

## Piggyback Terms of Service

### 1. Application of Terms

- 1.1. By using the Platform, you confirm that you accept and agree to comply with these Terms, whether or not you create an Account.
- 1.2. Please also read our privacy policy located in the footer of [www.piggyback.co.nz](http://www.piggyback.co.nz), because it will apply to all information you provide to Piggyback and forms part of these Terms. By accepting these Terms, you also accept our privacy policy.
- 1.3. If you do not agree to be bound by these Terms including our privacy policy located in the footer of [www.piggyback.co.nz](http://www.piggyback.co.nz), you must not use any part of our Platform.
- 1.4. If you accept these Terms on behalf of a company or other legal entity, you warrant that you have the authority to bind that entity to these Terms.

### 2. Changes

- 2.1. We may change these Terms at any time by updating them on the Platform. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Platform, you agree to be bound by the changed Terms.
- 2.2. We can change these Terms at any time by providing you at least 30 days' prior notice of the change, whether via our Site, by sending you an email. Your continued use after that notice means that you agree to the changed Terms.

### 3. Definitions

- 3.1. The following words and phrases have specific meanings wherever you see them used in these Terms:

**Account** means a Client's account or Trainer's account on the Platform.

**Application** means a Piggyback application for a mobile phone, tablet or other mobile or peripheral device.

**Booking** means a booking for a Consultation through the Platform.

**Consultation** means an organised conversation between the Trainer and Client to discuss details regarding a Program that is free of charge for the Client to Book.

**Content** means computer code, text, graphics, images, music, software, audio, video, information or other digital materials.

**Payment Provider** means any third party provider of payment functionality enabled by us on the Platform.

**Platform** means the systems (including the Site, Application and other systems) we provide to connect to enable the provision of our Services in accordance with these Terms.

**Piggyback** means Piggyback Limited, a company registered in New Zealand under company number 0211191658, with its registered office 34 Parau street, Mt Roskill, New Zealand, and **our, us** and **we** used in these Terms refer to Piggyback.

**Program** means a workout regime to assist Clients with their individual goals and situation.

**Services** means the provision of the Platform to connect Client with Trainers offering Training Sessions, and associated services provided from time to time.

**Site** means the Piggyback website at [www.piggyback.co.nz](http://www.piggyback.co.nz).

**Terms** means these terms of service.

**Trainer** means a personal trainer who has an Account on the Platform.

**Subscription Fee** means the fee payable by a Client per week of a Program.

**you** means the person who accepts these Terms in accordance with clause 1 above.

#### **4. Piggyback's Services**

- 4.1. As part of our Services we provide Trainers the ability to list Consultations for Clients to Book, however, we do not guarantee that you will be able to find a Consultation that suits your availability.
- 4.2. We do not inspect Programs made by Trainers and we have no control over, and are not responsible for, the delivery or quality of Programs.

#### **5. Creating a Client Account**

- 5.1. To use the Services as a Client you must first create an Account.
- 5.2. To create an Account, you must be over 18 years of age and must not have an existing Account.
- 5.3. You agree to provide accurate, current and complete information, including but not limited to Health Information during the Account registration process and to update such information to keep it accurate, current and complete at all times. If you provide any false or misleading information, we may suspend or terminate your Account in accordance with clause 7.

#### **6. Creating a Trainer Account**

- 6.1. To create an account as a Trainer, you must first be approved by us (**Trainer Application**). Please contact us at [hello@piggyback.co.nz](mailto:hello@piggyback.co.nz) to find out more.
- 6.2. You agree to provide accurate, current and complete information, including but not limited to during the Trainer Application process and to update such information to keep it accurate, current and complete at all times. If you provide any false or misleading information, we may suspend or terminate your Account in accordance with clause 7

#### **7. Your obligations**

- 7.1.1 You must comply with:
- 7.1.2 these Terms, our privacy policy and any additional terms or guidelines made available on the Platform from time to time; and
- 7.1.3 all applicable laws, regulations and rules,

when using the Platform, our services and with respect to any Content you upload or share using our Services.

