



## TERMS OF SERVICE

These Terms of Service (“Terms”) are an agreement between you (“you”) and Simpl Labs Inc. (including without limitation its brands, such as Simpl Fit, Simpl Fitness, etc.) (“Company”, “we”, “us” or “our”) that allows you to use our software, subscriptions, applications (“apps”), websites and other products and services, as long as you follow the Terms.

By accessing or using any of our websites, content, mobile applications (“apps”), tools, widgets, subscription products or services, software, API(s), widgets, and/or other product(s), service(s), data, or information supplied to you by the Company (collectively, as applicable, the “**Services**”), you signify your agreement to (1) all terms and conditions in these Terms, (2) our privacy policy located on our website (“Privacy Policy”), and (3) any other standard policies or community guidelines, if any, posted in our Services, which are all expressly incorporated herein and must also be observed and followed (clauses (1) through (3) collectively, the “Agreement”).

**IF YOU ARE HAVING A MEDICAL EMERGENCY, CONTACT 911, AND DO NOT USE THIS SERVICE**

### **To Use Our Services (defined below), You:**

- May need to register with us to access and use some of our Services
- Must not initiate or participate in any activities on our Services that are illegal, harmful, or interfere with anyone’s use of our services, including the sending of e-mail or instant messaging spam

### **If You Post Content On our Services, You:**

- May post content that you create or have been given permission to post by the owner, is legal, and doesn’t violate this Agreement
- Are responsible for content, data and information that you post to our Services and assume all risks of posting personal information online
- Continue to own the content but grant us a license to use and distribute your content, subject to and in accordance with this Agreement.

## I. DESCRIPTION OF SERVICES

By accessing or using any Services, including without limitation by downloading, installing or using any associated software, APIs or apps supplied by the Company, including any for which the purpose is to enable you to use the Services (collectively, the “Software”, which is considered a part of the Services), you agree to the terms of this Agreement. Any reference to the “website(s)”, the “web site(s)”, the “site”, “www.simpl.fit”, or other similar references, shall include any and all pages, subdomains, affiliated domains, brands, products or other areas of our website, or any other affiliated sites or domains owned or operated by or on behalf of us, plus any of the online content, information and services as made available in or through the website. The Services include without limitation all aspects of the website, or of any app or other product or service, including but not limited to all products, Software and other applications, features, channels and services offered therein. Any reference to “content” shall include all content in all forms or mediums, such as (without limitation) text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials you may view on, access through, or contribute to the Services.

You must be at least 18 years of age, and, where law requires an older legal age, of legal age for contractual consent or older to use this website and/or the other Services. Due to the age restrictions, no content or information from the Services falls within the Child Online Privacy Protection Act (“COPA”) and is not monitored as doing so. All information and services are exchanged electronically, via the internet. You are responsible for maintaining your own access to the internet and for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). You shall also be responsible for maintaining the security of the Equipment. You consent to receiving communications electronically. Company is a privately owned and operated company and does not represent or speak for any governmental office or authority. You may acquire additional products, services and/or content of ours from our websites or Services. We reserve the right to require that you agree to separate agreements as a condition of your use and/or purchase of such additional products, services and/or content, which terms will apply in addition to these Terms.

If you are a business user offering some portions of the Services to your customers or end users (such as, by way of example but without limitation, a school or college offering to its students, or a team offering to its players, etc.), which may only be done if and to the extent expressly permitted by us, then this paragraph shall also apply. You shall be responsible for clearly and conspicuously disclosing to your customers and end users (“end users”) (including without limitation in any posted terms and conditions and in any written agreements with your customers) (i) that you (and not we) are solely responsible for all content and any services you provide to end users or any messages or content sent (or attempted to send) to, from, between or among, end users, (ii) that we shall have no liability whatsoever to end users, and (iii) that we are not responsible for any disputes between you and your end users, (iv) regarding all disclaimers, warranty limitations, and limitations of liability, by us herein or otherwise with respect to the Services; and (v) with respect to use of the Services by your end users, such end users are responsible for complying with, and subject to, all the same terms as herein. You shall not state or imply otherwise. You hereby agree to indemnify, defend and hold us harmless from any for any allegation, loss, liability, claim made against us by any end users or otherwise arising out of any breach of this paragraph.

