

## Agreement Structure and Contracting Entity

1.1 The Agreement shall comprise of: (1) each set of Commercial Terms; (2) the Service Terms; (3) any applicable Price Plan Guide(s); (4) these General Terms; (5) FPCR Standard List Price; (6) any other document expressly referred to in this Agreement; which apply in decreasing order of precedence.

1.2 By entering into the Agreement, Customer confirms that it is contracting as a business and not as a consumer.

## 2. Definitions

The defined terms in the Agreement shall have the following meanings:

**Actual Spend** – For applicable Agreements specifying a Spend, the aggregate amount of Charges incurred taken as a non-refundable deposit upon entering into the service agreement.

**Access Fee** – A periodic fee payable by Customer for use of the Services.

**Commencement Date** – The date of FPCR acceptance of the Commercial Terms. Where acceptance is not express, acceptance is deemed when FPCR begins to provide the Services and/or purchases eternal services for use by the Customer.

If the Customer makes further orders after the initial Commencement Date, the commencement date for the ordered Services shall be the date FPCR begins to provide the ordered Services to the Customer.

**Commercial Terms** – ‘The Commercial Terms’, ‘Order Form’, ‘Welcome Letter’ or ‘Sales Page’ details the commercial offer to Customer for the Services, and which incorporates any applicable Service Terms, Price Plan Guides and these General Terms.

**Confidential Information** – Information which would reasonably be regarded as confidential by a business person concerning the operations, business, services, know-how, suppliers, customers, or products of the disclosing Party disclosed by a Party to the other Party before or after the Commencement Date.

**Connection** – Personal Login is configured to attach to FPCR Website, with a price plan associated with it.

**Content Service Pass** – A virtual pass to access content services as part of Customer’s price plan (where applicable).

**Customer** – The contracting party set out in the Commercial Terms. **Customer Equipment** – Any tangible material not supplied by FPCR to Customer which Customer uses to access the Services.

**Due Date** – As specified in the Commercial Terms, and if not specified, 7 days from the date of invoice by direct debit, Paypal or similar on-line banking services.

**Intellectual Property Rights** – Rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including all goodwill associated with any trademarks



or trade and business names), copyright, moral rights, databases, domain names, topography rights and models, and including the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; rights in the nature of unfair competition rights and to sue for passing off; and trade secrets, confidentiality and other proprietary rights, including rights to know-how and other technical information.

**Minimum Term** – The minimum term which Customer commits to receive a Service measured from the Commencement Date, as specified in the Commercial Terms.

**Party** – FPCR or Customer, together ‘the Parties’.

**Price Plan Guide** – A document which details out of bundle Charges and individual terms for a particular standard price plan, as updated from time to time.

**Service Terms** – A schedule that sets out service specific information such as terms and conditions, specifications and technical information.

**Software Licence** – The terms and conditions that prescribe: how Customer shall use the Software, the rights of the Software owner or licensor, and the rights of the Software user, in relation to such Software, which may be provided as a ‘click-through’ or ‘shrink-wrap’ licence.

**Standard List Price** – FPCR standard unsubsidised Charges for Services and Equipment as detailed on [www.fitproclientrecipes.com](http://www.fitproclientrecipes.com) advised to Customer by FPCR and/or as made available on request by FPCR (as amended by FPCR from time to time). In the event of conflict, Charges detailed on [www.fitproclientrecipes.com](http://www.fitproclientrecipes.com) shall take precedence.

**Subsidy** – A sum FPCR invests in the Customer.

**Target Spend** – The amount of money specified in the Commercial Terms for a particular Service (where applicable).

**Third Party Services** – Those Services provided by third parties which are in addition to Customer’s inclusive price plan allowance. Third party services may include photo content.

### 3. FPCR Obligations

3.1 FPCR shall use reasonable endeavours to supply Customer with the Services according to the standard of skill and care expected of a competent provider.

3.2 Customer acknowledges that, due to the nature of technology, it is impossible to provide a fault-free Service. For example, the Services may be affected by server issues.

3.3 FPCR shall use reasonable endeavours to give Customer access to FPCR at all times however, because these server, internet speeds & similar are not controlled by FPCR, FPCR shall not be responsible for their performance or functionality.

### 4. Use of Services



4.1 FPCR may suspend the Services: (a) for any maintenance, modification, or technical failure of the website; (b) to safeguard the security and integrity of the website; (c) for any breach of Customer's obligations in clause 4.3; (d) where it is necessary to comply with law or regulation (including any orders by law enforcement or regulatory agencies); or (e) where Customer has exceeded any limits on its account.

4.2 FPCR shall keep all suspensions to a minimum and shall give Customer prior notice of such suspensions where reasonably practicable.

