

## MackFit Terms of Use

This Agreement was last revised on January 28, 2019.

Welcome to MackFit.com, a website and online service owned and operated by MackFit, a California corporation (“MackFit”, “Company”, “we,” or “us”). This page explains the terms by which you may use our service. By accessing or using the MackFit services, website (including all areas of the site), applications and software provided online and made available offline through or in connection with the service, including through a mobile device (collectively, the “Service”), you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement (the “Agreement” or “Terms of Use”). By using the Service you agree to the Terms of Use, whether or not you are a registered user of our Service.

PLEASE READ THESE TERMS OF USE CAREFULLY. THESE TERMS INCLUDE AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO YOUR USE OF ANY OF THE SITES TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEED IN COURT. THE DISPUTES/ARBITRATION PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS AGREEMENT ALSO INCLUDES A JURY WAIVER.

We reserve the right to amend this Agreement at any time and without notice. If we do this, we will post the amended Agreement on this page and indicate at the top of the page the date the Agreement was last revised. Your continued use of the Service after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Service. This Agreement applies to all visitors, users, and others who access the Service (“Users”).

### 1. Use of Our Service.

The Service is a place that offers health and fitness information, is for educational and entertainment purposes, and enables fitness devotees, those that are in shape, and those that want to get in shape a place to learn about and explore new workout routines, techniques and exercises led by noted fitness trainer Elvon Mack and his affiliates. Registered Users (“Members”) are able to access exclusive non-public fitness content, and post feedback about their workouts. By enabling users to find, view, and learn about new innovative exercises and fitness information, MackFit’s goal is to generate a community of fitness enthusiasts committed to bettering themselves and others.

MackFit grants you permission to use the Service as set forth in this Agreement, provided that: (i) you will not copy, distribute, or disclose any part of the Service in any medium; (ii) you will not alter or modify any part of the Service other than as may be reasonably necessary to use the Service for its intended purpose; and (iii) you will otherwise comply with the terms and conditions of this Agreement.

## 2. **Eligibility.**

Use of the Service is void where prohibited. This Service is intended solely for Users who are thirteen (13) years of age or older, and any registration, use or access to the Service by anyone under 13 is unauthorized, unlicensed, and in violation of this Agreement. MackFit may terminate your account, delete any content or information that you have posted on the Service, and/or prohibit you from using or accessing the Service (or any portion, aspect or feature of the Service) for any reason, at any time in its sole discretion, with or without notice, including without limitation if it believes that you are under 13. If you are under 18 years of age you may use the Service only if you either are an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement.

IF YOU ARE A PARENT OR GUARDIAN AND YOU PROVIDE YOUR CONSENT TO THE REGISTRATION OF YOUR CHILD WHO IS 13 YEARS OF AGE OR OLDER WITH THE SERVICE, YOU AGREE TO BE BOUND BY THIS AGREEMENT WITH RESPECT TO, THROUGH, AND IN CONNECTION WITH SUCH REGISTRATION AND USE.

3. **Term and Termination.** This Agreement shall remain in full force and effect while you use the Service.

MackFit may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Service without notice and liability, if, in MackFit's sole determination, you violate any of terms of this Agreement, including the following prohibited actions: (i) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (ii) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (iii) uploading invalid data, viruses, worms, or other software agents through the Service; (iv) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (v) interfering with the proper working of the Service; or, (vi) bypassing the measures we may use to prevent or restrict access to the Service, including, but not limited to, registering for the Service with an email address that is not rightfully yours.

4. **Membership Accounts.** You will need to register with MackFit and create a "Member" account by direct registration on the Service. Your membership account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. You may use your account settings to control your Member Profile.

- a. **Password and Email.** When you sign up to become a Member, you will also be asked to choose a permanent password and supply your email address. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the account, username, or password of another Member at any time or to disclose your password to any third party. You agree to notify MackFit immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible

for any and all use of your account, and the activity that occurs on your account, and you must keep your account password secure. You must notify MackFit immediately of any breach of security or unauthorized use of your account. Although MackFit will not be liable for your losses caused by any unauthorized use of your account, you shall be liable for the losses of MackFit or others due to such unauthorized use.