USE OF THE SERVICES BY ANY PARTY, INCLUDING YOU, IN ANY HIGH RISK APPLICATION IS DONE AT THE USER’S OWN RISK, WITHOUT ANY WARRANTY. AS USED HEREIN, A “HIGH RISK APPLICATION” IS ANY USE WHERE THE FAILURE OF THE SERVICE COULD CAUSE SERIOUS RISK, INCLUDING RISK OF INJURY TO PERSONS OR PROPERTY, OR A LIFE-THREATENING SITUATION, INCLUDING BUT NOT LIMITED TO, MEDICAL APPLICATIONS OR OTHER SIMILAR APPLICATIONS.

We are not providing any medical advice or services via the Services, and should not be relied upon as a substitute for consultations with qualified professionals who are familiar with your individual needs. Please consult your doctor, trainer, physical therapist, or other clinician(s) as necessary.

## II. PASSWORDS AND ACCESS

In order to access some features of the Services, you may have to register or create an account. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. Registration or subscription to the Services and payment of any applicable fee, authorizes a single individual to use the Services unless otherwise expressly stated. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Company immediately of any breach of security or unauthorized use of your account. Although Company will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of Company or others due to such unauthorized use. It is a condition of your use of the Services that all the information you provide will be correct, current, and complete; If we believe the information you provide is not correct, current, or complete, we have the right to refuse you access to the Services or any of its resources, and to terminate or suspend your access at any time, without notice.

You shall not download any content, software or services unless you see a “download” or similar link displayed by Company on the Services for that content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any content for any other purposes without the prior written consent of Company or the respective licensors of the content. Company and its licensors reserve all rights not expressly granted in and to the Services and their content.

You agree not to circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or the content therein.

### III. YOUR OBLIGATIONS

You represent and warrant that all information that you provide to us will be true, accurate, complete and current, and that you have the right to provide such information to us in connection with your use of the Services. You must comply with the terms of any applicable policies posted in our Services, including any Acceptable Use Policy.

You may not:

1. restrict or inhibit any other user from using and enjoying the Services;
2. post or transmit any unlawful, fraudulent, libelous, defamatory, obscene, pornographic, vulgar, sexually-orientated, profane, threatening, abusive, hateful, offensive, false, misleading, derogatory, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations;
3. post or transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited commercial communication (except as otherwise expressly permitted by Company) or engage in spamming or flooding;
4. post or transmit any information or software which contains a virus, Trojan horse, worm or other harmful component;
5. upload, post, publish, reproduce, transmit or distribute in any way any component of the Services itself or derivative works with respect thereto;
6. resell or otherwise exploit for commercial purposes, directly or indirectly, any portion of the Services, or access to them;
7. use email addresses obtained from the Services for solicitation purposes of any kind, directly or indirectly;
8. use data mining, robots or other similar data gathering and extraction tools;
9. access (or attempt to access) this site through any automated means (including use of scripts or web crawlers);
10. make any derivative works based, in whole or in part, on any portion or all of the Services;
11. use i-frames, webpage frames, or any similar framing, to enclose, capture or distribute any part of the Services;
12. mirror or cache or store any pages or portions of the Service;
13. co-brand any portion of the Services;
14. otherwise imply any relationship with or endorsement of your brands or services;
15. use a false email address, impersonate any person or entity, forge e-mail headers or otherwise disguise the origin of any communication or mislead as to the source of the information you provide to the Services;
16. portray Company or any company affiliated with it in a negative manner or otherwise portray its Services in a false, misleading, derogatory or offensive manner;
17. use the Services in any manner that could damage, disable, overburden, or impair our servers or interfere with any other party's use and enjoyment of the Services;
18. attempt to gain unauthorized access to any services or information to which you have not been granted access through password mining or any other process;

19. post or transmit any photograph or likeness of another person without that person's consent, if and to the extent necessary under applicable laws;
20. post, publish, transmit, reproduce, distribute or in any way exploit any information, software or other material obtained through the Services for commercial purposes (other than as expressly permitted by the Services and by the provider of such information, software or other material); or
21. upload, post, publish, transmit, reproduce, or distribute in any way, information, software or other material obtained through the Services which is protected by copyright, or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or rightholder, or which otherwise violates or infringes the rights of others, including without limitation, patent, trademark, trade secret, copyright, publicity, or other proprietary rights.