4.3 Customer shall not: (a) use any Equipment or Service for any purpose that may be abusive, a nuisance, illegal, or fraudulent; (b) do anything that causes the website to be impaired; or (c) use the Services in a way which is inconsistent with good faith commercial practice to FPCR detriment.

4.4 Customer may supply the Equipment and Services to Users but Customer shall not resell to others within the fitness industry & health professions; or otherwise distribute within the fitness industry & health professions unless as a recognised & registered affiliate to FPCR.

Customer is responsible for all obligations relating to the Equipment and Services including the compliance of Users with the terms of this Agreement and all applicable laws.

## 6. Charges

6.1 Unless specified otherwise, FPCR states all Charges exclusive of VAT which is charged at the current rate when applicable. Any Charges not specified in the Commercial Terms shall be at Standard List Price. Rounding and minimum charges apply as set out in the Commercial Terms and/or the applicable Price Plan Guide.

6.2 Access Fees shall be debited according to schedule in the Service Plan. Customer shall pay on the Due Date without set off, unless validly disputed in accordance with clause 6.3 below.

6.3 If Customer reasonably and in good faith disputes a payment or part of it, Customer shall use reasonable endeavours to notify FPCR of such dispute before the Due Date, providing explicit details of why the amount is incorrect or service faulty and how much Customer considers is due.

6.4 Where FPCR has not received payment for undisputed Charges by the Due Date, FPCR shall: (a) contact the Customer's or other contact advised to FPCR in writing to request payment; (b) be entitled to stop service where FPCR has not received payment within 5 calendar days of the Due Date.

## 6. Website

6.1 Customer shall use reasonable endeavours to ensure that website is only used with Customer's authorisation by their clients if their Service Plan includes client access and shall inform FPCR as soon as is reasonably practicable after Customer becomes aware that an unauthorised access has occurred.

6.2 FPCR shall remain the property of FPCR but FPCR grants Customer a licence to use website (including any Software) to the extent necessary to use the Services.



6.3 FPCR shall allocate, when applicable, URL to Customer for Customer's use of the Services. FPCR may reallocate, withdraw or change such URL as a result of applicable law or instructions from a regulatory authority, but will take reasonable steps to minimise any disruption to Customer.

## 7. Software Licence

7.1 Subject to the terms of the Agreement and any Software Licence provided with the Equipment or Services, FPCR shall grant or will ensure that the licensor will grant to Customer, a non-transferable, non-sub-licensable, and non-exclusive licence to use the Software during the Minimum Term for the applicable Service in object code form for the Customer's internal use.

7.2 Where FPCR provides Customer with Services which contain Software subject to a Software Licence and Customer does not accept the terms of the Software Licence, Customer will not be able to use the relevant feature of the Service to which the Software Licence relates and FPCR shall not be liable for any failure to provide the Services which rely on acceptance of the Software Licence.

7.3 Where Software is subject to a Software Licence, the terms of the Software Licence shall comprise the Customer's sole rights and remedies in respect of the Software to which it applies.

7.4 The Customer shall not copy, modify, reverse engineer, adapt, translate, decompile, disassemble, make error corrections, license, sub-license, or resell any Software in whole or part, unless expressly permitted to do so by FPCR or by relevant law.

## 8. Ordering

8.1 Customer shall order Services by submitting an order through FPCR online ordering system, by email, or by such other means as FPCR may permit.

8.2 Orders are binding on both Parties from the date of acceptance by FPCR. If acceptance is not express, it shall be deemed to have occurred on activation of Service by FPCR.

## 9. Termination

9.1 The Agreement shall commence on the Commencement Date and shall continue until the relevant Services are terminated in accordance with the Agreement.

9.2 Each Party shall have the right to terminate the Agreement in whole or in part by giving the other Party 30 days' written notice of termination. Customer may stop using content services at any time, but Customer shall still pay the Charges for the Services. Customer must check with the content service provider on how it can end its agreement with them.

9.3 The Parties shall each have the right to terminate this Agreement in whole or part with immediate effect (by serving written notice of termination to the other Party): (a) if the other Party becomes subject to an Insolvency Event; or (b) if the other Party is in material breach of this Agreement (provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is deemed received from the non-infringing Party).



9.4 FPCR may terminate this Agreement in whole or part with immediate effect, by giving written notice to Customer where FPCR has suspended the Services under clause 4.1(c) or clause 6.5.

9.5 Unless FPCR notifies Customer otherwise, any content services included in Customer's price plan shall start at the same time as the Commencement Date, regardless of when Customer starts to use the Content Service Pass, and shall end after the Minimum Term set out in the Commercial Terms. If a content service included in Customer's particular price plan is provided for less than the Minimum Term, the content service may become a monthly paid subscription from the date the content service ends unless Customer cancels it.

