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# Fortus Terms of Use

Effective Date: 31 July 2024

Welcome to Fortus! We want you to know and understand your rights and our rights relating to the provision of the Services (as defined below). Please review them carefully. Here are a few highlights:

- Your privacy is critically important to us. See how we collect and use your personal information in our Privacy Policy.
- You own your content, but give us a right to use it.
- We expect you to be respectful and we can disable access to your account or content if you act in violation of our rules.
- Fortus is not liable for your activities and no warranties are made by Fortus.
- You can cancel your subscription or delete your account at any time.
- We can suspend or terminate your account if you violate our Terms.
- We want your feedback, and you allow us to use it.
- You agree to arbitrate if there is a dispute between us (unless you reside in the European Union).
- There are easy ways to reach us if you have questions or need help. Contact us at [team@fortus.fit](mailto:team@fortus.fit) at any time.

## Terms of Use

**PLEASE READ THESE TERMS OF USE CAREFULLY.**

**These Terms of Use cover important information about the Platform, subscriptions, and any applicable fees. Your use and/or subscription is governed by these Terms of Use. The following additional terms may also apply to you:**

**A. Forum Community Standards Addendum: the provisions in the Community Standards form part of the Terms of Use and create a legally binding agreement between you and FORTUS.**

**C. Additional Terms: If you are a resident of certain countries, the Additional Terms in these Terms of Use may apply to you. The Additional Terms supersede these Terms of Use through any such conflict.**

These Terms of Use and any other terms and documents expressly contained herein, each as may be amended, supplemented or replaced from time to time (together, the "**Terms of Use**") apply to your use of the FORTUS mobile application ("**FORTUS App**"), or one of our other products or services, all of which are part of FORTUS's platform ("**Services**" or "**Platform**").

These Terms of Use are entered into by and between you as a user (referred to as "**User**", "**you**" or "**your**") and Fortus Fit (ACN 677 951 316) (referred to as "**FORTUS**", "**we**", "**us**" or "**our**"), and supersede and replace any terms and conditions of services that you may have previously agreed with FORUTS in connection with the Platform.

**Your access to and use of the Platform constitutes your agreement to be bound by these Terms of Use.** The offering of the Platform to you is conditional on your acceptance of these Terms of Use. If you do not agree to these Terms of Use, you must not access or use the Platform. We reserve the right to review user accounts and actions on the Platform to ensure abidance with the Terms of Use.

These Terms of Use were written in English. In any case where a translated version of the Terms of Use disagrees with the English version, the English version takes precedence.

For more details about FORTUS's privacy practices, please refer to our [Privacy Policy](#).

# Definitions

**Terms of Use** refers to this document.

**FORTUS App** refers to the downloadable FORTUS mobile application.

**Services** and **Platform** refer to any of our **products** or **services** we offer to you.

**User, you** or **your** refers to you as a user of the **Services** or **Platform**.

**FORTUS, we, us** or **our** refers to Fortus Fit (ACN 677 951 316).

**User Account** refers to the User Account you create upon signing up to the **FORTUS App**.

**Verified Account** refers to a **User Account** that has been verified on the **FORTUS App**.

**Applicable Laws** refers to any civil and common laws, statutes, subordinate legislation, treaties, regulations, directives, decisions, by-laws, ordinances, circulars, codes, orders, notices, demands, decrees, injunctions, resolutions and judgments of any government, quasi-government, statutory, administrative or regulatory body, court, agencor association by which **FORTUS** or the **User** are bound in any jurisdiction applicable to the access and use of the **Platform**.

**Contributed Content** refers to any content or materials that **you** submit or otherwise upload to or through the **Platform** (including any information contributed by you in respect of any blog, forum, and any comments, feedback or ideas that you send to **FORTUS**).

# 1. USER

## 1.1. Eligibility

By accessing or using the Platform, you confirm that you are of legal age in your country, are not under 16 years old, have full power, capacity, and authority to agree to the Terms of Use and have not been previously suspended or removed from using the Platform.

## 1.2. User Account Creation

To use certain features of the Platform or Services, you will need to create a user account (each, a "**User Account**") by providing your full name, an email address, a password, your date of birth and other information that we may require from time to time. You will also need to create a username which will be visible to others on the app. Please provide accurate and current information when creating your User Account. We may change the ways in which you can create or access a User Account in the future.

FORTUS may, at its sole discretion:

- a) limit the number of User Accounts that you may create or maintain;
- b) stipulate additional conditions and requirements for the opening or maintaining of User Accounts; and/or
- c) refuse to create a User Account for you.