Company has no obligation to monitor the Services. However, you acknowledge and agree that Company has the right to monitor the Services electronically from time to time, and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the Services properly, or to protect itself or its customers. Company reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, inappropriate or in violation of this Agreement.

With respect to any Software, including without limitation subscription software as a service, subject to the terms and conditions of this Agreement, we hereby grant to you a limited, nonexclusive, non-transferable license to access and use such Software during the term of this Agreement, solely by the number of authorized users, and only up to the approved and mutually agreed usage volumes, as set forth on the applicable ordering document or as otherwise mutually agreed, and solely for internal and non-commercial purposes, provided that you shall also comply at all times with all official documentation, technical manuals, functional manuals, operator and user guides and manuals.

You shall not, and shall not attempt to (and shall not authorize or allow any third party to or attempt to): (a) download or otherwise obtain a copy of the Service (as applicable as such term is used herein, including any portion thereof) in any form; (b) reverse engineer, reverse compile, decompile, disassemble, or translate, exploit, or otherwise derive the source code of the Service or otherwise modify, the Service, or create any derivative works thereof; or (c) use the Service on behalf of any third party or for any purpose other than as described in this Agreement; (d) sell, resell, lease, license, sublicense, distribute, reproduce, copy, duplicate, or otherwise transfer or exploit the Service or use it as a service bureau; (e) post, send, process or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material violating of third party rights; (f) post, send, process or store material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (g) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or related systems or networks; (h) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or our rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the software or on any copies made in accordance with this Agreement; (i) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or our rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Service, or documentation, or on any copies made in accordance with this Agreement; (j) use, or authorize or permit the use of, the Service except as expressly permitted herein; (k) use the Service to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, nor to perform any activity which breaches the rights of any third party. The Service may be used only by you (i) for your internal business purposes and only for your direct benefit; (ii) only by the number of persons for whom a license fee has been paid, and all such use may only be by those persons using the Service for the benefit of you in the course and scope of their employment, subject to the terms hereof; (iii) only in its original form without alteration or combination with other products, services or software except as expressly authorized in any applicable documentation; and (iv) in compliance with all applicable laws and in compliance with all documentation and instructions provided by us. You agree not to copy, duplicate or imitate, in whole or in part, any concept, idea, business model, business process, product, service or other intellectual property or other

ideas or content embodied in the Services or learned by you from your use of or access to the Services. You agree not to use the Services to violate any local, state, national or international law or to impersonate any person or entity, or otherwise misrepresent your identity or your affiliation with a person or entity. Materials you post to the Services may not contain URLs or links to websites that compete with the Services nor other competitive content or references.

We grant to you a limited, revocable, and nonexclusive right to create a hyperlink to our publicly available website(s), subject to the terms hereof, provided that the link does not portray us or our products or services in a false, misleading, derogatory, or offensive matter, and provided you do not i-frame them or alter the content therein or in any way imply a relationship therewith. You may not use any logo, trademark, or tradename that may be displayed on this site or other proprietary graphic image in the link without our prior written consent.

You will keep and protect any of our Confidential Information as confidential, using at least the same efforts you use to protect your own confidential information and in no event less than reasonable and industry standard efforts. Our "Confidential Information" includes the Services, documentation and information about the Services and their operation, and any other information you obtain from or about us or from or about the Services, or any other information which a reasonable person would or should understand to be confidential or proprietary in nature. You agree to return or destroy our Confidential Information when this Agreement is over. You acknowledge and agree we shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available under law or in equity. Your confidentiality obligations shall survive termination or expiration of this Agreement.

While this Section highlights some of your key obligations, headers and section titles are for convenience only, and you are bound by all the terms of this Agreement.

#### IV. PUBLIC POSTINGS AND LICENSED MATERIALS

We will use reasonable efforts to protect the confidentiality of certain personally identifiable information you submit to us (e.g., your address and credit card information submitted by you initially for the purpose subscribing to the Service) ("Personally Identifiable Information"), in accordance with the Privacy Policy posted on our website.