- b. **Communications and Notifications.** By providing MackFit with your email address, you consent to our use of the email address to send you Service-related notices, including, among other things, notices required by law, in lieu of postal mail. We may also use your email address to send you other messages, including changes to MackFit features, marketing messages, and special offers. If you do not want to receive such email messages, you may opt out by clicking on the “unsubscribe” link at the bottom of the email, sending us an email at [marketing@mackfit.com](mailto:marketing@mackfit.com) or by sending mail to the following postal address:

Customer Support  
MackFit  
11049 Magnolia Blvd. #308  
North Hollywood, CA 91601

Opting out may prevent you from receiving email messages regarding updates, improvements, or special offers.

- c. **Requirements.** Member accounts are limited to one account per person. When creating your account, you must provide accurate and complete information. You may not create or use an account for anyone other than yourself, provide an email address other than your own, or create multiple Membership Accounts. Additionally, you may not impersonate someone else (e.g., adopt the identity of a co-worker). You may never use another Member’s account without permission. Although MackFit will not be liable for your losses caused by any unauthorized use of your account, you shall be liable for the losses of MackFit or others due to such unauthorized use.

## 5. Usage Permissions and Restrictions.

- a. **Personal Use.** The Services are for the personal use of Members only.
- b. **Non-Commercial Use.** The Services may not be used in connection with any commercial endeavors except those that are specifically endorsed or expressly approved in writing by MackFit.
- c. **Restrictions.** You agree not to use or launch any automated system, including without limitation, “robots,” “spiders,” “offline readers,” etc., that accesses the Service in a manner that sends more request messages to the MackFit servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser. Illegal and/or unauthorized use of the MackFit Service, including collecting and/or harvesting personally identifiable information, including usernames and/or email

addresses of Members, by electronic or other means for the purpose of sending spam, unsolicited email or unauthorized framing of or linking to the website is prohibited. You agree not to use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages. Appropriate legal action will be taken for any illegal or unauthorized use of the MackFit Service.

## 6. **Billing and Payments.**

- a. **General.** You acknowledge that MackFit may charge a fee for the use of any Services, provided that MackFit notifies you of any such fee before you incur it. Subject to the foregoing, you agree to pay any fees incurred by you. Member agrees to pay for all products ordered through the Website using the payment method indicated, and provides MackFit and its third party payment processor express authorization to charge said fees to the Member's payment provider at time of purchase or renewal. Fees owed depend on the specific type and quantity of MackFit products, services, information, or deliverables (collectively "Deliverables") ordered. Payment of fees shall not be contingent on any events other than the delivery of the ordered Deliverables. Any attorney fees, court costs, or other costs incurred in collection of delinquent undisputed amounts shall be the responsibility of and paid for by Member. If payment is not current, MackFit may immediately cease to provide any and all Deliverables to the Member.

It is the Member's responsibility to promptly provide MackFit with any contact or billing information changes or updates (including phone number, email address, physical address, credit card numbers, etc.). Account updates should be made online via the "My Account" section, once member has logged into the Service. MackFit does not validate all credit card information required by the Member's payment provider to secure payment.

Some orders may be charged, fulfilled and processed by an authorized third party partner of MackFit, in which case any refunds, charge-backs, returns or product substitutions will be subject to the discretion and policies of such third party provider.

All sales are final, non-cancelable and non-refundable except as expressly set forth in this Agreement or as otherwise determined by us in our sole discretion.

### b. **Subscriptions.**

- i. *Subscription Deliverables.* For a subscription fee, MackFit will make available certain areas, features and Content within the Service solely to Members. Your subscription to the Service is a personal, revocable, non-exclusive, non-commercial, non-transferable license to privately stream the Content made available to you via the Service. We do not allow transmission of the Service for any commercial or business related use or for non-Member use in any commercial establishment or area open to the public (e.g., gym, fitness studio, club, etc.). You may not rebroadcast, transmit or perform the programming available via the Service or charge admission for its viewing.

- ii. *Subscription Fees.* MackFit charges a monthly subscription fee for your access to certain areas, features, and Content within the Service. Subscriptions for annual, semi-annual, and multi-year subscriptions may, in total, customarily average less per month during such subscription period than the cost of a month-to-month subscription, provided the Member remains a subscriber for the full time period of such subscription.
- iii. *Subscription Renewal and Cancellation.* Subscriptions will automatically renew using the Member's current credit card account number unless Member cancels their subscription prior to the renewal date for such subscription by visiting the "My Account" section and selecting the "Cancel" option.

