Terms & Conditions

Effective: June 8, 2014

Introduction

Our mobile application “Track Runner” is an online mechanism for tracking, managing, and sharing your fitness activity, specifically running and includes an automated data backup mechanism (“sync feature”). Our services are provided to you by The App Cauldron, Inc. (“The App Cauldron", "us", "we" or "our"), and any such partners, service providers, sponsors, or affiliates as may be connected to the application. Your use of our services is subject to certain terms and conditions. The terms and conditions set forth below (“Terms”), as well as the privacy policy set forth at http://trackrunnerimages.blob.core.windows.net/images/PrivacyPolicy.pdf, apply to your use of our service and functionality provided on or through the Track Runner mobile application including but not limited to the sync feature (the "Service").

By accessing and using the Service, you acknowledge that you have read, understood, and agree to be bound by these Terms and the Privacy Policy. If you do not accept these Terms and the Privacy Policy, you are not authorized to use the Service. We may modify these Terms and the Privacy Policy at any time and such modification will be effective upon publication.

If you are under the age of 18, you must review these Terms with you parent(s) or legal guardian(s) to ensure that both you and your parent(s) or legal guardian(s) understand and consent to the Terms. A parent or legal guardian accepting the Terms for the benefit of a child, agrees and accepts full responsibility for his or her child's use of the Service.

Use of the Service

The Service consists of and allows for the delivery of software, text, graphics, images, video, audio, data, and other material (collectively referred to as the “Content”). The Content may be owned by us or may be provided by and through arrangement with others, including other users of the Service, or our partners, sponsors, or affiliates. The Content is protected by copyright under both United States and foreign laws. Unauthorized use of the Content may violate copyright, trademark, and other laws. You have no rights in or to the Content, and you may not use the Content except as permitted under these Terms. No other use is permitted without prior written consent.
from us or the owner of the Content. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not decompile, reverse engineer, disassemble or otherwise attempt to discover any source code, sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose, except to utilize features of the Service that, by their nature, involve publishing or sharing of Content with the public. You agree not to use any data mining, robots, scraping or similar data gathering methods. If you violate any part of these Terms, your permission to access and/or use the Content and Services automatically terminates and you must immediately destroy any copies you have made of the Content. A breach hereof may result in civil action on our part and criminal prosecution.

**User Content**

You shall be solely responsible for User Content you submit to our service or through our service in connection with other services accessed via our service. By submitting the User Content to us, you hereby grant us a perpetual, worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use, reproduce, distribute, prepare derivative works of, modify, display, and perform all or any portion of the User Content in connection with our provision of the Service and our (and our successors’) business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. We may maintain copies of any User Content for purposes of backup, security, or maintenance, or as required by law.

**Indemnity**

You agree to defend, indemnify, and hold us harmless from and against any claims, actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of these Terms or your uploading of, access to, or use or misuse of the Content or the Service. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit or proceeding. We reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.
Disclaimer of Warranty and Limitation of Liability

WE, OUR AFFILIATES, OUR PARTNERS, AND OUR AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, OR LICENSORS, MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONTENT (INCLUDING THE USER CONTENT), INCLUDING BUT NOT LIMITED TO ITS ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS, OR RELIABILITY.

NEITHER WE NOR OUR AFFILIATES OR PARTNERS SHALL BE SUBJECT TO LIABILITY FOR TRUTH, ACCURACY, OR COMPLETENESS OF ANY INFORMATION CONVEYED TO USERS OF THE SERVICE OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA OR INFORMATION STREAM FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SERVICE AND THE CONTENT AT YOUR OWN RISK.

WE MAKE NO WARRANTY THAT THE SERVICES WILL BE AVAILABLE ERROR FREE OR THAT THE SERVICES OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE SERVICE OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, WE SHALL NOT BE RESPONSIBLE FOR THOSE COSTS.

THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. WE HEREBY DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, MERCHANTABILITY, NON INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE. THIS INCLUDES WITHOUT LIMITATION DATA TRANSFERRED BY MEANS OF THE SYNC FEATURE. ALTHOUGH WE ENDEAVOR TO PROTECT USER CONTENT FROM TEMPORARY MISPLACEMENT OR PERMANENT LOSS WE EXPRESSLY DISCLAIM ALL WARRANTIES AS TO THE AVAILABILITY AND SECURITY OF OUR OR OUR AFFILIATES' OR PARTNERS' BACKUP SYSTEM.

IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE SERVICE AND THE CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Some states do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not
apply to you. IN SUCH STATES, OUR LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

User Conduct and Personal Safety

The Service is rendered to you and accessed by you via the Internet or other data transmission facilities or carriers by use of a mobile phone (“Device”) of your own choice. Your carrier’s normal rates and fees apply.

You understand and agree that all your athletic and/or recreational activities using the Service may have inherent, implicit and/or express risks of bodily injury or death and/or property damage.

You understand and agree that you voluntarily and at your own free will assume all known and unknown risks associated with such athletic or recreational activities.

We encourage you to always put safety first, follow applicable traffic regulations, and not to change settings on your Device and/or the Software while in motion or in unsafe areas. Be alert and aware of your surroundings at all times when exercising.

You understand and agree that you download or otherwise obtain the Service at your own risk, and will be solely responsible for your use and any damage to your Device by means of which you access the Service, loss of data or other harm of any kind that may occur as a result thereof.

It is important that you warm up and stretch before each workout and that you use common sense while running or performing exercise of any kind. If you experience any pain, feel weak, dizzy or exhausted or become short of breath, immediately stop your workout. Permanent hearing loss may occur if ear buds or headphones are used at high volume. Set the volume to a safe level.

No Medical Advice

The App Cauldron provides the Service for you to track, manage, and share your fitness activities. THE SERVICE DOES NOT CONTAIN OR CONSTITUTE, AND SHOULD NOT BE INTERPRETED AS, MEDICAL ADVICE OR OPINION. We are not licensed medical professionals, and we are not in the business of providing medical advice. You should always consult a qualified and licensed medical professional prior to beginning or modifying any diet or exercise program. Communication with our Service occurs exclusively over the internet or by functioning of our Software and we are not familiar with your individual physical characteristics or health. Any information you provide to us
may not fully reflect the state of your health. YOUR USE OF THE MOBILE APPLICATION DOES NOT CREATE A DOCTOR-PATIENT RELATIONSHIP BETWEEN YOU AND THE APP CAULDRON.

Third Party Service Providers and Advertisers

The App Cauldron may choose at any time to have its partners', service providers', sponsors', affiliates' and other third parties' products, services, advertisements and other offers made available via the Service. Any such offerings made available to you, even if co-branded with Track Runner or other names and trademarks of The App Cauldron, are made and offered directly by the applicable third party service provider or advertiser, unless otherwise expressly noted. You acknowledge and accept that if you buy any such products or services offered you are contracting directly with the applicable business partner or third party service provider or advertiser. Your correspondence or business dealings with, or participation in promotions of, third party service providers or advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party service provider or advertiser. The App Cauldron shall not be responsible or liable for the performance or nonperformance of any third party service provider or advertiser and any loss or damages of any kind resulting thereof.

General

These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us without restriction.

These Terms are governed by the internal substantive laws of the Commonwealth of Massachusetts, without respect to its conflict of law provisions. You expressly agree to submit to the exclusive personal jurisdiction of the state and federal courts sitting in the City of Boston in the Commonwealth of Massachusetts. If any provision of these Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms, which shall remain in full force and effect. Failure by us to act on or enforce any provision of the Terms of Use shall not be construed as a waiver of that provision or any other provision in these Terms of Use. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you, these Terms constitute the entire agreement between you and us with respect to the subject matter, and supersede all previous or contemporaneous agreements, whether written or oral, between the parties.
with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. These Terms will inure to the benefit of our successors, assigns, licensees, and sublicensees.

All sections of these Terms that, by their nature, should survive termination will survive termination, including, without limitation, the sections entitled Indemnity, Disclaimer of Warranty and Limitation of Liability, and General.

Contact and Notices

All notifications, questions and comments relating to these Terms can be submitted via e-mail to info@theappcauldron.com.