Certain material you may post on our Services is or may be available to the public, including without limitation any public profile data, feedback, questions, comments, suggestions, uploads, blog entries, ratings, reviews, images, videos, poll answers, etc., in any form or media, that you post via the Services or otherwise (collectively, "Public Postings"). These Public Postings will be treated as non-confidential and nonproprietary. You are responsible for any Public Postings and the consequences of sharing or publishing such content with others or the general public. This includes, for example, any personal information, such as your address, the address of others, or your current location. **WE ARE NOT RESPONSIBLE FOR THE CONSEQUENCES OF PUBLICLY SHARING OR POSTING ANY PERSONAL OR OTHER INFORMATION ON THE SERVICES.**

Other content or communications you transmit to us, including without limitation any feedback, data, questions, comments, suggestions, in any form or media, that you submit to us via e-mail, the Services or otherwise (to the extent excluding any Personally Identifiable Information, collectively, "Submissions"), will be treated as non-confidential and nonproprietary.

By providing any Public Posting or Submission, you (i) grant to Company a royalty-free, non-exclusive, perpetual, irrevocable, sub-licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works (including products) from, distribute, and display such content throughout the world in all media and you license to us all patent, trademark, trade secret, copyright or other proprietary rights in and to such content for publication on the Services pursuant to this Agreement; (ii) agree that we shall be free to use any ideas, concepts or techniques embodied therein for any purpose whatsoever, including, but not limited to, developing and marketing products or services incorporating such ideas, concepts, or

techniques, without attribution, without any liability or obligation to you; (iii) grant to Company the right to use the name that you submit in connection with such content. In addition, you hereby waive all moral rights you may have in any Public Posting or Submissions.

You shall be solely responsible for your own content and any Public Postings and Submissions. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish content you post or submit. You further agree that content you submit via Public Postings or Submissions will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant us all of the license rights granted herein. You further agree that you will not submit to the Services any content or other material that is contrary to any posted "community guidelines" or similarly titled document, if any, which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.

We do not endorse any content submitted to the Services by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with content. We do not permit copyright infringing activities and infringement of intellectual property rights on the Services, and we will remove all content if properly notified that such content infringes on another's intellectual property rights as set forth herein below. We reserve the right to remove content without prior notice. We reserve the right to decide whether your content violates this Agreement for reasons other than copyright infringement, such as, but not limited to, pornography, obscenity, or excessive length. We may at any time, without prior notice and in our sole discretion, remove such content and/or terminate a user's account or otherwise block access for submitting such material in violation of this Agreement.

We are not responsible for end user error or errors in inputs or for errors in any user supplied data. We do not independently verify the truthfulness or accuracy of any data or content input into the Services and are not responsible for the fraud, misrepresentation, negligence or misconduct of any end user or other third party.

Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that we may, without your consent, include your name and/or other indicia in our lists of current or former customers in promotional and marketing materials. Additionally, upon your consent, we may prepare a case study relating to your access and use of the Services, including but not limited to one or more testimonials from you or your users, aggregated data of the results of your use of the Services, and other informational material as determined by us. you agree to provide reasonable assistance to us and timely responses in our preparation of said case study.

## V. FEES AND PAYMENTS

If and to the extent any portion of the Services may require a fee payment or incremental payment or subscription, you agree to pay Company any applicable fees posted for the Services. By completing and submitting any credit card or other payment authorization through the Services, you are authorizing Company to charge the fees to the account you identify. You must keep all billing information, including payment method, up to date. You agree to pay us for all charges incurred under your account, including all applicable taxes, fees, and surcharges. You authorize and direct us to charge your designated payment method for these charges or, if your designated payment method fails, to charge any other payment method you have on file with us. Further, you authorize and direct us to retain information about the payment method(s) associated with your account. If we do not receive payment from your designated payment method or any other payment method on file, you agree to pay all amounts due upon demand by us. You will be responsible for accrued but unpaid charges, even if your account is canceled by you or

terminated by us. During any free trial or other promotion, if any, you will still be responsible for any purchases and surcharges incurred using your account.

After 30 days from the date of any unpaid charges, your fee-based Services will be deemed delinquent and we may terminate or suspend your account and Services for nonpayment. We reserve the right to assess an additional 1.5 percent late charge (or the highest amount allowed by law, whichever is lower) per month if your payment is more than 30 days past due and to use any lawful means to collect any unpaid charges. You are liable for any fees, including attorney and collection fees, incurred by us in our efforts to collect any remaining balances from you. Except as otherwise mutually agreed in writing, we reserve the right to change our fees with 30 days' notice.