In the event of a price change, we will attempt to notify you in advance by sending an email to the email address you have registered for your account. If you do not wish to accept a price change, you may cancel your subscription in accordance with the instructions for cancellation below. If you do not cancel your subscription after the price change and prior to the start of your new subscription period, your subscription will be renewed at the price in effect at the time of the renewal, without any additional action by you, and you authorize us to charge your payment method for these amounts. **YOU ARE RESPONSIBLE FOR ALL INTERNET ACCESS CHARGES. PLEASE CHECK WITH YOUR INTERNET PROVIDER FOR INFORMATION ON POSSIBLE INTERNET DATA USAGE CHARGES.**

You may cancel your subscription at any time. All refunds that may be associated with a cancellation will customarily be processed within ten (10) business days. Prepaid fees for annual, semi-annual, and multi-year subscriptions will be refunded based on the number of months remaining on the contract period, beginning with the month following receipt of written cancellation, but may be subject to adjustment according to current product pricing and subject to adjustment for any incentives or discounts provided for said prepayment. To request a refund, please contact MackFit at [orders@mackfit.com](mailto:orders@mackfit.com).

Once the cancellation is processed, a confirmation email will be sent via the Member's email account on record with MackFit. If Member has a question about a cancellation, Member should contact MackFit at [orders@mackfit.com](mailto:orders@mackfit.com). The Company reserves the right to change its fees or billing methods at any time. The Company will provide timely notice to the affected Members of any such changes.

- c. **Prices.** All pricing is in United States dollars. Prices are current at the time of publication and are subject to change without notice.
- d. **Shipping.** Any tangible property purchased through the Service will be shipped FOB Shipping Point. Title to such products purchased by you from the Service passes from

Company (or, as applicable, from the Company's authorized third-party fulfillment provider) to you upon shipment.

In the event you do not receive your order, please contact us by email at [orders@mackfit.com](mailto:orders@mackfit.com), and MackFit will either: (i) re-send the Deliverables at no additional costs to you, (ii) provide you with store credit for the amount of your purchase plus free shipping, or (iii) fully refund your order cost.

- e. **Discrepancies.** The Member must notify MackFit about any billing problems or discrepancies within sixty (60) days after charges first appear on their Account statement. If it is not brought to MackFit's attention within 60 days, Member agrees to waive their right to dispute such problems or discrepancies.
- f. **Taxes.** Member will be responsible for any applicable sales or use tax, duties, or other governmental taxes or fees payable in connection with the Member's sale or purchase. If you do not pay such sales or other tax or fee on a transaction, you will be responsible for such taxes or fees in the event that they are later determined to be payable on such sale, and MackFit reserves the right to collect such taxes or other fees from you at any time.
- g. **Returns.** All tangible merchandise which meets the condition requirements as outlined herein, other than special orders and as otherwise noted by Company, may be returned to us (or as applicable, to the Company's authorized third-party fulfillment provider) for the issuance of a replacement item so long as your original merchandise is received by us (or as applicable by the Company's authorized third-party fulfillment provider) within 30 days of the date of your receipt of your initial order.
  - i. *Return Process.* In order to return a Product, You must utilize and complete the return packing slip included with your Deliverables, indicating the reason for the return. If you need to return an item and a return packing slip was not included in your package, please contact us at [orders@mackfit.com](mailto:orders@mackfit.com) for return instructions. No merchandise can be returned without a return packing slip.
  - ii. *Return Shipping.* You are responsible for paying shipping back to the designated location for returned items, unless such item is being returned due to a product defect or error by Company or, as applicable, by the Company's authorized third-party fulfillment provider.
  - iii. *Condition of Items.* Your return will be processed after we have received your return of the qualifying Product. In order for MackFit to accept your return at no cost to you, an item must be in new condition, and must be in the original packaging. Returns will be returned to you if the Products exhibit any obvious signs of use, have been opened, or are not in the condition in which they were received.
  - iv. *Inspection.* All merchandise must be inspected by you upon delivery. In the event your order arrives damaged, please contact us via e-mail at [orders@mackfit.com](mailto:orders@mackfit.com) and MackFit, in its discretion, may elect to re-send the merchandise to you at no charge,

provide you with store credit for a future purchase, or refund the amount charged to your credit card.