## 1.3. Community Standards

FORTUS's Community Standards describe restrictions on user behaviour and Contributed Content and are incorporated by reference into these Terms of Use. You agree to comply with the Community Standards.

## 1.4. Verified Accounts

By FORTUS's sole discretion, we may choose to verify your User Account and place a badge on your account or profile indicating that you are a 'verified user' on the platform. Through this your User Account may become a Verified Account ("**Verified Account**"). The reasons for this may include, but are not limited to the following:

- (i) that you are a professional in some capacity;
- (ii) that you encounter significant risks from impostors attempting to represent themselves as you; and
- (iii) you have entered into an agreement with FORTUS for this to occur.

Verified Accounts may, at FORTUS's discretion, receive a free subscription. All Verified Accounts must honour the FORTUS Community Standards as listed in these Terms of Use. We reserve the right to remove your Verified Account status and/or remove any associated benefits, such as your free subscription, at any time for any reason.

## 1.5. Security

a) When you create a User Account, you will be responsible for maintaining the security of your User Account access credentials, for all activities that occur under the User Account and any other actions in relation to the User Account (with or without your permission).

b) FORTUS is not responsible for any loss or activity that results from the unauthorised use of your User Account due to your failure to secure your access credentials.

We endeavour to use reasonable security measures to protect against unauthorized access to your account. We cannot, however, guarantee absolute security of your account, your Contributed Content or the personal information you provide, and we cannot guarantee that our security measures will prevent unauthorized third parties from illegally accessing the Services or its contents.

c) You should not share the access credentials of your User Account (including passwords) with any other person or allow any other person to access your User Account. The use of unique and complex passwords is highly recommended for security reasons. You must immediately notify the FORTUS team in writing at [support@FORTUS.com](mailto:support@FORTUS.com) of any unauthorised use of your User Account or any other breaches of security.

## **1.6. Suspension and termination**

a) FORTUS has the right to suspend access to your User Account, or to terminate your User Account, at any time and for any reason (including where you are in breach of any of the provisions in these Term of Use), subject to Applicable Laws (as defined at clause 3.1 below)

b) Termination of your account may include:

(i) removal of access to all offerings within the Services, (ii) deletion of your information, files and Content associated with your account; and

(iii) barring of further use of the Services.

You agree that all suspensions or terminations for cause shall be made in Fortus's sole discretion and that Fortus shall not be liable to you or any third party for any suspension or termination of your User Account or access to the Services.

c) You acknowledge and agree that these Terms of Use continue to apply even after your User Account expires or is terminated, or where you have stopped using the Platform.

## **1.7. Third Party Services**

a) You may register for or log-in to your account via a third-party network, such as Facebook or Google. If you do so, you authorise Fortus to pre-populate the registration and other relevant information fields of your account and/or to use such third-party credentials to log you into your account. If you connect your account to a third-party network, you agree to comply with the terms and conditions and policies applicable to such third party.

b) By virtue of certain Services connecting to the Google Maps API, you agree to be bound by the [Google Maps/Google Earth Additional Terms of Service](#) (including the [Google Privacy Policy](#)) in connection with your use of such Services.

## 2. SUBSCRIPTION SERVICE

Further details about the Subscription Service will be announced at a later date.

## 3. USE OF THE PLATFORM

The FORTUS Platform and Services cannot be provided and the agreement described in these Terms of Service cannot be performed without FORTUS processing data about you, and other FORTUS App Users, including your location data. Processing of the data you share with Fortus, including location data, is essential to the Services we provide and a necessary part of our performance of the agreement we have with you.

### 3.1. Lawful Use

By using the Platform, you confirm that you will not use the Platform for any of the following:

a) *Unlawful Activity* – any activity that: (i) involves proceeds from any illegal or unlawful activity; (ii) publishes, distributes or disseminates any illegal or unlawful material or information; or (iii) otherwise violates, or could possibly violate, any civil and common laws, statutes, subordinate legislation, treaties, regulations, directives, decisions, by-laws, ordinances, circulars, codes, orders, notices, demands, decrees, injunctions, resolutions and judgments of any government, quasi-government, statutory, administrative or regulatory body, court, agency or association by which FORTUS or the User are bound in any jurisdiction applicable to the access and use of the Platform ("**Applicable Laws**").