You are responsible for all charges incurred under your account, including applicable taxes, fees, surcharges, and purchases made by you or anyone you allow to use your account (including your children, family, friends, or any other person with implied, actual, or apparent authority) or anyone who gains access to your account as a result of your failure to safeguard your username, password, or other authentication credentials or information.

## VI. WARRANTIES AND LIMITATIONS OF WARRANTIES.

If you are not completely satisfied with the Services, your sole remedy is to cease using the Services. With respect to any fee-based Services, if you signed up for designated term or timeframe, you will still be responsible for payment for the full term. If you did not subscribe for any minimum period, then you may cancel at any time on 30 days advanced notice, and cease to use the Services, then you will not be charged any additional amounts after the effective date of such termination. In any case, you will be responsible for any and all charges and activity accrued prior to your Services termination date, and those obligations will survive your termination of the Services. Company undertakes commercially reasonable efforts to ensure that the information it provides is current and accurate, however, Company does not warrant the accuracy of information. Company also undertakes commercially reasonable efforts to protect the confidentiality of any confidential information you provide, in accordance with the Privacy Policy, however, Company does not guaranty the confidentiality of such information against unauthorized third party access or system failure.

THE SERVICES, THE WEBSITE, AND ALL INFORMATION, CONTENT, AND MATERIALS RELATED TO THE FOREGOING, ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND ACCURACY OF DATA. WE DO NOT WARRANT THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR VIRUS FREE. ALTHOUGH INFORMATION THAT YOU SUBMIT MAY BE PASSWORD PROTECTED, WE DO NOT GUARANTEE THE SECURITY OF ANY INFORMATION TRANSMITTED TO OR FROM THE SERVICES AND YOU AGREE TO ASSUME THE SECURITY RISK FOR ANY INFORMATION YOU PROVIDE THROUGH THE SERVICES.

## VII. LIMITATIONS OF LIABILITY.

IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS OR DAMAGES ARISING DUE TO BUSINESS INTERRUPTION OR FROM LOSS OR INACCURACY OF INFORMATION, INCLUDING IF AND TO THE EXTENT ANY OF THE FOREGOING ARISES IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SERVICES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF WE WERE ADVISED THAT SUCH DAMAGES WERE LIKELY OR POSSIBLE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF US TO YOU FOR ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, EXCEED THE TOTAL FEES PAID TO US BY YOU, IF ANY, DURING THE SIX-MONTH PERIOD PRECEDING THE DATE OF ANY CLAIM (OR \$10 IF THE SERVICES ARE FREE). YOU ACKNOWLEDGE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL TERM BETWEEN YOU

AND US RELATING TO THE PROVISION OF THE SERVICE TO YOU AND WE WOULD NOT PROVIDE THE SERVICE TO YOU WITHOUT THIS LIMITATION.

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS US AND OUR AFFILIATED COMPANIES, AND EACH OF OUR AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL LOSSES, EXPENSES, DAMAGES, CLAIMS, JUDGMENTS, COSTS, EXPENSES AND LIABILITIES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY US OR SUCH PARTIES AND/OR ARISING OUT OF OR RESULTING FROM (1) ANY ACTUAL OR ALLEGED VIOLATION BY YOU OF THIS AGREEMENT (INCLUDING ANY REPRESENTATION OR WARRANTY HEREIN); (2) ANY ACTIVITY RELATED TO YOUR ACCOUNT BY YOU OR ANY OTHER PERSON ACCESSING THE SERVICE WITH YOUR PASSWORD; (3) YOUR USE OF AND ACCESS TO THE SERVICES; (4) YOUR ACTUAL OR ALLEGED VIOLATION OF ANY THIRD PARTY RIGHT, INCLUDING WITHOUT LIMITATION ANY COPYRIGHT, PROPERTY OR PRIVACY RIGHT; (5) YOUR ACTUAL OR ALLEGED VIOLATION OF ANY LAW, RULE OR REGULATION; AND/OR (6) YOUR CONTENT OR DATA, INCLUDING IF IT CAUSES ANY DAMAGE TO A THIRD PARTY. YOUR DEFENSE, INDEMNIFICATION AND HOLD HARMLESS OBLIGATIONS IN THIS AGREEMENT WILL SURVIVE THIS AGREEMENT AND YOUR USE OF THE SERVICES.