- v. *Incorrect Merchandise.* Contact us via e-mail at [orders@mackfit.com](mailto:orders@mackfit.com) if you received an item different than what was described on the website or is different than what you ordered.

## 7. License Grant.

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, personal license to use the Service. MackFit reserves all rights not expressly granted herein in the Service and the Content (as defined below). MackFit may terminate this license at any time for any reason or no reason.

## 8. Our Proprietary Rights.

- a. **Intellectual Property Rights.** For the purposes of this Agreement, “Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.
- b. **Content.** Except for your User Content, the Service and its materials, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos and music (the “Content”), and all Intellectual Property Rights related thereto, are the exclusive property of MackFit and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.
- c. **Ideas and Comments.** You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place MackFit under any fiduciary or other obligation, that we are free to disclose the Ideas on a non-confidential basis to anyone or otherwise use the Ideas without any additional compensation to you. You acknowledge that, by acceptance of your submission, MackFit does not waive any rights to use similar or related ideas previously known to MackFit, or developed by its employees, or obtained from sources other than you.

## 9. User Content and User Content Responsibility.

- a. **User Content.** Some areas of the Service may allow Users to post feedback, comments, questions, data, text, images, photos, video, sounds, musical works, works of authorship, materials and other information (“User Content”). You are solely responsible for your User Content that you upload, publish, display, link to or otherwise make available (hereinafter, “post”) on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. MackFit will not review, share, distribute, or reference any such User Content except as provided herein or in our [Privacy Policy](#) or as may be required by law. All such User Content is owned by the User who posted it to the Service. MackFit does not have, nor does it claim, any ownership rights in any User Content.

You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; (v) contains any information or content that is illegal; (vi) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (vii) contains any information or content that you know is not correct and current. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined above), rights of publicity and privacy. You understand that publishing your User Content on the Service is not a substitute for registering it with the U.S. Copyright Office, the Writer’s Guild of America, or any other rights organization.

- b. **Responsibility for User Content.** MackFit takes no responsibility and assumes no liability for any User Content that you or any other Users or third parties post or send over the Service. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you send, upload, download, stream, post, transmit, display, or otherwise make available or access through your use of the Service, is solely your responsibility. In the event that you elect to download User Content, MackFit recommends that you only download or access files from a trusted source and implement security measures to scan downloaded files for contaminants. MackFit disclaims any responsibility or liability relating to your access to or downloading of User Content. MackFit is not responsible for any public display or misuse of your User Content. You understand and acknowledge that you may be exposed to User Content that is inaccurate, offensive, indecent, or objectionable, and you agree that MackFit shall not be liable for any damages you allege to incur as a result of such User Content.
- c. **User Content License.** By submitting User Content to the Service, you hereby grant MackFit a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use, reproduce, distribute, prepare derivative works of, display and perform the User

Content in connection with the Service and MackFit's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under these Terms of Use. The above licenses granted by you in User Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that MackFit may retain, but not display, distribute or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.

- d. **Additional Representations and Warranties.** You shall be solely responsible for your own User Content and the consequences of posting or publishing it. In connection with User Content, you affirm, represent and warrant, in addition to the other representations and warranties in this Agreement, the following: (i) You are at least 18 years of age, or if you are under 18 years of age you are either an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement; and (ii) Your User Content and MackFit's use thereof as contemplated by this Agreement and the Service will not infringe any rights of any third party, including but not limited to any Intellectual Property Rights, privacy rights and rights of publicity.

## 10. Informational Purpose.

- a. **No Reliance; Not Medical Advice.** The Service, and the Content therein, is for informational purposes only. This site is meant to be used as a means to learn about various fitness regimens and exercises, which may or may not be suitable for you. In no way should the Content contained in the Service be relied upon, or be a substitute for, professional medical advice, diagnosis, or treatment, and is not intended to replace the relationship between you and your medical provider. Always seek the advice of your physician or other qualified health provider with any questions you may have regarding a medical condition or change in health. Never disregard professional medical advice or delay in seeking it because of something you have read or viewed on or through the MackFit Service! All Content is subject to modification, change and/or being withdrawn at any time in the sole discretion of MackFit and its affiliates. Reliance on any information provided by MackFit, MackFit employees, others appearing on the Service at the invitation of MackFit, or other visitors to the Service is solely at your own risk and is not medical or healthcare advice.

