

**AMERICAN COUNCIL ON EXERCISE®**  
**Fit Facts® Content License Agreement**

**1. Definitions.**

- a) “Term” shall mean one year from the Effective Date.
- b) “Content” shall mean one or more of Licensor’s Fit Facts, one-page health and fitness information datasheets, and will include where appropriate a photo or graph. The content shall include the textual content, articles, visual materials, and other content developed and/or owned by Licensor.
- c) “Effective Date” shall be the date of Licensee’s completed purchase of the Content.
- d) “Licensed Content” shall mean the portion of the Content purchased by Licensee for use as prescribed in these Terms and Conditions.
- e) “Media” shall mean the Licensee’s company-owned website located at the url provided during the purchase process, or related electronic newsletter(s) published by the Licensee and distributed by download from the Licensee’s website or by email to the Licensee’s customers and subscribers.
- f) “Licensed Trademarks” shall mean Licensor’s Trademarks, Service Marks, Trade names, logos and graphics belonging to Licensor (the “Licensor Marks”).
- g) “Marketing Materials” shall mean any other materials provided by Licensor to the Licensee for use in the Media.
- h) “Proprietary Notices” shall mean the copyright and trademark notices set forth in the Marketing Materials and in Section 3b below.

**2. License Grant**

- a) Licensed Content. Licensee hereby grants to the Licensee a non-exclusive non-transferable license for the Term to publish the English language unabridged version only of the Licensed Content as part of the Media. Subject only to the license rights granted in this agreement, Licensor shall retain all right, title and interest, including copyrights, in and to the Licensed Content. Without limiting the foregoing, this license does not include the right to distribute the Licensed Content apart from the Media, and this license specifically excludes any rights to distribute the Licensed Content on a standalone basis. All rights not specifically granted to the Licensee are reserved to Licensor. Upon termination of this Agreement at the end of the Term, the Licensee

will immediately cease all use of the Licensed Content. Licensee shall not have the right to sublicense any of the rights granted to Licensee herein to any third party. All rights not specifically granted to Licensee in this Agreement are hereby reserved by Licensor.

- b) Licensed Trademarks and Marketing Materials. Licensor hereby grants to the Licensee a non-exclusive, non-transferable license for the Term to copy, use, publicly display and transmit the Licensed Trademarks and Marketing Materials in the Media solely in connection with fulfilling Licensee’s obligations under this Agreement. Upon termination of the Term of this Agreement, the Licensee will immediately cease all use of the Licensed Trademarks, Marketing Materials and Licensor’s name and, at the Licensee’s election, destroy or deliver to Licensor all materials in the Licensee’s control or possession which bear such names, including any sales literature. The Licensee will not challenge any intellectual property rights claimed by Licensor in the Licensed Trademarks. All uses of the Licensed Trademarks by the Licensee pursuant to the terms of this Agreement will inure to the benefit of Licensor.
- c) License Limitations. Unless otherwise agreed to in writing by Licensor, the rights granted herein are limited to the Media as defined herein, and do not apply to any other Licensee websites, newsletters, publications, content, channels, joint ventures or similar business partnerships or arrangements now existing or arising in the future. To the extent reasonably possible, the use of the Licensed Content, Marketing Materials and Licensed Trademarks is to be limited to North America. Unless otherwise agreed to in writing, the rights granted herein expressly exclude any rights to use the Licensed Content and/or Licensed Trademarks in hard copy (print) format or in any other format or through any means of delivery other than through digital format delivery over the Internet in connection with the Media as set forth in this Agreement.

**3. Licensee Responsibilities.**

- a) Marketing. The Licensee shall use its best efforts to market, promote, and distribute the Licensed Content in the Media. Licensee is required to use all of the Licensed Content and may not alter the Licensed Content in any manner.
- b) Use of Proprietary Notices.
  - i. On each web page included in the Media in which the Licensed Content or a link to

Licensed Content appears, the Licensee will display Licensor's logo, with an associated live link to the Licensor web site at [www.acefitness.org/getfit](http://www.acefitness.org/getfit).

- ii. On each web page in the Media in which the Licensed Content appears, the Licensee will also display the following notice, with a live link to the Licensor web site:  
Provided by American Council on Exercise.

- iii. In the "terms and conditions" page of the Media, or elsewhere in the Media where trademark information is included for the Licensee's intellectual property, the Licensee will display the following notice: "ACE®, American Council on Exercise®, Operation FitKids®, Workout Watchdog®, FitnessMatters®, Energy2Burn®, Gymjob.com®, and other related marks and logo's are registered trademarks of the American Council on Exercise"

- iv. Licensor shall also be identified in the Media by including the following paragraph:  
*"The American Council on Exercise® (ACE®) is a nonprofit organization dedicated to promoting the benefits of physical activity and protecting consumers against unsafe and ineffective fitness products and instruction. For more information on ACE® visit [www.acefitness.org](http://www.acefitness.org)."*

- c) Licensor Approvals. Licensee shall use the Marketing Materials in the form provided by Licensor without modification or editing. Licensor shall have the right to review and approve all uses of Licensor's logo, which approval shall not be unreasonably withheld.
- d) Other Notices in Media. The Licensee may include such notices as it may choose in the Media to protect its own intellectual property rights. The Licensee must include, in the Media, (i) a privacy statement addressing the use of personal information, and (ii) terms and conditions of use that protect the Licensed Content to the same extent that such terms and conditions provide contractual and legal protection to the Licensee's similar valuable intellectual property delivered to users through the Media.