You acknowledge that the information on the Website and other Services is provided 'as is' for general information only. If you use the Services to provide any services in any heavily regulated industry, such as, without limitation, medical, legal, tax or financial advice, you are fully responsible for all such services, and represent and warrant that you are appropriately qualified and certified to do so, possessing all necessary licenses and permits to do so. You indemnify us for any failure by you or your agents to do so and/or to follow any applicable laws, rules and regulations. You may use the Services for informational purposes only, as an aid, but only as one information source among many, and not as the sole basis for making any decisions; you must conduct proper due diligence and use your own judgment when making any decisions based on any information, analytics or reports derived from the Services.

We shall not be liable for any circumstances arising out of causes beyond our reasonable control or without our fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures, or other force majeure.

If we breach this Agreement, you agree that your exclusive remedy is to recover, from us or any affiliates, resellers, distributors, and vendors, direct damages up to an amount equal to your Services fee for one month (or up to USD\$10.00 if the Services are free). YOU CAN'T RECOVER ANY OTHER DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, DIRECT, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE. These limitations and exclusions apply if this remedy doesn't fully compensate you for any losses or fails of its essential purpose or if we knew or should have known about the possibility of the damages. To the maximum extent permitted by law, these limitations and exclusions apply to anything related to this Agreement such as, without limitation, loss of content; any virus affecting your use of the Services; delays or failures in starting or completing transmissions or transactions; claims for breach of contract, warranty, guarantee, or condition; strict liability, negligence, misrepresentation, or omission; trespass, or other tort; violation of statute or regulation; or unjust enrichment. **Some or all of these limitations or exclusions may not apply to you if your state, province, or country doesn't allow the exclusion or limitation of incidental, consequential, or other damages.**



## VIII. DURATION OF TERMS

Once in effect, this Agreement will continue in operation until terminated by either you or us. However, even after termination, the provisions of sections III through XV of this Agreement will remain in effect in relation to any prior use of the Services by you. You may terminate this Agreement at any time and for any reason by providing notice to Company in the manner specified in this Agreement or by choosing to cancel your access to the Services using the tools provided for that purpose within the Services. We may terminate this Agreement without notice or, at our option, temporarily suspend your access to the Services, in the event that you breach this Agreement. Notwithstanding the foregoing, Company also reserves the right to terminate this Agreement at any time and for any reason by providing notice to you either through email or other reasonable means. After termination of this Agreement for any reason, you understand and acknowledge that Company will have no further obligation to provide the Services or access thereto. Upon termination, all licenses and other rights granted to you by this Agreement, if any, will immediately cease, but your licenses to us shall survive, and certain of your obligations (including payment obligations, if any) will survive in accordance with the terms hereof.

## IX. MODIFICATION OF TERMS

Company may change the terms of this Agreement from time to time. You will be notified of any such changes via e-mail (if you have provided a valid email address) and/or by our posting notice of the changes on the Services (which may consist of publishing the changes on our website). Any such changes will become effective when notice is received or when posted on the Services, whichever first occurs. If you object to any such changes, your sole recourse will be to terminate this Agreement. Continued use of the Services following such notice of any such changes will indicate your acknowledgement of such changes and agreement to be bound by such changes.

## X. MODIFICATIONS TO SERVICES

We reserve the right to modify or discontinue the Services at any time with or without notice to you, including without limitation by adding or subtracting features and functionality, third party content, etc. In the event of such modification or discontinuation of the Services, your sole remedy shall be to terminate this Agreement as set forth herein. Continued use of the Services following notice of any such changes will indicate your acknowledgement and acceptance of such changes and satisfaction with the Services as so modified.