We are not a licensed medical care provider and have no expertise in diagnosing, examining, preventing, or treating medical conditions of any kind, or in determining the effect of any food or exercise on a medical condition. You should always consult a physician before changing your diet and/or fitness regimen. Certain foods, exercises,

treatments, and activities may not be suitable for you. You should consult with your physician before following any instructions you receive through the Service or participating in any event or exercise available on or through the Service. Not all activities described on the Service are suitable for everyone. If you think you may have a medical emergency, call your doctor or 911 immediately.

- b. **Benefits.** No federal, state or other agency has judged the merits or the value of the Content. Past performance of participants in exercises, fitness routines or regimens, or similar activities does not guarantee and is not indicative of future results.
- c. **Practitioner/Instructor Content.** The views, thoughts, and opinions expressed by instructors on the Service belong solely to the author and are not those of MackFit, its officers, employees, or affiliates. Any assumptions in any analysis or recommendations made in such content are not reflective of any other person or entity other than the instructor, who may change his/her thoughts, views and opinions at any time, and should not be held to such views in perpetuity.

**11. DMCA Copyright Policy.** You may not post, modify, distribute, or reproduce in any way, any copyrighted material, trademarks, or other proprietary information belonging to others without obtaining the prior written consent of the owner of such proprietary rights. It is the policy of MackFit to terminate Membership privileges of any Member who repeatedly infringes the copyright rights of others upon receipt of prompt notification to MackFit by the copyright owner or the copyright owner's legal agent.

Without limiting the foregoing, if you believe that your work has been copied and posted on the MackFit Service in a way that constitutes copyright infringement, please provide us with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) a description of the copyrighted work that you claim has been infringed; (iii) a description of where the material that you claim is infringing is located on the MackFit Service; (iv) your address, telephone number, and email address; (v) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Please provide this information to:

Copyright Notices - MackFit  
11049 Magnolia Blvd. #308  
North Hollywood, CA 91601  
Email: [contact@mackfit.com](mailto:contact@mackfit.com)

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying MackFit and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with MackFit's rights and obligations under the Digital Millennium Copyright Act ("DMCA"), including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, MackFit has adopted a policy of terminating, in appropriate circumstances and at MackFit's sole discretion, members who are deemed to be repeat infringers. MackFit may also, at its sole discretion, limit access to the Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

*Counter-Notice.* If you believe that your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your User Content, you may send a counter-notice to MackFit's copyright agent containing the following information: (i) your physical or electronic signature; (ii) identification of the User Content that has been removed or to which access has been disabled and the location at which the User Content appeared before it was removed or disabled; (iii) a statement that you have a good faith belief that the User Content was removed or disabled as a result of mistake or a misidentification of the User Content; and (iv) your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court in Los Angeles, California, and a statement that you will accept service of process from the person who provided notice of the alleged infringement.

If a counter-notice is received by MackFit's copyright agent, MackFit may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed User Content or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the User Content provider, Member, or User, the removed User Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, in MackFit's sole discretion.

## **12. Mobile Use**

MackFit makes available a version of its Service for use with mobile devices (the "MackFit Application"). You acknowledge that certain services, such as offers, location-based services, and service-related information (such as the availability of MackFit Application upgrades), may be provided from time to time in the form of text (SMS) messages delivered to your registered mobile device instead of directly through the Application. By registering your mobile device or providing us with your mobile phone number, you agree to receive such SMS-based communications to the mobile number associated with your registered mobile device. To opt-out of receiving these SMS-based communications, follow the instructions in the body of the SMS message. In the event you elect to opt-out of such SMS-based communications, you may receive an additional message from the Service confirming your election. MackFit does not warrant that the text messaging service will be uninterrupted or error free.

Though you may access the Service via a mobile device, MackFit shall not be liable for any delay in performing or failure to perform any obligation hereunder by circumstances beyond our reasonable control including (without limitation) any technical problems beyond the control of MackFit such as (for example) defects, congestion or failures of capacity or otherwise in the public data or telephone or mobile carrier network or caused by atmospheric interference, your mobile device being turned off for an extended period of time so that messages are not retained, or your being unable to obtain mobile network coverage.