## **8. Suspension or Termination**

- 8.1. You may close your Account at any time by following the Account closing process on the Platform.
- 8.2. We have the right to suspend or terminate any Account, or number of Accounts, or all Accounts, at any time, for any reason or no reason, which need not be disclosed to you. This includes but is not limited to Accounts that we consider in our sole discretion, contain invalid information or to have been used for inappropriate or objectionable activities, in violation of these Terms, in breach of any law in any jurisdiction or which are, or may be, harmful or detrimental to Piggyback, the Platform or any user or third party. We shall not be liable for any loss of revenue or opportunity or any damage, cost or other liability, suffered or incurred by you in connection with a suspended or terminated Account.
- 8.3. If we exercise our discretion under these Terms to suspend or terminate your Account, any or all of the following can occur with or without any notice or explanation to you. Your Account (as applicable) will be deactivated or suspended and you will not be able to access any part of the Platform, your Account or your Content.
- 8.4. If your Account is terminated, we do not have an obligation to delete or return to you any Content you have posted to the Platform.

## **9. Security**

- 9.1. During the registration process, you must choose a password as part of our security procedures. You must ensure that your password is strong and not disclose it to any third party.
- 9.2. You must not allow others to access or use your Account, unless expressly authorised in writing by us. No matter whether anyone using your Account is authorised to use it or has obtained unauthorised access, you will remain responsible for their actions and omissions.
- 9.3. You must tell us immediately if you think that someone has used or has unauthorised access to your Account or password, or there has been some other security breach.

## **10. Subscription Fees**

- 10.1. Subscription Fees are to be paid by a Client at the time of or before receiving a Program and are non-refundable, unless otherwise stated below in clause 11.

## **11. Cancellation of a Consultation**

- 11.1. The Trainer or Client can cancel the Consultation before it occurs.
- 11.2. If you excessively cancel Consultations or don't show up to them Piggyback has the right to terminate your Account.
- 11.3. If your Trainer does not show up to your Training Session we will refund the Training Fee. You may use the refund as credit for a different booking.

## **12. Your Content**

- 12.1. By uploading Content to and creating Content on, the Platform, you grant us the licence referred to in clause **15.3** below.

- 12.2. You must maintain copies of all Content you upload to the Platform. We do not make any guarantees that there will be no loss of your Content or the Services will be bug free. You should download all your Content prior to terminating your Account.
- 12.3. We have standards which apply to the Content you upload to the Platform. These are set out in clause **13.1** and in any review, rating and community guidelines we may publish from time to time. If we are notified of a claim that Content you have uploaded to the Platform breaches our standards, we may prevent your Content being accessible through the Platform or being used in connection with Services and/or delete it.
- 12.4. If we terminate your Account because you have breached these Terms we may delete your Content immediately or keep it for evidential purposes.

### **13. Uploading appropriate Content**

- 13.1. Whenever you upload Content to the Platform or use the Platform to create or send Content, you must comply with the Content standards set out in this clause **13.1**. You will not with respect to such Content:
- 13.1.1 upload, create, transmit, distribute, or store obscene, offensive, objectionable or inappropriate content;
  - 13.1.2 damage, interfere with or degrade the functioning of the Platform;
  - 13.1.3 upload, create, transmit, distribute, or store verbal, physical, written or other abuse or unsolicited commercial communications (including threats of abuse or retribution or spam) to any person or cause harm to any person in any way under the Harmful Digital Communications Act 2015; or
  - 13.1.4 upload, create, transmit, distribute, or store material that violates trademark, copyright, trade secret, or other intellectual property rights of others or violates the privacy, publicity, or other personal rights of others.
- 13.2. You warrant that any Content you uploaded or send via the Platform complies with the Content standards in clause **13.1**. You will be liable to us and you indemnify us for any breach of that warranty. We have the right to remove any Content without notice if, in our opinion, your Content does not comply with those standards.

### **14. Privacy**

- 14.1. Please see our privacy policy located in the footer of [www.piggyback.co.nz](http://www.piggyback.co.nz) for information and notices concerning Piggyback's collection and use of your personal information.
- 14.2. If you are a Client, in accordance with our privacy policy we will provide your details to the Trainer you are matched with and to other Client's attending the same Training Session (which may include personal information, including Health Information).
- 14.3. If you are a Trainer, in accordance with our privacy policy we will provide your details and to Clients that have made a Booking with you (which may include personal information).

### **15. Intellectual Property Rights**

- 15.1. We are the owner or the licensee of all intellectual property rights in the Platform (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos

and look and feel). Those works are protected by trade mark, copyright and other intellectual property and trade practices laws and treaties around the world. All such rights are reserved.