## XI. OWNERSHIP

We and/or our vendors and suppliers, as applicable, retain all right, title and interest in and to the Services, the website and all information, content, Software, and other software and materials provided by or on behalf of us, including but not limited to all text, images, videos, logos, button icons, audio clips, and the look and feel of the website and our brands and logos, and any data compilations, including without limitation any data input by or on behalf of us or our third party providers, and any data to the extent processed by, or resulting as an output of, the Services, and all Services usage data, statistical data or aggregated data collected or reported with respect to the any part or all of the Services, including without limitation any aggregated and anonymized data extracted or derived from the Service, including all aggregated and anonymized usage data, statistical data, transactional data, metadata, market data and other aggregated and anonymized data collected from user data and files. We own the rights to any metadata we collect from or about your use of the Services. Without limiting the generality of the foregoing, we reserve the right to create and market public indexes, analysis or insights created from such data. You agree that you will not copy, reproduce, distribute or create derivative works from any information, content, software or materials provided by us, or remove any copyright or other proprietary rights notices contained in any such information, content, software or materials without the copyright owner's prior written consent.

Unless otherwise stated, all content in our websites or other Services, is our property or the property of third parties. These contents are protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions and other copyright laws.

Your feedback is welcome and encouraged. You agree, however, that (i) by submitting unsolicited ideas to us, you automatically forfeit your right to any intellectual property rights in such ideas; and (ii) unsolicited ideas submitted to us or any of our employees or representatives automatically become our property.

## XII. INTERNATIONAL USERS

The Services are controlled, operated and administered by us from within the United States. We make no representation that this site is available for access or use at other locations outside the U.S. However, any access or use from outside the U.S. is still subject to this Agreement. Access to the Services is expressly prohibited from territories where this site or any portion thereof is illegal. You agree not to access or use any information or materials on the Services in violation of U.S. export laws and regulations, or in violation of any laws or regulations in the country from which you are accessing the Services. Any personal information which we may collect via the Services may be stored and processed in our servers located in the United States or in any other country in which we, or our affiliates, subsidiaries, or agents maintain facilities. You consent to any such transfer of personal information outside your country of residence to any such location.

## XIII. THIRD PARTY CONTENT AND SERVICES

Certain content (including without limitation advertisements) on the Services may be supplied by third parties. Company does not have editorial control over such content. Any opinions, advice, statements, services, offers, or other information that constitutes part of the content expressed or made available by third parties, including without limitation, suppliers and vendors, advertisers, or any customer or user of the Services, are those of the respective authors or distributors and not of Company or its affiliates or any of its officers, directors, employees, or agents. In many instances, the content available on the Services represents the opinions and judgments of the respective third parties, whether or not under contract with Company. You may enter into correspondence with or participate in promotions of such third parties, such as advertisers promoting their products, services or content on this site. Any such correspondence or participation, including the delivery of and the payment for products, services or content, are solely between you and each such third party. Company neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, submission, posting, or statement made on the Services. Under no circumstances shall Company, or its affiliates, or any of their respective officers, directors, employees, or agents, be liable for any loss or damage caused by your reliance on any content or other information obtained through the Services.

The Services may integrate and/or interact with third party services, such as via APIs or browser extensions. For example, the Services may leverage APIs from third parties, and/or rely on third party browser extensions, and Company has no affiliation, association, endorsement, or sponsorship by any other third party services with which it integrates or interacts from time to time (collectively, "Third Party Services"). Company makes no claim, representation or warranty of any kind, type or nature concerning any Third Party Services, nor Company's or any User's compliance with any third party terms of service for any such Third Party Services (collectively, "Third Party Terms"). It shall be each User's sole responsibility to analyze and interpret any applicable Third Party Terms and comply therewith. Each User is solely responsible for their interpretation of Third Party Terms and their actions relevant to compliance thereof. By using the Services, you hereby release Company and waive any and all claims or claim rights that you may have against Company, and release and indemnify Company against any claims that any third party may have against you, including with respect to your use of any Third Party Services, including if accessed or used via our Services, and with respect to Third Party Terms, applicable privacy policies or any other rules or regulations of such third parties.

Without limiting the generality of the foregoing, we may elect, in our discretion, to utilize social logins, allowing you to login to the Services via other third party authentication services, such as (without limitation) your Facebook, Twitter, LinkedIn, Google, or other account credentials. You understand that these are Third Party Services, and this in no way creates and endorsement of, by or from us to them or vice versa, that we are not responsible for their logins, systems or data, and that by using such third party logins, you may be subject to their respective privacy policies and other terms of use.

You understand that when using the Services, you will be exposed to content from a variety of sources, and that we are not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such content. You further understand and acknowledge that you may be exposed to content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against us with respect thereto, and, to the extent permitted by applicable law, agree to indemnify and hold harmless Company, its owners, operators, affiliates, licensors, and licensees to the fullest extent allowed by law regarding all matters related to your use of the Services.