b) *Unauthorised Use* – any activity that: (i) interferes with, disrupts, negatively affects or inhibits other Users from accessing or fully enjoying the Platform; (ii) introduces to the Platform any malware, virus, trojan horse, worms, logic bombs or any other programme that would otherwise result in any technical glitch, malfunction, failure, delay, default or security breach; (iii) attempts to gain unauthorised access, whether through password mining or otherwise, to other User Accounts, computing systems or networks connected to the Trading Platform; (iv) undermines the security or integrity of the computing systems or networks on which the Platform is hosted; (v) attempts to modify, copy, reproduce, reverse engineer or decompile the Platform or the computer programs used to deliver the Platform; (vi) uses the User Account information of another person to access or use the Platform; or (vii) transfers access or rights to your User Account to a third party.

c) *Abusive Acts* – any act that: (i) defames, abuses, extorts, harasses, stalks, threatens or otherwise violates or infringes the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of any other person; (ii) incites, threatens, facilitates, promotes, or encourages hate, racial intolerance or violent acts towards any other person; or (iii) harvests or otherwise collects information from the Platform about other Users including addresses, phone numbers, email addresses and credit card details.

d) *Fraud* – any act that: (i) attempts to defraud FORTUS or any other person; or (ii) provides false, inaccurate or misleading information to FORTUS.

### 3.2. Contributed Content

a) You agree that FORTUS is not responsible for, and does not endorse, Contributed Content posted on the Services. As between you and FORTUS, any Content will be non-confidential and non-



proprietary and we will not be liable for any use or disclosure of Content. You acknowledge and agree that your relationship with FORTUS is not a confidential, fiduciary, or other type of special relationship, and that your decision to submit any Contributed Content does not place FORTUS in a position that is any different from the position held by members of the general public, including with regard to your Contributed Content. Your Contributed Content will not be subject to any obligation of confidence on the part of FORTUS other than as set forth in our [Privacy Policy](#) and your [privacy controls](#), and FORTUS will not be liable for any use or disclosure of any Contributed Content you provide.

b) You are solely responsible for all content or materials that you submit or otherwise upload to or through the Platform or to us (including any information contributed by you in respect of any blog, forum, and any comments, feedback or ideas that you send to FORTUS) ("**Contributed Content**") and expressly agree not to submit or upload any Contributed Content which:

- i) contains material that is defamatory, discriminatory, obscene, indecent, abusive, racist, offensive, harassing, violent, hateful, inflammatory or is otherwise objectionable or illegal;
- ii) you know not to be true and honest, or which spreads false or misleading statements;
- iii) you do not have the right to submit or upload, including where the content may infringe any Intellectual Property Rights of any party;
- iv) impersonates any person or entity or otherwise associates, infers or misrepresents the User's affiliation with a person or entity;
- v) contains the personal details or confidential information of any third party unless that third party has expressly consented to such use and disclosure;
- vi) contains, or links to, viruses, corrupted data or other harmful, disruptive or destructive files;
- vii) constitutes unsolicited promotions, campaigning, advertising or solicitations, or other types of content which constitute "spam";
- viii) may expose FORTUS or other Users to any harm or liability of any kind; or
- ix) is contrary to any Applicable Laws.

c) FORTUS has the right, but not the obligation, to monitor all conduct and content submitted to or through the Platform, and may in its sole discretion: (i) refuse to publish, remove or disable access to Contributed Content that it considers breaches these Terms of Use; or (ii) suspend or discontinue your opportunity to submit, post or upload content to the Platform.

d) You acknowledge and agree that some of your Contributed Content may continue to be publicly available on the Platform after your User Account is closed or otherwise terminated, subject to your right to have your Contributed Content removed upon request in accordance with Applicable Laws.

e) We may provide you with the ability to mark certain Content that you submit to the Services as private, public, or available only to select users of the Services. Fortus will maintain the privacy of such Content in accordance with your elections. However, if you do not elect to mark your Content as private or available for a limited group of athletes, or later change such designation to allow such Content to be made available to anyone, you are responsible for the public nature of the content. Please review our [Privacy Policy](#) for more information on how to manage your privacy controls.

f) If you believe that any Contributed Content violates these Terms of Use or any Applicable Laws, including any copyright laws, you should report it to the FORTUS team at [support@FORTUS.com](mailto:support@FORTUS.com).

## **4. AVAILABILITY OF SERVICES, SECURITY**

4.1. FORTUS shall make reasonable efforts to ensure that the Platform is available to you. However, access to the Platform may be disrupted from time to time due to necessary maintenance, technical issues, network and system overloads or events outside of FORTUS's control. FORTUS will use commercially reasonable efforts to avoid downtime of the Platform, but assumes no liability if the Platform or any part thereof is unavailable at any time or for any period.