## 10. Consequences of Termination

10.1 Subject to clause 18.2 below, on termination of the Agreement (in whole or part), the following shall apply to all or part of the Agreement terminated: (a) Customer shall cease use of the Service(s) and Software (b) FPCR shall cease to provide the Services(s); (c) the Parties shall promptly upon request return or destroy all Confidential Information (except one copy which is necessary to keep in order to ensure compliance with this Agreement), and provide written confirmation of this upon request; and (d) Customer shall pay FPCR all sums due, including any applicable Service Charge. Customer shall not be entitled to unused Subsidy after termination or expiry of the Minimum Term.

## 11. Intellectual Property

11.1 The Intellectual Property Rights that exist in, or which are created by FPCR during the provision of the Services, Software are owned by FPCR . Other than as is necessary for use permitted under this Agreement, no other right, licence or transfer is granted or implied under such Intellectual Property Rights. Customer shall not do anything to jeopardise FPCR's Intellectual Property Rights.

11.2 The Intellectual Property Rights that relate to Customer's documentation, processes, procedures, know-how and anything else to which the Customer has title are owned by Customer or its licensors, and other than as is necessary for use permitted under this Agreement, no other right, licence or transfer is granted or implied under such Intellectual Property Rights. FPCR shall not do anything to jeopardise Customer's or Customer's licensor's Intellectual Property Rights.

## 12. Changing this Agreement

12.1 FPCR may change this Agreement (including changing or introducing new Charges or changing or withdrawing the Services or Third Party Services) where required: (a) to comply with applicable law or regulation; (b) because of a change imposed by a third party supplier; or (c) due to a change in FPCR's operations or services, where such change affects at least 90% of its relevant customer base.

12.2 Subject to the rest of this clause, FPCR shall provide Customer as much written notice as is reasonably practicable of a change made under clause 12.1(a), and at least 30 days' written notice for a change made under clauses 12.1(b) or 12.1(c). FPCR shall not notify Customer of a change if it relates to a Third Party Service which Customer does not regularly use, but shall (where applicable) update the relevant Price Plan Guide on [www.fitproclientrecipes.com](http://www.fitproclientrecipes.com) at least 30 days before the change takes effect. FPCR may update or withdraw its Services without notice only where such change (in FPCR's reasonable opinion) does not cause Customer any detriment or where Customer does not regularly use that Service.



12.3 The Customer may terminate the affected part of the Agreement where a change under clause 12.1(b) or clause 12.1(c) causes the Customer a material detriment which cannot be offset by FPCR to the Customer's reasonable satisfaction on 30 days' written notice to FPCR. This right to terminate ends 30 days after the effective date of the change. The following shall be a material detriment for the purposes of this clause: (a) an increase in Customer's UK monthly Charges of more than 10% in a 12 month period; (b) an increase in Customer's monthly inclusive price plan Charges; or (c) a withdrawal of the core Services or an adverse change to the core Services. However, this clause does not apply if the change or withdrawal relates to a Third Party Service which Customer may stop using or cancel without ending this Agreement.

12.4 Save as set out in clause 12.1, changes to this Agreement must be made by written agreement of both Parties.

### 13. Confidentiality

13.1 Neither Party shall disclose the Confidential Information of the other Party to any other party for the duration of this Agreement and for 3 years after termination except as permitted below. A Party may disclose the Confidential Information to any director, officer, employee, contractor, or adviser, of the receiving Party where necessary to fulfil the purpose of this Agreement provided that the receiving Party ensures those recipients comply with this clause 14.

13.2 Confidential Information shall not include information that: (a) is publicly available other than through breach of this Agreement; (b) is lawfully in the possession of the receiving Party before disclosure under this Agreement; (c) has been obtained from a third party who is free to disclose it; (d) is independently developed without access to the Confidential Information; or (e) a Party is required to disclose by law or regulatory authority.

13.3 Upon written request, as soon as reasonably practicable, a Party shall return all Confidential Information (as far as technically reasonably possible) to the Disclosing Party. The Receiving Party may retain Confidential Information as required by law or as required for archive purposes. This Agreement will continue to apply to any retained Confidential Information.

### 14. Liability

14.1 Nothing in this Agreement restricts the Customer liability for: death or personal injury resulting from negligence; claims for non-payment; the non-excludable statutory rights of consumers; liability for fraud or fraudulent misrepresentation; breach of confidence; and anything which cannot be restricted by law.

