

# Terms of Service

FITTAR B.V. (together with our affiliates, “FITTAR”, “we”, or “us”) provides an interactive Smart Box, consisting of a hardware part and a software application, for use at home, in sports and wellness environments. The Smart Box is designed to motivate users in their movements in a motivating way and to motivate them to continue to perform the movements (the “FITTAR Smart Box”).

FITTAR provides the FITTAR Smart Box through which our services are accessed and also provides an online fitness community and related products, services, content and features through the FITTAR website located at [www.fittar.eu](http://www.fittar.eu), including subdomains (collectively, the “Site”), and through mobile and desktop applications and FITTAR-controlled social media pages (collectively, the “FITTAR Service”).

By signing a FITTAR Smart Box services order form, by registering as a member or by visiting, browsing, or using the FITTAR Service in any way, you (as a “Customer” or “user”) accept these Terms of Service (the “Agreement”), which forms a binding agreement between you and FITTAR.

If you do not wish to be bound by this Agreement, you may not access or use the FITTAR Service. Certain elements of the FITTAR Service may be subject to additional terms and conditions specified from time to time; your use of those elements of the FITTAR Service is subject to those additional terms and conditions, which are incorporated into this Agreement by this reference.

## 1. WHO MAY USE THE FITTAR SERVICE

You are solely responsible for ensuring that you comply with all applicable laws, rules and regulations related to this Agreement, and the right to access and use the FITTAR Service is revoked where this Agreement or use of the FITTAR Service is prohibited or conflicts with any applicable law, rule or regulation.

## 2. LICENSE TO USE THE FITTAR SERVICE

License. Subject to your compliance with this Agreement, FITTAR grants you a limited, non-transferable, non-exclusive, revocable license to access and use the FITTAR Service for your own use and for no other purpose whatsoever. This license includes the right to view content available on the FITTAR Service. This license is to you and may not be assigned or sublicensed to anyone else.

Restrictions. Except as expressly permitted in writing by an authorized representative of FITTAR, you will not use the FITTAR Service except as expressly authorized under this Agreement, and you will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer, or disassemble the FITTAR Service, nor will you take any measures to interfere with or damage the FITTAR Service, nor will you use the FITTAR Service (or any component thereof) to create any product or technology that competes with the FITTAR Service (or any component thereof). You will not download and/or install any third party software and/or application on the FITTAR Smart Box that is not expressly permitted by FITTAR in writing. All rights not expressly granted by FITTAR in this Agreement are reserved.

### 3. COMMITMENT PERIOD

Commitment Period. When you first sign up for the FITTAR Service you may agree to a specific price and plan, which may include a commitment period term of one or more years ("Commitment Period"). You agree to maintain your FITTAR Service for the applicable Commitment Period. The price available with your plan is valid until the Commitment Period expires, at which time your FITTAR Service will automatically continue as long as the Commitment Period term.

Auto-Renewal for FITTAR Services. Unless you opt out of auto-renewal or sign up for a new Commitment Period, your FITTAR Service will be automatically extended following any Commitment Period for another period as long as the Commitment Period term, at the then-current non-promotional rate. To change or terminate your FITTAR Service, contact us at [info@fittar.eu](mailto:info@fittar.eu). By law, after automatic renewal, your subscription can be terminated on a monthly basis. If you terminate your FITTAR Service during the Commitment Period, you may use your FITTAR Service until the end of the then-current term and your FITTAR Service will not be renewed after the then-current term expires.

Other Offers. FITTAR may offer additional promotions or discounts related to FITTAR Services from time to time. Please read the details of those offers carefully, as any additional terms presented to you during the sign-up process will form part of the Agreement. Unless specified in writing, all discount offers that require a payment are non-refundable, and all free months offered are included in the Commitment Period (i.e., for a one-year Commitment Period with one free month you will pay for eleven months of the FITTAR Service). Any free trial or other promotion must be used within the specified time frame of the trial or promotion. You may be required to have a valid payment method on file in order to initiate a free trial; if you do not cancel before your free trial period ends, your account will be converted to a paid FITTAR Service and will be charged in accordance with these FITTAR Service Terms and Conditions.