4.2. You acknowledge and agree that you are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for antivirus protection and accuracy of data input and output, and for maintaining a means external to the Platform for any reconstruction of any lost data.

4.3. You acknowledge and agree that FORTUS shall not have any liability or be responsible in any way for: (a) your use of the internet to connect to the Platform or any technical problems, system failures or security breaches; (b) the hardware that you use to access the Platform (including in respect of viruses and malicious software, and any inappropriate material) and the integrity and proper storage of any of your data associated with the Platform that is stored on your own hardware; or (c) any fees you may incur in order to connect to the internet for the purpose of using or accessing the Platform.

4.4. You must immediately notify the FORTUS team in the event that you become aware of any part of the Platform malfunctioning or if you otherwise experience any material malfunction or other connectivity problem that adversely affects your access to or use of the Platform.

4.5. Users may also be required to download and install updates to the FORTUS App so as to maintain access to the Platform and its services. A User's failure to do so might lead to certain services offered on the Platform becoming temporarily inaccessible to the User until such update has been downloaded and installed.

## **5. INTELLECTUAL PROPERTY, USE LICENCE**

### **5.1. FORTUS's ownership of the Platform**

All of the patents, trademarks, logos, trade names, rights in domain names, copyrights, moral rights, design rights, database rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether or not patentable) and other similar intellectual property rights (whether registered or not)) and applications for such rights as may exist anywhere in the world (collectively, "**Intellectual Property Rights**") in the Platform and the material published on and through it (except the Contributed Content) are owned by FORTUS, its licensors and other providers of such material and are protected by Applicable Laws. You may not engage in any activity on or through the Platform, including transmitting or using Contributed Content, that infringes or otherwise makes unauthorised use of another party's Intellectual Property Rights.

You acknowledge and agree that the Services, any necessary software used in connection with the Services (if any), and any aggregated data based on Contributed Content on FORTUS contain proprietary and confidential information that is protected by applicable intellectual property and

other laws. Except as expressly permitted by applicable law or authorized by Fortus or applicable third party service providers or advertisers, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Services, the software or Content available on the Services (other than Content that you may submit), in whole or in part.

The term FORTUS, the Fortus logo and other Fortus logos and product and service names are the exclusive trademarks of, and are owned by, Fortus Fit Pty Ltd, and you may not use or display such trademarks in any manner without Fortus's prior written permission. Any third party trademarks or service marks displayed on the Services are the property of their respective owners.

Fortus reserves all rights not expressly granted hereunder.

## **5.2. User's licence to use Platform**

You are not granted any right to use, and may not use, any of FORTUS's Intellectual Property Rights other than as set out in these Terms of Use and subject to the following conditions:

- a) you are granted a limited, personal, non-transferable, non-sublicensable and revocable licence to access and use the Platform (or any part of it or its contents) for your own personal use and may not copy, reproduce, republish, upload, re-post, modify, transmit, distribute, display, perform, license, create derivative works from, sell or otherwise use the Platform (or any part of it or its content) in any way for non-personal, public or commercial use without prior written consent from FORTUS;
- b) you may not remove or modify any copyright, trademark or other proprietary notices that have been placed in any part of the Platform;
- c) you may not use any data mining, robots or similar data-gathering or extraction methods.
- d) You are granted a limited, non-exclusive right to create a text hyperlink to FORTUS for non-commercial use only, provided such link does not portray FORTUS or any of its products or services in a false, misleading, derogatory or otherwise defamatory manner, and provided further that the linking site does not contain any pornographic, illegal, offensive, harassing or otherwise objectionable material. You are further granted a right to implement any RSS feeds located on FORTUS for your personal, non-commercial use, solely as described on FORTUS. We reserve the right to revoke these licenses generally, or your right to use specific links or RSS feeds, at any time, with or without cause.
- e) You understand that use of certain features of FORTUS may require you to purchase third party equipment or materials (e.g., GPS systems). While Fortus may recommend the equipment or materials of certain third party suppliers, Fortus shall have no responsibility for your acquisition or use of any third party equipment or materials and does not guarantee that third party equipment or materials will function with FORTUS or will be error-free.
- f) You understand that you are responsible for any charges associated with sending communications via your device. You hereby acknowledge that you have the right to communicate with your contacts via the Services.
- g) You represent and warrant that: (i) you are authorized to create your account, whether individually or on behalf of an organization; (ii) you own the Contributed Content posted by you on or through the Services or otherwise have the right to grant the rights and licenses set forth in these Terms; (iii) the posting and use of your Contributed Content on or through the Services does not and will not violate,

misappropriate or infringe on the rights of any third party, including, without limitation, privacy and data protection rights, publicity rights, copyrights, trademark and/or other intellectual property rights; and (iv) you agree to pay for all royalties, fees, and any other monies owed by reason of Contributed Content you post on or through the Services.

f) FORTUS reserves the right to monitor your use of the Platform and to alter or revoke your licence or your access to the Platform at any time and for any reason. Your licence shall terminate upon the expiry or termination of your User Account.

