or awards sustained or incurred by the other Party or made against the other Party, arising from or in connection with any claim, proceedings, action or demand made or raised by any person in which it is alleged that use of the first Party's Intellectual Property Rights for any of the purposes of this Agreement does infringe the rights of any person.

## 8. Privacy Policy

For your rights on personal data protection, please refer to our Privacy Policy at [this page](#).

## 9. Confidentiality

You shall hold in strict confidence all information and data relating to FitUp, its services, business affairs, marketing and promotional plans, other operations matters which are (i) created in the course of this Agreement, or (ii) disclosed to you by FitUp or (iii) directly/indirectly acquired by you from FitUp or its affiliated companies. Any such information shall not be disclosed to any third party or use it for such other purposes without the prior written consent of FitUp, unless disclosure of such information is necessary for the proper discharge of either Parties' rights or obligations under this Agreement and in law.

The obligations of confidentiality in this clause shall not extend to any matter which is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Agreement or which any Party receives from a third party independently entitled to disclose it or which the Party is required by law or regulatory authority to disclose.

The confidentiality undertakings herein provided shall survive any termination, whether herein envisaged in this Agreement or otherwise.

## 10. Disclaimers

We make no warranty or guarantees as to the reliability, timeliness, availability, quality, accuracy or completeness of the Services and/or any services obtained by or from third parties through the use of FitUp Services and/or the Site. All services on the Site that are provided to you are strictly "as is" basis.

To the extent permitted by law, we have no liability or responsibility to you or any other person for any Loss in connection with:

- (a) The Site being unavailable (in whole or in part) or performing slowly;
- (b) Any error in, or omission from, any information made available through the Site;
- (c) Any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Site. For the avoidance of doubt, you are responsible for ensuring that the process by which you access and use the Site protects you from this;
- (d) Any site linked from the Site. Any link on the Site to other Sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operations.

## 11. Limitation of Liability

Any claims against FitUp by you shall be in any event be limited to the amounts paid in utilizing the services under this Agreement giving rise to such claims. In no event shall FitUp be liable to you or anyone for any direct,

indirect, punitive, economic, future, special, exemplary, incidental, consequential or other damages or losses of any time or kind (including personal injury, emotional distress and loss of data, goods, revenue, profits, use or other economic advantage).

## 12. Indemnity

You shall indemnify and hold FitUp and its affiliates, officers, employees, licensors, agents, representatives and third party providers (each an “**Indemnified Party**”) from and against all Losses to which such Indemnified Party may suffer or incur as a result of any default, failure, omission, misconduct, negligence or breach in the performance of this Agreement on the part of the indemnifying Party. We may be entitled to defend any claim otherwise subject to indemnification by you and in such case, you further agree to provide full cooperation as reasonably required.

The indemnity herein shall survive the termination or expiry of this Agreement.

## 13. Force Majeure

FitUp is not responsible for failures or delays in performance resulting from force majeure events which include the acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures and outage, earthquakes or other disasters.

## 14. Payment and Fees

All payment for the Booking Fees shall be made to Fitup in the method and pricing as may be determined by FitUp.

Trainers may enter or edit Payment Method information in your account settings. If a payment is unsuccessfully settled due to expiration, insufficient funds or otherwise, trainers will remain responsible for any uncollected amounts of Booking Fees and authorize us to continue billing the Payment Method or other alternative payment method you have provided, including in an attempt to create/sign up for a new account, or reactivating the unsettled account. We would also reserve the right to remedies under the applicable laws and we shall be entitled to terminate your access to the Site due to non-payment, a fundamental breach of the provision herein.

## 15. Cancellation and Refund

If a cancellation of a booking is made by the Trainer or the Gym Partners 24 hours before the session, the Trainer will be provided a full refund in the form of credits which the Trainer will be entitled to cash out their credit balances upon the closure of User Account, but a system fee will chargeable by FitUp for the use of Site. No refund will be made for late cancellation without appropriate notice prescribed above or a no-show. The Trainer can use the credit to book for a replacement session on the Site, but these credits have no cash value or any other value outside of the Site and are not redeemable for cash. The credits do not operate or serve as electronic money in any way, and cannot be freely transferrable.