Price changes: We reserve the right to change the prices of our subscriptions at any time for various reasons, including but not limited to inflation, cost increases, or service improvements. We will notify the customer of any price changes by email or through an announcement on our website. The new prices will take effect on a specific date, as indicated in the announcement. Note: in the event of mandatory changes in law or regulations, we reserve the right to change the prices of our subscriptions without prior notice or consent from the customer."

#### 4. TERMINATION OR CANCELLATION OF FITTAR Service

Cancellation of the FITTAR Service. You may only cancel your FITTAR Service after the expiration of your Commitment Period, except as described in the next paragraph. You agree that if you cancel your FITTAR Service before the end of the commitment period, you will remain responsible for all outstanding FITTAR Service fees (if any) for the remainder of the commitment period.

The notice period for our services is one month before the expiration of your commitment period, unless otherwise specified in the agreement. If you wish to terminate your services, you must notify us in writing or by email, observing the one month notice period. Failure to terminate the services on time may result in the agreement being extended for a full term and may incur additional costs.

Suspension/Termination by FITTAR. FITTAR may immediately terminate or suspend your account, and all or a portion of your FITTAR Service, without notice if: (a) your payment is more than 15 days overdue; (b) you provide false or inaccurate information; (c) you violate the Agreement; or (d) you engage in conduct that violates applicable law or that is threatening, abusive or harassing to FITTAR employees, agents, or other FITTAR users.

If we terminate or suspend your FITTAR Service, your license to use the FITTAR Service is also terminated or suspended (as applicable). If your FITTAR Service is terminated, FITTAR may immediately delete all data, files, and other User Content associated with your account without further notice to you. You must pay all charges through the date of termination. Should you wish to resume your FITTAR Service after any suspension, a restoration of service fee may apply. This fee is in addition to all past due unpaid charges and other fees.

#### 5. PRIVACY

Our Privacy Policy forms a part of this Agreement. Please review the Privacy Policy to learn about:

- What information we may collect about you;

- What we use that information for; and
- With whom we share that information.
- Cookie policy

## 6. PAYMENT

You agree to pay the monthly fee specified when you signed up for the FITTAR Service. If the amount to be charged varies from the amount you preauthorized (other than due to the imposition or change in sales tax), you have the right to receive, and we will provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

Your failure to terminate and/or continued use of your FITTAR Service reaffirms that we are authorized to charge you for that FITTAR Service. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you.

**Billing Authorization.** You may be asked to provide a credit, charge or debit card number from a card issuer that we accept in order to activate your FITTAR Service. Your authorizations in this section also apply to our payment processor and any other company who acts as a billing agent for us. You hereby authorize us to charge your specified payment method on a monthly basis, in advance, for the FITTAR Service and/or to place a hold on your payment method with respect to any unpaid charges for FITTAR Services. You authorize the issuer of your selected payment method to pay any amounts described herein without requiring a signed receipt, and you agree that these FITTAR Service Terms shall be accepted as authorization to the issuer of the payment provider to pay any amounts described herein, without requiring a signed receipt from you. You authorize us to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to your payment method until such amounts are paid in full. You agree to provide updated payment information upon request and any time the information you previously provided is no longer valid. You acknowledge and agree that neither FITTAR, nor any FITTAR agent, will have any liability whatsoever for any insufficient funds or other charges incurred by you as a result of attempts to charge, and/or place holds on, your specified payment method as contemplated by these FITTAR Service Terms. If you provide a debit card number instead of a credit card number, you authorize all charges described herein to be applied to such debit card unless and until you provide a credit card number.

Third-Party Payment Processor. You agree to pay us, through our payment processor or financing partner (as applicable), all charges at the prices then in effect for any purchase in accordance with the applicable payment terms presented to you at the time of purchase. You agree to make payment using the payment method you provide when you set up your account. We reserve the right to correct, or to instruct our payment processor or financing partner to correct, any errors or mistakes, even if payment has already been requested or received.

Financing Purchase. If you finance the purchase of your FITTAR Service or a FITTAR Smart Box, you agree to abide by the terms of the financing agreement that governs your purchase, which will be provided to you separately. Unless we tell you otherwise at the time of purchase, if you finance the purchase of a FITTAR Smart Box or FITTAR Service, your Commitment Period will be equal to the length of the financing. In addition, you agree to supply FITTAR with a credit or debit card prior to the end of your Commitment Period, or your FITTAR Service will terminate at the end of your Commitment Period.