### **5.3. Contributed Content**

a) Contributed Content is submitted to the FORTUS platform, and may include By posting or otherwise providing Contributed Content, you grant FORTUS a non-exclusive, transferable, royalty-free, sub-licensable, irrevocable, perpetual worldwide licence and right to use (including commercial use), distribute, reproduce, display and otherwise make available such Contributed Content on and through the Platform (and across different media for any purpose) without any compensation to you, and you waive (and to the extent that you cannot so waive agree irrevocably not to assert) any and all moral rights to which you may be entitled anywhere in the world in respect of such Contributed Content. This license ends when you delete your Content or your account.

b) You own the information, data, text, software, sound, photographs, graphics, video, messages, posts, tags, or other materials you make available in connection with the Services ("Content"), whether publicly posted, privately transmitted, or submitted through a third party API (e.g. a video submitted via Zwift). You represent and warrant that you own and control all of the rights to the Contributed Content, and have the lawful right to post or otherwise provide such Contributed Content on and through the Platform and otherwise provide FORTUS with such Contributed Content.

### **5.4. Feedback**

We welcome your comments, feedback, suggestions, and other communications regarding FORTUS and the information and services we make available through the Platform (collectively, "Feedback"). If you provide Feedback, you hereby grant to Fortus a worldwide, non-exclusive, transferable, assignable, sub-licensable, perpetual, irrevocable, royalty-free license to copy, distribute, create derivative works of, publicly display and perform and otherwise exploit such Feedback and to use, make, have made, sell, offer for sale, import and export products and services based on such Feedback. For this reason, we ask that you not send Fortus any Feedback that you do not wish to license to us as set forth above.

## **6. THIRD PARTIES**

### **6.1. Third Party Services and Content**

a) In using the Platform, you may view content provided by third-parties, including links to web pages, products and services of such parties ("Third Party Content"). Third Party Content made available on the Services are made and offered directly by the applicable third party Unless expressly stated otherwise, FORTUS does not control, endorse or adopt any Third Party Content and has no responsibility for Third Party Content including material that may be misleading, incomplete,

erroneous, offensive, indecent or otherwise objectionable in your jurisdiction. You acknowledge and agree that Fortus is not responsible for the availability of such external sites or resources.

b) Your dealings or correspondence with such third parties are solely between you and the third party. You are not obligated to use or transact business with any third party that appears on the Services. FORTUS is not responsible or liable for any loss or damage of any sort incurred as a result of any such dealings, and you understand that your use of Third Party Content, and your interactions with third parties, is at your own risk. You agree that FORTUS shall not be liable for any loss or damages of any kind incurred by you as the result of any of your dealings with third party service providers or advertisers available through the services.

c) If you access the Platform through or using any services or software provided by third parties, you acknowledge and agree that FORTUS is not responsible or liable for any loss or damage of any kind incurred as a result of your use of such third party services or software.

## **4.2. Electronic Communications**

a) The Services may provide you with the ability to send or post messages to forums or chat rooms, speak via internet voice connections or send similar messages and communications to third party service providers, advertisers, your personal contacts, other athletes and/or Fortus. You agree to use communication methods available on the Services only to send communications and materials related to the subject matter for which Fortus provided the communication method, and you further agree that all such communications by you shall be deemed your Content and shall be subject to and governed by the Terms and applicable law (including laws regulating direct marketing communications with which you will need to comply with, as applicable).

b) By using communications methods available on the Services, you agree that;

- (i) depending on your account settings and method of communication, communications methods used by you may constitute public, and not private, means of communication between you and the other party or parties;
- (ii) communications sent to or received from third party service providers, advertisers or other third parties are not endorsed, sponsored or approved by Fortus (unless expressly stated otherwise by Fortus); and
- (iii) communications are not routinely pre-reviewed, post-reviewed, screened, archived or otherwise monitored by Fortus in any manner, though Fortus reserves the right to do so at any time. You agree that all notices, disclosures and other communications that we provide to you electronically shall satisfy any legal requirement that such communications be in writing.