- 15.2. You must not reproduce, duplicate, copy, sell, assign, resell or exploit any portion of the Platform or anyone else's Content, without our express prior written permission.
- 15.3. You own, or undertake that you are authorised to use, any intellectual property in any Content you upload to or create on the Platform. You grant us a worldwide, royalty free licence to use, store, back-up, copy, transmit, distribute, communicate and otherwise make available your Content, for the purposes of enabling you to use the Platform and the Services and for any other purpose related to provision of the Services.

## **16. Takedown procedure**

- 16.1. Without limiting our other rights in these Terms, we may, without any prior notice to you, remove any of your Content from our Platform or block access to our Platform (totally or partially) where we have received a notice of intellectual property infringement or notice of takedown in respect of your Content. You agree that we will have no liability to you in respect of any loss (including loss of profit), cost or damage suffered or incurred by you as a result of such action.
- 16.2. If there is a dispute between you and a third party as to whether your Content infringes the intellectual property of that third party, you acknowledge that it is your responsibility to resolve such dispute with the third party, and until you have provided us with satisfactory written confirmation of a resolution between you and the third party we will not restore the alleged infringing materials or reinstate access to the Platform. You agree to indemnify us against all claims, proceedings or actions by such third party against us including costs (legal or otherwise) that we may incur in defending such claims, proceedings or actions on a full indemnity basis.

## **17. Viruses**

- 17.1. We do not guarantee that the Platform will be secure or free from bugs or viruses. You are responsible for configuring your information technology, computer programmes and platform in order to access the Platform. You should use your own virus protection software.
- 17.2. We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Site or Application or to your downloading of any Content on either of them, or on any website linked to either of them.
- 17.3. You must not misuse the Platform by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Platform, the server on which the Platform is stored or any server, computer or database connected to the Platform. You must not attack the Platform via a denial-of-service attack or a distributed denial-of service attack.

## **18. Disclaimers and limitation of liability**

- 18.1. If you choose to use the Platform, you do so at your own risk.
- 18.2. The Platform and Content are provided without warranty of any kind, either express or implied. We make no warranty that the Platform or Content will meet your requirements or be available on an uninterrupted, secure, or error-free basis.

- 18.3. We are not responsible for communications and interactions between a Client and Trainer.
- 18.4. The Trainer is responsible for the health and safety of the Client.
- 18.5. To the extent permitted by law, we excludes all conditions, warranties, representations or other terms which may apply to the Platform and any Content on it, whether express or implied.
- 18.6. We will not be liable to you or other third party for any direct, indirect or consequential loss, cost, lost opportunity or profit, lost goodwill, reputational damage or liability or other adverse event whatsoever, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:
- 18.6.1 use of, or inability to use, the Platform or Services;
  - 18.6.2 any interaction between a Client and Trainer whether in person or online; or
  - 18.6.3 use of or reliance on any Content displayed on the Platform.
- 18.7. In no event will Piggyback's aggregate liability arising out of or in connection with these Terms including your use of or inability to use the Platform and Services exceed the Training Fee or other fee paid.

## **19. Indemnity**

- 19.1. You agree to indemnify, and hold Piggyback and its affiliates and subsidiaries, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, any tax, legal and/or accounting fees, arising out of or in connection with your access to or use of the Platform, Services or your violation of these Terms.

## **20. Miscellaneous**

- 20.1. We may assign or transfer these Terms, at our sole discretion, without restriction. You may not assign or transfer your rights under these Terms without our prior written consent, which may be withheld in absolute discretion.
- 20.2. Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given by Piggyback:
- 20.2.1 via email (in each case to the address that you provide) or
  - 20.2.2 via the Platform. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is sent.
- 20.3. These Terms shall be governed by and construed in accordance with New Zealand law. You agree to submit to the exclusive jurisdiction of the courts of New Zealand with respect to any claim or matter arising out of or in connection with these Terms or their termination.
- 20.4. No failure or delay by Piggyback to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by Piggyback shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.5. If any provision or part-provision of these Terms is or becomes void, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and

enforceable. If such modification is not possible, the relevant provision or part-provision shall be severable and deemed to be deleted, and shall not affect the validity, legality or enforceability of the remaining provisions.

20.6. If you have any questions or concerns in relation to the Platform or these Terms, please Contact Us [hello@piggyback.co.nz](mailto:hello@piggyback.co.nz).

20.7. These terms were last updated on 31<sup>st</sup> of March 2020.