### **13. Privacy**

We care about the privacy of our Users. [Click here](#) to view our Privacy Policy. By using the Service, you are consenting to have your personal data transferred to and processed in the United States.

### **14. Security**

MackFit has implemented commercially reasonable technical and organizational measures designed to secure your personal information and User Content from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information and User Content for improper purposes. You acknowledge that you provide your personal information at your own risk.

### **15. Third-Party Websites, Advertisers or Services.**

Your dealings with or participation in promotions of advertisers to which you opt-in and/or find on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that MackFit shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

### **16. Indemnity.**

You agree to defend, indemnify and hold harmless MackFit and its subsidiaries, agents, and other affiliated companies, and the employees, contractors, agents, officers and directors of each, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation, your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of your User Content or any information that is submitted by you or via your account; (vi) any claim or penalty from a taxing authority related to your activities on the Service; or (vii) any other party's access and use of the Service with your unique username, password or other appropriate security code.

## **17. No Warranty.**

THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, MACKFIT, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

MACKFIT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE MACKFIT SERVICE AND MACKFIT WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

## **18. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MACKFIT, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE. MACKFIT IS NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY MEMBER OR OTHER USER OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL MACKFIT BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MACKFIT ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICE, INCLUDING VIEWING, PLAYING OR DOWNLOADING ANY MATERIALS ON OR FROM THE SERVICE, OR OTHERWISE IN CONNECTION WITH THE SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE

SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL MACKFIT, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO MACKFIT HEREUNDER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF MACKFIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

## 19. Disputes.

A. Informal Resolution. If a dispute arises between You and MackFit, you agree to first provide MackFit with notice of your complaint via email to [info@mackfit.com](mailto:info@mackfit.com) so that the parties may attempt to resolve the dispute informally within sixty (60) days from the date your complaint is received.

B. Applicable Law and Venue. Except as otherwise provided herein, You and MackFit each agree that these Terms of Use and the relationship between the parties shall be governed by, construed, and enforced in accordance with the laws of the State of California without regard to its conflict of law provisions. Except as provided below, You and MackFit agree to submit to the exclusive jurisdiction of the state and federal courts located in Los Angeles County, California, including for any action seeking to compel arbitration or vacate an arbitral award, and consent to the personal jurisdiction of such courts. The parties agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

C. Arbitration Agreement.

(1) Arbitration.

With the exception of class actions, small claims court filings, or actions for preliminary injunctive relief (as further discussed below), any other dispute of any kind between you and MackFit arising under this Agreement or in connection with your use of the Service (“Dispute(s)”), if unresolved through the informal process outlined above, will be resolved by binding arbitration in Los Angeles County, California. If you are an individual consumer using the Service primarily

for personal reasons (“Individual Consumer”), as opposed to an individual accessing the Service for business purposes, and you are located within the United States, you may alternatively select your state of residence as the place of arbitration, but all other actions remain subject to the venue and choice of law provisions in Section 19.B.

The arbitrator presiding over a Dispute will be a retired judge or justice of any state or federal court with substantial experience in the subject matter relevant to the matter in dispute and will follow California law, exclusive of conflict or choice of law rules, in adjudicating the dispute. **BY AGREEING TO ARBITRATE, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL.**

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act.

The parties agree that the arbitrator presiding over a Dispute will be instructed, whenever practicable, to resolve threshold legal issues by way of motions filed by the parties. The parties also agree that they will follow JAMS’ streamlined arbitration rules and procedures then in effect in arbitrating any Dispute, except to the extent that the JAMS rules are inconsistent with this Section 19.C including the class action waiver described below. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com).

The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve all Disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms of Use, including, but not limited to, any claim that all or any part of these Terms of Use is void or voidable, or whether a claim is subject to arbitration. The arbitrator will be empowered to grant whatever relief would be available in a court under law or in equity, other than class relief. The arbitrator’s award will be written, and binding, on the parties and may be entered as a judgment in any court of competent jurisdiction. If you are an Individual Consumer, SMBS will pay all arbitration administrative fees and fees for the arbitrator’s services, other than the \$250 filing fee required for you to initiate a claim.