## **7. LIMITATIONS OF LIABILITY, DISCLAIMER, INDEMNITY**

### **7.1. Limitation of Liability**

a) Nothing in these Terms of Use shall exclude or restrict FORTUS's liability for: (a) death or personal injury resulting from the negligence of FORTUS or its Associated Parties (as defined in Clause 7.1(b) below); (b) fraud or fraudulent misrepresentation; (c) any other matter that cannot be excluded or limited under Applicable Laws; or (d) the indemnities set out in Clause 7.3 and paragraph 2(d) of the Prenatal and Post-Pregnancy Program Addendum (where applicable).

b) Subject to the above, to the maximum extent permitted by Applicable Laws:

i) in no event shall FORTUS, its affiliates and its and their respective shareholders, members, directors, officers, employees, attorneys, agents, representatives, suppliers and contractors (collectively, "**Associated Parties**") be liable for any:

A) indirect or consequential loss; or

B) loss of profit, business opportunity, anticipated savings, revenue or goodwill,

in each case, whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with authorised or unauthorised use of the Platform, or these Terms of Use; and

ii) FORTUS and the Associated Parties' aggregate liability in contract, tort, or otherwise (including any liability for any negligent act or omission) howsoever arising out of, or in connection with, the performance of its obligations under these Terms of Use in respect of any one or more incidents or occurrences shall be limited to the greater of (a) the total amount of fees received by FORTUS or the Associated Parties from you in connection with your use of the Platform in the twelve (12) month period prior to the date of the first incident or series of connected incidents giving rise to a claim made by you under these Terms of Use, and (b) AUD 100.00.

## **7.2. Disclaimers**

a) To the maximum extent permitted under Applicable Laws, the Platform and any product, service or other item provided by or on behalf of FORTUS are provided on an "as is" and "as available" basis and FORTUS expressly disclaims, and you waive, any and all other warranties of any kind, whether express or implied, including implied warranties of merchantability, fitness for a particular purpose, title or non-infringement or warranties arising from course of performance, course of dealing or usage in trade. Without limiting the above, FORTUS does not represent or warrant that the Platform is accurate, complete, reliable, current or error-free, or free of viruses or other harmful components.

b) To the maximum extent permitted under Applicable Laws, FORTUS is not responsible or liable for any loss or damage of any sort incurred that result from your use of, or inability to use, the features of the Platform.

c) The features on the Platform that promote physical activity, nutrition or general wellness are for your informational purposes only and are not intended as medical advice or services, or for diagnostic or treatment purposes. Before engaging in any physical activity or making any changes to your diet or lifestyle, we recommend seeking advice from your relevant health care professional. Never disregard any advice from a health care professional because of something that you have read on the Platform.

## **7.3. Indemnification**

a) To the maximum extent permitted by Applicable Laws, you agree to indemnify and hold harmless immediately upon demand FORTUS and the Associated Parties from any claim, demand, lawsuit, action, proceeding, investigation, liability, damage, loss, cost or expense including reasonable attorneys' fees, in any way arising out of, in relation to or in connection with directly or indirectly:

i) your use of, or conduct in connection with, the Platform;

ii) your breach of these Terms of Use;

iii) the Contributed Content you provide; or

iv) your violation of any Applicable Laws or the rights of any other person or entity.

b) You will provide FORTUS and the Associated Parties with any assistance that FORTUS and the Associated Parties reasonably requests in defending any such action or proceeding.

## **8. CHANGES AND UPDATES TO PLATFORM, TERMS OF USE**

FORTUS may delete or modify any feature or part of the Platform at any time without notice. FORTUS may also revise and update these Terms of Use at any time in its sole discretion by posting an updated Terms of Use on the Platform. All such changes to the Terms of Use are effective immediately when posted to the Platform and apply to all access to and use of the Platform thereafter. Your continued use of the Platform following the posting of such revised Terms of Use constitutes your acceptance and agreement to the changes which are binding on you.

d) The mobile application may download and install upgrades, updates and additional features in order to improve, enhance, and further develop the Services. Fortus reserves the right at any time to modify or discontinue, temporarily or permanently, the Services or any portion thereof with or without notice. You agree that Fortus shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

## **9. COMPLAINTS, GOVERNING LAW AND DISPUTE RESOLUTION**

### **9.1. Complaints**

If you have any questions, feedback or complaints, please contact the FORTUS team by email at [team@fortus.fit](mailto:team@fortus.fit).

### **9.2. Governing Law**

These Terms of Use (including a dispute relating to its existence, validity or termination) and any non-contractual obligation or other matter arising out of or in connection with it are governed by Queensland law. The courts of Queensland have exclusive jurisdiction to settle any dispute arising from or connected with these Terms of Use.