As a convenience to you, Company may provide, in or through the Services, one or more links to third party web sites or services and/or provide email contacts respecting third parties. Company makes no endorsement of such third parties, nor any representation or warranty regarding anything that takes place between you and any such third parties, including, without limitation, visits to third party web sites, services, email correspondence with third parties, and business or other transactions with third parties found through the Services. Please understand that such third parties are independent from and not controlled by Company, even if, for example, a Company link or logo appears on a website linked from this website or our other Services. It is up to you to read those third party sites' applicable terms of use, privacy, and other applicable policies. For example, without limitation, we may outsource operation of certain aspects of our Services to one or more third parties, and they may have access to certain data by virtue of operating such Services, subject to their own policies.

Certain third parties may be third party beneficiaries to this contract. For example, without limitation, Apple Inc., Google, Inc., or Microsoft Corporation will be a third-party beneficiary to this contract if you access the Services using applications developed for Apple iOS, Android, or Microsoft Windows-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. However, your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service.

#### XIV. DIGITAL MILLENNIUM COPYRIGHT ACT

A. If you are a copyright owner or an agent thereof and believe that any content in our Services infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of

- is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Company's designated method to receive notifications of claimed infringement is by emailing the Copyright Agent at [support@simpl.fit](mailto:support@simpl.fit). You acknowledge that if you fail to comply with all of the requirements of this Section your DMCA notice may not be valid.

B. If you believe that your 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 content, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in New Jersey, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Company may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 or more business days after receipt of the counter-notice, at Company's sole discretion.

## XV. CLASS ACTION WAIVER AND ARBITRATION

### **THIS SECTION CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH US.**

Except if you opt-out as expressly permitted below, or except to the extent contrary to applicable law ("Excluded Disputes"), you hereby agree that all disputes between you and us (whether or not such dispute involves a third party) with regard to your relationship with us, including without limitation disputes related to these Terms, your use of the Service, and/or rights of privacy and/or publicity, may, in our discretion, be resolved by binding, individual arbitration under the American Arbitration Association's rules for arbitration of consumer-related disputes and you hereby expressly waive trial by jury. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules. You may bring claims only on your own behalf. You agree that you shall not participate in any class action or class-wide arbitration for any claims covered by this Agreement. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if we are a party to the proceeding. This dispute resolution provision will be governed by the US Federal Arbitration Act, to the extent permissible. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either we or you can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms. You may opt out of this agreement to arbitrate. If you do so, neither you nor we can require the other to participate in an arbitration proceeding. To opt out, you must notify us in writing within 30 days of the date that you first became subject to this arbitration provision. You must use this address to opt out: [support@simpl.fit](mailto:support@simpl.fit).

You must include your name and residence address, the email address you use for your account with us, and a clear statement that you want to opt out of this arbitration agreement. If and to the extent the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then such preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with us.

#### XVI. MISCELLANEOUS.

You shall comply with all laws, rules and regulations now or hereafter promulgated by any government authority or agency that are applicable to your use of the Services, or the transactions contemplated in this Agreement. You may not assign your rights or obligations hereunder, and any attempt by you to sublicense, assign or transfer any of the rights, duties or obligations hereunder or to exceed the scope of this Agreement is void. In the event that Company is sold to a third party, such a sale will not be deemed a transfer of personal information so long as that third party agrees to assume Company's obligations as to these Terms of Services and any associated Privacy Policy. This Agreement, the Services, and the rights and obligations of the parties with respect to the Services will be subject to and construed in accordance with the laws of the State of New Jersey, excluding conflict of law principles. By accessing or using any Services you agree that the statutes and laws of the State of New Jersey, without regard to conflicts of law principles thereof, will apply to all matters arising from or relating to the use thereof. You also agree and hereby submit to the exclusive legal jurisdiction and venues of the Courts in New Jersey with respect to such matters. This is the entire agreement between you and Company with regard to the matters described herein and govern your use of the Services, superseding any prior agreements between you and Company with respect thereto. The failure of Company to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions hereof shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of this Agreement or related to use of the Services must be filed within three (3) months after such claim or cause of action arose or be forever barred.

**Last Updated: June 23, 2020**