14.2 Except for clause 14.1, each Party's liability under this Agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, indemnity or otherwise): (a) is excluded for: (i) any loss (whether direct or indirect) of: profit, revenue, business, data, anticipated savings or goodwill; and (ii) any indirect or consequential losses, regardless of whether such losses were contemplated; and (b) for all other losses is limited in total to 100% of the value of the Charges paid or payable by Customer in the first 12 months of the Agreement, or if this Agreement has not been in place for 12 months, the average monthly Charges payable for the months from the Commencement Date of the Agreement to the date of the first claim, multiplied by 12.



14.3 Unless expressly set out in this Agreement, all other warranties, terms, conditions, statements and representations (whether expressed or implied by statute, common law, custom, usage or otherwise) are excluded to the fullest extent permitted by law.

## 15. Transferring this Agreement

15.1 Either Party may transfer, novate, or assign (in whole or in part) this Agreement with the other Party's prior written consent, such consent not to be unreasonably withheld or delayed.

15.2 Despite clause 15.1, FPCR may transfer, novate, or assign this Agreement (in whole or part) without consent to: a debt collection agency where FPCR has terminated this Agreement for Customer's non-payment.

15.3 FPCR may use sub-contractors to perform any of its obligations under this Agreement but remains responsible for their performance.

15.4 Unless expressly provided in this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 16. Data Protection

16.1 Both Parties shall comply with applicable privacy law. The Customer acknowledges that FPCR will process personal data and traffic data when it provides the Services and that FPCR is the Controller of these data under the Data Protection Act 1998.

16.2 Where required, Customer authorises FPCR to process these data and agrees to use reasonable endeavours to notify its Users about FPCR: (a) processing data for maintaining the security, integrity and quality of the website; (b) processing data for its own market research and analysis in order to develop FPCR's products, but this does not include providing personal data to third parties or making it publicly available; and (c) disclosing data to third parties only: (i) if required by applicable law or regulation; or (ii) where the third parties are sub-contracted processors of FPCR.

## 17. Notices

17.1 All notices to FPCR under this Agreement shall be in writing and sent to the Admin at HQ Address. All notices to Customer under this Agreement shall be in writing and sent to the Customer's address, main contact mobile telephone number (via text), or email address set out in the Commercial Terms. Notices will be deemed given 2 working days after dispatch, unless time of delivery can be proved.

## 18. General Terms

18.1 Neither Party shall lose any right under this Agreement if it fails to use that right, or delays in using it. For a waiver of a right to be valid, it must be written and will not give rise to an on-going waiver of that right unless it is expressly stated to do so.

18.2 Termination of this Agreement (in whole or part), shall not affect the accrued rights and liabilities of either Party. Any provision of this Agreement which expressly or by implication is



intended to come into or continue in force on or after termination of this Agreement (in whole or part) shall continue in force.

18.3 This Agreement is governed by the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England.

18.4 Subject to clause 14.1, this Agreement represents the entire agreement between the Parties relating to the subject matter and supersedes any previous agreement related to the subject matter. The Parties have not relied on any statement, representation, warranty or understanding, other than expressly set out in this Agreement.

18.5 Customer shall ensure its systems, equipment and processes are compatible for use with the Services. FPCR shall not be liable to support the Services if Customer's systems, equipment, or processes are incompatible with the Services. FPCR shall use reasonable endeavours to advise Customer of relevant requirements on request.

18.6 If a provision or part-provision is illegal, invalid or unenforceable, that provision or part-provision shall be treated as having been modified to the minimum extent necessary to make it valid, legal or enforceable and to ensure it achieves the intended commercial result of the original provision. If modification is not possible, the relevant provision or part-provision shall be deleted. Any modification to or deletion shall not affect the validity of the rest of this Agreement.

18.7 Services used by Customer but not stated in the Commercial Terms shall be governed by this Agreement unless the Parties agree otherwise.

18.8 Both Parties shall use reasonable endeavours to resolve any dispute under this Agreement. If there is a dispute under this Agreement, and Customer's account manager has been unable to resolve the issue to Customer's satisfaction, Customer may escalate the issue to a more senior representative within FPCR according to the following levels. Nothing in this Agreement prevents a Party from seeking a remedy through the courts.

18.9 FPCR shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption and shall not give or receive any bribes, including in relation to any foreign public official.

18.10 Neither Party will be responsible or liable for the failure or delay in the performance of its obligations due to a cause beyond its reasonable control. If the cause ends, the Party shall perform its obligations and the time for performance will be extended by the duration of the cause. If delay in performance persists for a period of more than 30 days, the unaffected Party will be entitled to terminate this Agreement on written notice.

18.11 Customer shall take appropriate measures to back up data and otherwise protect against loss of data under this Agreement and keep secret.