### **9.3. Dispute Resolution**

a) You agree that any arbitration shall be conducted in their individual capacities only, and not as a class action or other representative action. If any court or arbitrator determines that the class-action waiver set forth in this section is void or unenforceable for any reason, or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

If you are a consumer for the purposes of the laws of the country of which you are resident, you may benefit from any mandatory provisions of such laws. Nothing in these Terms of Use, including this clause 9, affects your rights as a consumer to rely on such mandatory provisions of law.

## **10. GENERAL**

### **10.1. Terms of Use Formatting**

Section titles and headings in the Terms are for convenience only and have no legal or contractual effect. Any rights not expressly granted herein are reserved.

### **10.2. Force Majeure Event**

a) A "Force Majeure Event" means any event beyond FORTUS's reasonable control, including flood, extraordinary weather conditions or earthquake, or other act of God, fire, war, insurrection, riot, labour dispute, accident, action of government, communications, power failure, or equipment or software malfunction.

b) If a Force Majeure Event occurs that affects FORTUS's ability to perform its obligations under these Terms of Use, the FORTUS team will contact you as soon as reasonably possible to notify you and FORTUS's obligations under these Terms of Use will be suspended and the time of performance of our obligations will be extended for the duration of the Force Majeure Event.

### **10.3. Data Privacy**

We will only use your personal information as set out in FORTUS's [Privacy Policy](#) (as amended from time to time).

### **10.4. Notices**

Fortus's notice to you via email, regular mail or notices, posts, or links on the Services shall constitute acceptable notice to you under the Terms. A printed version of the Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

### **10.5. Transfers**

FORTUS may transfer its rights and obligations under these Terms of Use to another entity, but this will not affect your rights or FORTUS's obligations under these Terms of Use. You may not transfer your rights and obligations under these Terms of Use to another person.

### **10.6. Validity**

If any provision of these Terms of Use is deemed unlawful, void or unenforceable, that provision shall be deemed severed from the remaining provisions and shall not affect their validity and enforceability.

### **10.7. Waiver**

No waiver of any provision in these Terms of Use shall be valid unless in writing and signed by the parties. Any failure to enforce any right or remedy under these Terms of Use shall not operate as a waiver of the right to enforce such right or remedy in the future or of any other right or remedy.

### **10.8. Relationship of the parties**



a) Nothing in the Terms of Use: (i) is intended to, nor shall create or be deemed to create, any partnership, joint venture, agency, consultancy or trusteeship, or (ii) shall give rise to any fiduciary or equitable duties owed by FORTUS to you.

b) The Terms constitute the entire agreement between you and Fortus with respect to your use of the Services. The failure of Fortus to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms 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 of the Terms remain in full force and effect.

## **10.9. Third party rights**

A person who is not a party to these Terms of Use has no right whether by applicable statute or otherwise to enforce any term of these Terms of Use.

### **Disclaimer of Warranties and Liability**

THE INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND CONTENT AVAILABLE THROUGH THE SERVICES ARE PROVIDED TO YOU "AS IS" AND WITHOUT WARRANTY. FORTUS AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS HEREBY DISCLAIM ALL WARRANTIES WITH REGARD TO SUCH INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND CONTENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. FORTUS AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT: (a) THE SERVICE WILL MEET YOUR REQUIREMENTS; (b) YOUR CONTENT WILL BE AVAILABLE OR THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS; AND (e) ANY ERRORS IN THE SERVICES WILL BE CORRECTED.