Bill Inquiries and Refunds. If you believe you have been billed in error for the FITTAR Service, please notify us within 60 days of the billing date by contacting us at [info@fittar.eu](mailto:info@fittar.eu). FITTAR will not issue refunds or credits after the expiration of this 60-day period, except where required by applicable law.

## 7. SALE AND DELIVERY OF PRODUCTS

FITTAR accepts orders for the FITTAR services. Unfortunately, availability of products cannot be guaranteed. All products ordered will be delivered to the shipping address you provide. We may cancel an order placed by you at any time and for any lawful reason prior to our delivery of the product(s) and receipt of payment from you, provided that we will refund any fees that you prepaid for those products. We may send an acknowledgment of receipt of your order and/or proof of purchase information to your email address after your initial payment has been processed.

By installing the FITTAR SMART BOX, YOU ACKNOWLEDGE THAT YOU ARE SOLELY RESPONSIBLE FOR ALL RISK OF INJURY OR DEATH TO YOURSELF OR OTHERS AND DAMAGE TO THE FITTAR SMART BOX AND PROPERTY OF ANY NATURE CAUSED BY, OR RESULTING FROM INSTALLATION.

You are responsible and liable for any damage to the FITTAR SMART BOX caused by you and/or users. In case of any attempt to repair the FITTAR SMART BOX creates a risk of injury and property damage that we don't allow. IN ADDITION, ANY REPAIR OR ATTEMPTED REPAIR BY ANYONE

OTHER THAN A CERTIFIED FITTAR TECHNICIAN VOIDS THE LIMITED WARRANTY.

## 8. Term and Termination

Term. This Agreement begins on the date your FITTAR Smart Mirror is delivered and continues as long as you have a contract with us and/or continue to use the FITTAR Service.

## 9. SUBMISSIONS

Any video, image, graphics, photos, text, audio recording, content, materials, information or other works that is submitted to the FITTAR Service by or on behalf of users ("User Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content.

As between you and FITTAR, you own all User Content that you submit to the FITTAR Service. You grant FITTAR a worldwide, perpetual, irrevocable, non exclusive, sublicensable (through multiple tiers), transferable, royalty-free license and right to use, copy, transmit, distribute, publicly perform and display (through all media now known or later created), edit, modify, and make derivative works from your User Content for any purpose whatsoever, commercial or otherwise, without compensation to you. In addition, you waive any so-called "moral rights" or rights of privacy or publicity in your User Content. You further grant all users of the FITTAR Service permission to view your User Content for their purposes. If you make suggestions to FITTAR or through the FITTAR Service about improving or adding new features or products to the FITTAR Service or you otherwise provide feedback or testimonials, FITTAR a worldwide, perpetual, irrevocable, non-exclusive, sublicensable (through multiple tiers), transferable royalty-free license and right to use your suggestions, feedback and testimonials without any compensation or other obligation to you.

## 10. INDEMNIFICATION

You agree to indemnify, defend, and hold harmless FITTAR and our directors, officers, employees, and agents, from and against all claims, damages, losses and costs that arise from or relate to (i) your activities on the FITTAR Service, (ii) any User Content submitted by or on behalf of you or (iii) your violation of this Agreement.

## 11. THIRD PARTY SOFTWARE AND APPLICATIONS

Downloading and/or installing any third party software and/or applications that are not expressly authorized by FITTAR on any FITTAR hardware is strictly forbidden; any such downloading or installation is done at

your own risk and will void any applicable warranty or support commitments by FITTAR.

## 12. THIRD PARTY LINKS AND CONTENT

There may be links on the FITTAR Service that let you leave the service to access a site that is operated by a third party. FITTAR neither controls nor endorses these sites, nor has FITTAR reviewed or approved the content that appears on them. You acknowledge that FITTAR is not responsible for the legality, accuracy or inappropriate nature of any content, advertising, products or other materials on or available from any such third party sites, or any damage or loss caused or alleged to be caused by or in connection with the access or use of such third party sites.