## 16. Prohibited Conduct

In using the Site and for so long as this Agreement remains effective, Users agree not to:

- act or do things in a deceptive/fraudulent manner including access another user's account or signing up for more than one account;
- misrepresent the source, identity or content or information via the Site;
- make unsolicited offers, advertisements, proposals or promotions in any forms or media, whether offline or online between the Trainers and Partner Gyms;

- solicits, harasses, threaten, stalk, harm or is suspected of soliciting or harassing any of the authorised representatives, employees of FitUp, Partner Gyms, Trainers and/or Clients;

## 17. Termination

This Agreement shall be and remain valid and binding on the parties, unless sooner terminated by the Parties in accordance with the respective [specific terms](#):

**Trainers.** For termination for cause, please refer to the applicable provision for Trainers at [this page](#).

**Partner Gyms.** For termination for cause, please refer to the applicable provision for Partner Gyms at [this page](#).

**Effect of Termination.** Upon the termination of this Agreement, your right to use the Site is automatically revoked, and your Account will be closed. FitUp shall immediately be relieved from all further obligations under this Agreement other than to facilitate the cancellation and/or refund process stated in this Agreement.

## 18. Suspension

FitUp shall be entitled, without prejudice to any right it may have in terms of this Agreement or at law, at any time and on such notice as may be reasonable in the circumstances to suspend provision of the Account or the Services or any part thereof, including but not limited to any of the following circumstances: (a) if the User is in breach of its obligations under this Agreement or has committed or is suspected of committing any unlawful wrongdoing; and (b) for the purposes of modifying, expanding, maintaining or repairing the System.

Any liability on the part of FitUp for any loss or damage (whether direct or consequential) incurred or for any costs, claims or demands of any nature arising out of the suspension of the Services is excluded.

## 19. Waiver

No failure or delay on the part of a Party in exercising any rights or remedies under this Agreement at any time or for any period of time nor any knowledge or acquiescence by a Party of, or in, breach of any provision of this Agreement shall operate as or be deemed to be a waiver thereof nor shall a waiver by that Party of any breach constitute a continuing waiver in respect of any subsequent or continuing breach.

## 20. Governing Law

This Agreement shall be construed and governed in accordance with the laws of Malaysia.

## 21. Dispute Resolution

All disputes, controversies and/or differences arising out of or in connection with this Agreement shall be settled informally and amicably through mutual consultation following service of a notice from a party to the other, setting out a brief description of the claim, contact information and account information for the claims to be evaluated. Parties will have **30 days** from the date of receipt of the said notice or such other time period as the Parties may determine mutually, to informally resolve the other party's claims. If successful, there will not be any need for further action.

**Court Proceedings.** In the event the parties fail to resolve any matters in the aforesaid notice, the parties herein shall submit to the non-exclusive jurisdiction of the courts of Malaysia.

## 22. Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable, illegal or otherwise invalid in any respect under any law, such unenforceability, illegality or invalidity shall not affect or impair any other provisions of this Agreement and this Agreement shall then be construed, interpreted and applied so as to produce as nearly as may be the legal, economic and commercial result intended by us as the parties. In any such instance, we shall work together in good faith to make such alternative arrangement(s) or change such term(s) as may be legally permissible to carry out as nearly as practicable the original terms and intent of the Agreement.

## 23. Survival

The termination of this Agreement howsoever arising shall not affect such of the provisions hereof as are expressed to survive, operate or have effect thereafter.

## 24. Entire Agreement

**Trainers.** The applicable provisions of this Agreement constitutes the entire agreement between us in connection with the subject matter herein and replaces and supersedes all previous proposals, quotations and agreements pertaining to the subject matter of this Agreement, whether written or oral.

Notwithstanding this Clause, we may enter into any supplemental or separate (oral or written) agreement that are deemed appropriate (including but not limited to non-disclosure agreement, rights assignment agreement).