#### **4. Quality Control.**

- a) Compliance and Approval. Licensee shall display

all intellectual property notices required by Licensor in connection with the Licensed Content, Marketing Materials and Licensed Trademarks. The Licensee may not make any other public use of the Licensed Content, Marketing Materials or Licensed Trademarks without Licensor's prior written approval of their use.

- b) Quality of Media. The Media shall be maintained at or above the high quality level in existence as of the date of this Agreement. If at any time during the Term of this Agreement the quality of the Media declines, the Licensee shall use its best efforts to promptly restore the quality. If the Licensee does not restore the Media's quality within thirty (30) days of receipt of written notice from Licensor, Licensor may terminate this License Agreement.

#### **5. Delivery and Acceptance of Licensed Content.**

Licensor shall deliver the Licensed Content via Licensor's online system. The Licensed Content shall be deemed accepted upon posting by Licensor.

6. **Privacy; Data Protection; Use of Names:** Any personal information collected or accessed by Licensor as a result of click-thrus from the Media or any other permitted Licensee promotion and all links to Licensor's website shall be owned by Licensor, which reserves the right to use information required to process and fulfill subscription orders or other products and services. Licensor shall provide a privacy policy on its website describing the uses of the personal information, and provide subscribers to e-mail, magazine subscriptions and other services the option of opt-out of data collection and use according to Licensor's privacy policy.

#### **7. Warranties.**

- a) Licensor's Warranty. Licensor warrants that it has the legal right and power to enter into this License Agreement and perform its obligations hereunder;
- b) Licensee's Warranty. The Licensee warrants that it has the legal right and power to enter into this License Agreement and perform its obligations hereunder.

#### **8. Indemnification.**

- a) Indemnification by Licensee. The Licensee agrees to indemnify, hold harmless and defend Licensor and its directors, officers, employees and agents

from and against any action, claim, demand or liability, including reasonable attorney's fees, if such action is based on the following: (i) allegations that Licensee's Media, trademarks, service marks or other intellectual property infringes a third person's rights, including without limitation copyright or trademark right, or misappropriates a third person's trade secret, or (ii) the negligence or willful misconduct of Licensee. The Licensee agrees that Licensor shall have the right to participate in the defense of any such claim through counsel selected by Licensor at Licensor's cost.

- b) Indemnification by Licensor. Licensor agrees to indemnify, hold harmless and defend the Licensee and its directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorney's fees, if such action is based on the following: (i) allegations that the Licensed Content, the Marketing Materials, and/or the Licensed Trademarks, when displayed in the Media as permitted hereunder, constitutes under the laws of the United States a defamation or invasion of the right of privacy, or infringement of the trademarks, copyrights or intellectual property rights of any third party; or (ii) the negligence or willful misconduct of Licensor. Licensor agrees that Licensee shall have the right to participate in the defense of such claim through counsel selected by Licensee at Licensee's cost.

## 9. Limitation of Liability.

In no event shall either party be liable to the other or any other person for any indirect, incidental, consequential or punitive damages, including loss of profit or goodwill, for any matter arising out of or relating to this agreement or its subject matter, whether such liability is asserted on the basis of contract, tort or otherwise even if such party has been advised of the possibility of such damages.

## 10. Term and Termination.

- a) Term. The Term of this Agreement shall be one year from the date of Licensee's purchase of the Licensed Content.
- b) Termination for Cause. Either party shall have the right to terminate this Agreement and the license granted herein in the event the other party is in material breach with any of the terms and conditions of this Agreement and fails to cure such breach within 30 days after receipt of written notice.

- c) Effect of Termination. If this Agreement is terminated or expires, then all of the Licensee's rights and licenses with respect to the Licensed Content, Marketing Materials and Licensed Trademarks shall terminate.
- d) Survival of Certain Terms. The provisions of Sections 7, 8, 9, 10 and II of this Agreement, and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this Agreement.

## 11. Miscellaneous.

- a) Access to Media. The Licensee shall provide Licensor with access to the Media, including without limitation, two free subscriptions, if applicable, to any portions of the Media that require a payment prior to access, for the purposes of confirming the Licensee's compliance with the terms and conditions of this Agreement.
- b) Amendments and Waivers. Any term of this Agreement may be amended or waived with the written consent of the parties or their respective permitted successors and assigns. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.
- c) No Assignment. The Licensee shall not assign any of its rights, obligations or privileges (by operation of law or otherwise) hereunder without the prior written consent of Licensor. Licensor shall have the right to assign this Agreement to any successor to substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.
- d) Governing Law; Jurisdiction. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the state and

federal courts of San Diego, California.

- e) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth in the License Terms, or as subsequently modified by written notice.
- f) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance

with its terms.

- g) Independent Contractor. Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.
- h) Entire Agreement. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.