## 13. DISCLAIMERS

FITTAR may update, add to, enhance, modify, remove or alter any content or features of the FITTAR Service at any time, at our sole discretion. You are responsible for providing your own internet access to the FITTAR Service.

FITTAR provides the FITTAR Service on an "AS IS" and "AS AVAILABLE" basis. You use the FITTAR Service at your own risk. Other than as expressly provided in writing by FITTAR in connection with your purchase of a FITTAR service, FITTAR expressly disclaims any and all warranties of any kind, whether express or implied, including, but not limited to implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any other warranty that might arise under any law with respect to the FITTAR Service. Without limiting the foregoing, FITTAR makes no representations or warranties:

- That the FITTAR Service will be uninterrupted or error-free;
- Concerning any content, including User Content;
- Concerning any third party's use of User Content that you submit;
- That the FITTAR Service will meet your personal or professional needs;
- That FITTAR will continue to support any particular feature of the FITTAR Service; or
- Concerning sites and resources outside of the FITTAR Service, even if linked to from the FITTAR Service.

To the extent that another party may have access to or view content on your FITTAR Smart Mirror, you are solely responsible for informing such party of all disclaimers and warnings in this Agreement.

## 14. LIMITATION OF LIABILITY

To the fullest extent permitted by law: (i) FITTAR will not be liable for any indirect, incidental, special, consequential, punitive, or exemplary

damages, including but not limited to damages for loss of profits, goodwill, use, data or other intangible

losses; and (ii) FITTAR's total liability to you for all claims, in the aggregate, will not exceed the amount actually paid by you to FITTAR over the three (3) months preceding the date your first claim(s) arose.

## 15. PROFESSIONAL ADVICE DISCLAIMER

Professional Advice Disclaimer. THE FITTAR SERVICE OFFERS HEALTH AND FITNESS INFORMATION AND IS DESIGNED FOR EDUCATIONAL AND ENTERTAINMENT PURPOSES ONLY. YOU SHOULD CONSULT YOUR PHYSICIAN BEFORE BEGINNING A NEW FITNESS PROGRAM. YOU SHOULD NOT RELY ON INFORMATION AVAILABLE IN OR VIA THE FITTAR SERVICE AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH, YOU SHOULD ALWAYS CONSULT WITH A PHYSICIAN OR OTHER HEALTH-CARE PROFESSIONAL. DO NOT DISREGARD, AVOID OR DELAY OBTAINING MEDICAL OR HEALTH RELATED ADVICE FROM YOUR HEALTHCARE PROFESSIONAL BECAUSE OF INFORMATION AVAILABLE ON THE FITTAR SITE OR FITTAR SERVICE. THE USE OF INFORMATION PROVIDED THROUGH THE FITTAR SERVICE IS SOLELY AT YOUR OWN RISK.

NOTHING STATED OR POSTED ON THE FITTAR SITE OR AVAILABLE THROUGH ANY FITTAR SERVICE IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICAL OR COUNSELING CARE. FOR PURPOSES OF THIS AGREEMENT, THE PRACTICE OF MEDICINE AND COUNSELING INCLUDES, WITHOUT LIMITATION, PSYCHIATRY, PSYCHOLOGY, PSYCHOTHERAPY, OR PROVIDING HEALTH CARE TREATMENT, INSTRUCTIONS, DIAGNOSIS, PROGNOSIS OR ADVICE. THE FITTAR SERVICE IS CONTINUALLY UNDER DEVELOPMENT AND FITTAR MAKES NO WARRANTY OF ANY KIND, IMPLIED OR EXPRESS, AS TO ITS ACCURACY, COMPLETENESS OR APPROPRIATENESS FOR ANY PURPOSE. IN THAT REGARD, DEVELOPMENTS IN MEDICAL RESEARCH MAY IMPACT THE HEALTH, FITNESS AND NUTRITIONAL ADVICE THAT APPEARS HERE. NO ASSURANCE CAN BE GIVEN THAT THE ADVICE CONTAINED IN THE FITTAR SERVICE WILL ALWAYS INCLUDE THE MOST RECENT FINDINGS OR DEVELOPMENTS WITH RESPECT TO THE PARTICULAR MATERIAL.