**Partner Gyms.** The applicable provisions of this Agreement and the respective Collaboration Agreement shall constitute the entire agreement between us in connection with the subject matter herein and replaces and supersedes all previous proposals quotations and agreements pertaining to the subject matter of this Agreement, whether written or oral.

In the event of any inconsistency between any of the provisions of this Agreement applicable to the Partner Gym and the provisions of the respective Collaboration Agreement, the provisions of the Collaboration Agreement shall prevail.

## 25. Electronic Signature

You acknowledge and agree that by clicking on the button labeled "CONFIRM PURCHASE," "SUBMIT", "DOWNLOAD", "I ACCEPT" or such similar links as may be designated by FitUp to accept the terms and conditions of these Terms, you are submitting a legally binding electronic signature and are entering into a legally binding contract. You acknowledge that your electronic submissions constitute your agreement and intent to be bound by these Terms. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the Digital Signature Act 1997 and the Electronic Commerce Act 2006,

## 26. Assignability

The Users may not assign the Agreement or any rights or obligations herein without FitUp's prior written consent. Any attempted assignment or transfer is a violation of this Agreement. Notwithstanding the foregoing, FitUp may freely assign this Agreement or the other documentation in connection with FitUp Services without the consent of the Users. Subject to the foregoing restrictions, the Agreement will inure to the benefit of the successors and permitted assigns of the parties.

## **27. Relationship**

Nothing in this Agreement shall constitute or deemed to constitute a partnership between the parties and nor shall this Agreement be construed to constitute any party as the agent of the other party or employer-employee relationship.

## **28. Contact**

If you have any questions or need assistance, please contact our Customer Support at [support@fitup.my](mailto:support@fitup.my).

*[End of Document]*

## Specific Terms - Partner Gyms

**Termination for Cause.** FitUp may, subject to the respective individual agreements with the Partner Gyms and without prejudice to any other of its rights or remedies and without being liable to the Partner Gym for any loss or damage which may be occasioned, give written notice to the Partner Gym terminating this Agreement with immediate effect if the Partner Gym, its authorized representatives and employees:

- (1) Expressly or impliedly repudiates this Agreement and the Collaboration Agreement by refusing or threatening to refuse to comply with any of the provisions of this Agreement and the Collaboration Agreement;
- (2) Fails to pay any monies due and payable to FitUp or the Partner Gym is insolvent, unable to pay its debts, or where there is a winding up petition or a resolution to wind up the Partner Gym.
- (3) is/are in breach or fails to comply with any of the provisions of this Agreement and the Collaboration Agreement and (only in the case of a failure capable of being remedied) does not rectify such non-compliance within fourteen (14) working days of FitUp's written notice of such failure; and
- (4) Solicits, harasses or is suspected of soliciting or harassing any of the Trainers and/or Clients, including but not limited to preventing the Trainer and/or Client from accessing the Partner Gym or utilising the Services.

## Specific Terms - Trainers

**Termination for Cause.** FitUp may, without prejudice to any other of its rights or remedies and without being liable to the Trainers for any loss or damage which may be occasioned, give written notice to the Trainer terminating this Agreement with immediate effect if the Trainer:

- (1) Expressly or impliedly repudiates this Agreement by refusing or threatening to refuse to comply with any of the provisions of this Agreement;
- (2) Fails to comply with any of the provisions of this Agreement and (in the case of a failure capable of being remedied) and does not rectify such non-compliance within fourteen (14) working days of FitUp's written notice of such failure;
- (3) Fails to pay any outstanding sum due and payable to FitUp, or is unable to pay his/her debts.
- (4) Fails to comply with the rules and regulations of the respective Partner Gym;
- (5) Tampers or damages the property or equipment located within the vicinity of the Partner Gym belonging to either the Partner Gym or FitUp; and
- (6) Solicits, harasses or is suspected of soliciting or harassing any of the Partner Gym's authorised representatives, employees and/or Clients.