YOU EXPRESSLY AGREE THAT FORTUS IS NOT PROVIDING MEDICAL ADVICE VIA THE SERVICES. THE CONTENT PROVIDED THROUGH THE SERVICES, INCLUDING ALL TEXT, PHOTOGRAPHS, IMAGES, ILLUSTRATIONS, GRAPHICS, AUDIO, VIDEO AND AUDIO-VIDEO CLIPS, AND OTHER MATERIALS, WHETHER PROVIDED BY US OR BY OTHER ACCOUNT HOLDERS OR THIRD PARTIES IS NOT INTENDED TO BE AND SHOULD NOT BE USED IN PLACE OF (a) THE ADVICE OF YOUR PHYSICIAN OR OTHER MEDICAL PROFESSIONALS, (b) A VISIT, CALL OR CONSULTATION WITH YOUR PHYSICIAN OR OTHER MEDICAL PROFESSIONALS, OR (c) INFORMATION CONTAINED ON OR IN ANY PRODUCT PACKAGING OR LABEL. SHOULD YOU HAVE ANY HEALTH RELATED QUESTIONS, PLEASE CALL OR SEE YOUR PHYSICIAN OR OTHER HEALTHCARE PROVIDER PROMPTLY. SHOULD YOU HAVE AN EMERGENCY, CALL YOUR PHYSICIAN OR 000 IMMEDIATELY. YOU SHOULD NEVER DISREGARD MEDICAL ADVICE OR DELAY IN SEEKING MEDICAL ADVICE BECAUSE OF ANY CONTENT PRESENTED ON THE SERVICES, AND YOU SHOULD NOT USE THE SERVICES OR ANY CONTENT ON THE SERVICES FOR DIAGNOSING OR TREATING A HEALTH PROBLEM. THE TRANSMISSION AND RECEIPT OF OUR CONTENT, IN WHOLE OR IN PART, OR COMMUNICATION VIA THE INTERNET, E-MAIL OR OTHER

MEANS DOES NOT CONSTITUTE OR CREATE A DOCTOR-PATIENT, THERAPIST-PATIENT OR OTHER HEALTHCARE PROFESSIONAL RELATIONSHIP BETWEEN YOU AND FORTUS.

YOU EXPRESSLY AGREE THAT FORTUS DOES NOT ASSUME RESPONSIBILITY FOR THE INSPECTION, SUPERVISION, PREPARATION, OR CONDUCT OF ANY RACE, CONTEST, CHALLENGE, OR GROUP ACTIVITY THAT UTILIZES THE SERVICES, INCLUDING ANY THAT ARE ORGANIZED BY A CLUB ADMINISTRATOR.

YOU EXPRESSLY AGREE TO RELEASE FORTUS, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, PARTNERS AND LICENSORS (THE "RELEASED PARTIES") FROM ANY AND ALL LIABILITY IN CONNECTION WITH YOUR ATHLETIC ACTIVITIES AND/OR USE OF THE FORTUS WEBSITES, MOBILE APPLICATIONS, CONTENT, SERVICES OR PRODUCTS (INCLUDING, WITHOUT LIMITATION, ANY FORTUS TRAINING PLAN), AND PROMISE NOT TO SUE THE RELEASED PARTIES FOR ANY CLAIMS, ACTIONS, INJURIES, DAMAGES, OR LOSSES ASSOCIATED WITH SUCH USE. YOU ALSO AGREE THAT IN NO EVENT SHALL THE RELEASED PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH (a) YOUR USE OR MISUSE OF THE SERVICES, (b) YOUR USE OR MISUSE OF EQUIPMENT OR PROGRAMS CREATED OR LICENSED BY FORTUS (INCLUDING, WITHOUT LIMITATION, ANY FORTUS TRAINING PLAN) WHILE ENGAGED IN ATHLETIC ACTIVITIES, (c) YOUR DEALINGS WITH THIRD-PARTY SERVICE PROVIDERS OR ADVERTISERS AVAILABLE THROUGH THE SERVICES, (d) ANY DELAY OR INABILITY TO USE THE SERVICES EXPERIENCED BY YOU, OR (e) ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES OR CONTENT OBTAINED THROUGH THE SERVICES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF FORTUS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

FORTUS DOES NOT ENDORSE YOUR CONTENT OR ANY OTHER ATHLETE'S CONTENT AND SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY TO ANY PERSON OR ENTITY FOR ANY LOSS, DAMAGE (WHETHER ACTUAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR OTHERWISE), INJURY, CLAIM, LIABILITY OR OTHER CAUSE OF ANY KIND OR CHARACTER BASED UPON OR RESULTING FROM ANY CONTENT ON THE SERVICES.

THE COMPANY'S MAXIMUM AGGREGATE LIABILITY TO YOU PURSUANT TO THESE TERMS SHALL NOT EXCEED THE GREATER OF EITHER (a) FIFTY DOLLARS (\$50) OR (b) THE AMOUNT OF FEES PAID BY YOU TO FORTUS IN THE 12-MONTHS PRIOR TO DATE THE CLAIM.

IF YOU ARE A CONSUMER RESIDING IN THE EUROPEAN UNION, YOU HAVE LEGAL REMEDIES IF WE CAUSE YOU LOSS BY OUR BREACH OR NON-PERFORMANCE OF OUR LEGAL OBLIGATIONS, OR BY OUR NEGLIGENCE, AND THESE TERMS DO NOT AFFECT THOSE STATUTORY REMEDIES.