## 16. INTELLECTUAL PROPERTY

You acknowledge that the FITTAR Service contains software and other content that is protected by copyrights, patents, trademarks, trade secrets or other proprietary rights, and that these rights are valid and protected in

all forms, media and technologies existing now or hereafter developed. All FITTAR-generated content, and content provided to FITTAR by our partners and licensors, is copyrighted

individually and/or as a collective work under the Dutch copyright laws; further, as between you and FITTAR, FITTAR owns a copyright in the selection, coordination, arrangement and enhancement of all content in the FITTAR Service. Subject to your compliance with this Agreement, and solely for so long as you are permitted by us to access and use the FITTAR Service, FITTAR shall provide you with the needed software updates with the FITTAR Service, provided you keep intact all copyright and other proprietary notices. Subject to your compliance with this Agreement, and solely for so long as you are permitted by us to access and use the FITTAR Service, FITTAR hereby grants you a limited, revocable, non-exclusive, non transferable right and license to access and use the content made available on the FITTAR Service for your use of the FITTAR Service and for no other purpose whatsoever. Unless otherwise specified, copying or modifying any content or using content for any purpose other than your use of the FITTAR Service, including use of any such content on any other website or networked computer environment, is strictly prohibited.

The FITTAR name, logos and affiliated properties, designs and marks are the exclusive property of FITTAR and/or our affiliates, whether registered or unregistered, and may not be used in connection with any product or service that is not ours, or in any manner that is likely to cause confusion as to our endorsement, affiliation or sponsorship of any person, product or service. Nothing contained on the FITTAR Service should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our trade names, trademarks or other intellectual property without our express prior written consent.

Any other trademarks appearing on the FITTAR Service are trademarks of their respective owners. Our partners or service providers may also have additional proprietary rights in the content that they make available through the FITTAR Service. All rights not expressly granted in this Agreement are reserved.

## 17. COPYRIGHT

FITTAR respects the intellectual property of others, and we ask our users to do the same. Each user is responsible for ensuring that their User Content does not infringe any third party copyright or other intellectual property rights.

## 18. GOVERNING LAW

This Agreement will be governed by the laws of the Netherlands, without regard to principles of conflicts of law that would require a different result.

Any action arising out of or relating to this Agreement or your use of the FITTAR Service must be commenced in the state or federal courts located in Amsterdam, the Netherlands, and you consent to the jurisdiction of that court.

#### 19. INTERPRETATION; SEVERABILITY; WAIVER; REMEDIES

Headings are for convenience only and will not be used to construe the terms of this Agreement. If any term of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from this Agreement. No failure or delay by FITTAR in exercising any right hereunder will waive any further exercise of that right. FITTAR's rights and remedies hereunder are cumulative and not exclusive.

#### 20. SUCCESSORS; ASSIGNMENT; NO THIRD PARTY BENEFICIARIES

This Agreement is binding upon and will insure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives, and permitted assigns. You may not assign or transfer this Agreement without FITTAR's prior written consent. No third party has any rights hereunder. FITTAR may assign our rights, obligations and/or this Agreement at any time in our sole discretion without notice to you.

#### 21. NOTICES

You consent to receive all communications including notices, agreements, disclosures, or other information from FITTAR electronically. FITTAR may communicate by email or by posting to the FITTAR Service. For support-related inquiries, you may email [info@fittar.eu](mailto:info@fittar.eu). For all other notices to FITTAR, write to the following address:

FITTAR B.V.

Abe lenstra boulevard 50-7, 8448 JB

Heerenveen, The Netherlands

Attn: Legal department

#### 22. MODIFICATION

This Agreement may be modified at any time by FITTAR. Any such modification will be communicated to you by, at a minimum, revising the "Last Updated" date at the top of this page. Unless otherwise specified by us, modifications will be effective as of the date they are posted to the FITTAR Service.

## 23. ENTIRE AGREEMENT

This Agreement incorporates the following legal documents by reference, as well as any other policies or procedures referenced herein that are posted to the FITTAR Site from time to time:

- Privacy Policy
- FITTAR Terms and Conditions

If there is a conflict between any policies posted on the FITTAR Service and the terms of this Agreement, the terms of this Agreement will control. This Agreement, together with the FITTAR SMART BOX order confirmation represents the entire understanding between FITTAR and you and supersedes all prior agreements and understandings regarding the same.