If you are an Individual Consumer and the claim you wish to assert against us is for less than \$10,000 then, at your election, (i) the arbitration may proceed in-person, by telephone, or by written briefs or (ii) you may in lieu of arbitration bring your claim in small claims court. If either party files a claim in state or federal court that is required by these Terms of Use to have been brought to arbitration, then the other party will be entitled to such party’s reasonable attorneys’ fees incurred in successfully compelling arbitration.

Both parties reserve the right to seek a preliminary injunction or temporary restraining order from a federal or state court located in Los Angeles County, California. However, after such request for relief has been adjudicated by such

court, the remainder of the Dispute will be resolved by binding arbitration as set forth herein.

(2) Class Action Waiver.

YOU AND MACKFIT AGREE THAT DISPUTES WILL BE RESOLVED ON AN INDIVIDUAL BASIS AND THAT ANY CLAIMS BROUGHT UNDER THESE TERMS OF USE OR IN CONNECTION WITH THE SERVICE MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING. The parties further agree that they will not participate in any class action (existing or future) brought by any third party arising under this Agreement or in connection with the Service. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration hereunder can proceed on a class-wide basis, then such class action is not subject to arbitration and must be litigated in state or federal court in Los Angeles County, California.

(3) Opt-Out.

IF YOU ARE A NEW USER OF THE SERVICE, YOU CAN CHOOSE TO EJECT THE AGREEMENT TO ARBITRATE PROVISION ("OPT-OUT") BY EMAILING US AN OPT-OUT NOTICE TO [INFO@MACKFIT.COM](mailto:INFO@MACKFIT.COM) ("OPT-OUT NOTICE") OR VIA U.S. MAIL TO: MackFit, Attn: Arbitration Opt-Out, 11049 Magnolia Blvd. #308, North Hollywood, CA 91601. THE OPT-OUT NOTICE MUST BE RECEIVED NO LATER THAN THIRTY (30) DAYS AFTER THE DATE YOU ACCEPT THESE TERMS FOR THE FIRST TIME. IF YOU ARE NOT A NEW USER OF THE SERVICE, YOU HAVE UNTIL THIRTY (30) DAYS AFTER THE POSTING OF THE NEW TERMS TO SUBMIT AN ARBITRATION OPT-OUT NOTICE.

In order to opt-out, you must email your name, address (including street address, city, state, and zip code), and email address(es) associated with your User account(s) to which the opt-out applies, and the date you started using the Service to: [info@mackfit.com](mailto:info@mackfit.com). This procedure is the only way you can opt out of the agreement to arbitrate. If you opt out of the agreement to arbitrate, all other parts of these Terms of Use and its Disputes Section will continue to apply to you. Opting out of this agreement to arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with us.

## 20. Availability and Use Outside of the United States.

The Service is controlled, offered and operated from facilities in the United States. MackFit makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are

entirely responsible for compliance with local law, including but not limited to export and import regulations. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals located in the United States. Notwithstanding the foregoing, MackFit retains all rights, including all Intellectual Property Rights, to the Service and the Content therein, throughout the world.

## 21. Notification Procedures.

MackFit may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by MackFit in our sole discretion. MackFit reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement.

## 22. Notice to California Users.

Under California Civil Code Section 1789.3, California website users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210.

## 23. Trademarks.

“MackFit”, and other Service graphics, logos, page headers, button icons, scripts, and service names are trademarks, registered trademarks or trade dress of MackFit, a California corporation, and/or its licensors and affiliates. MackFit’s trademarks and trade dress may not be used in connection with any product or service that is not MackFit’s, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits MackFit. All other trademarks not owned by MackFit that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by MackFit.

## 24. General.

- a. **Entire Agreement.** This Agreement, together with any other legal notices and agreements published by MackFit via the Service, shall constitute the entire agreement between you and MackFit concerning the Service.
- b. **No Waiver.** MackFit’s failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision, and no waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

- c. **Headings.** The section titles in this Agreement are for convenience only and have no legal or contractual effect.
- d. **Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by MackFit without restriction.
- e. **Severability.** If any provision of this Agreement is unlawful, void or unenforceable by a court of competent jurisdiction, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

If you have any questions regarding this Agreement, please contact us at [help@mackfit.com](mailto:help@mackfit.com).