

Active Bands Terms of Service

1. AGREEMENT

- (a) These Terms of Service contain the terms and conditions that govern your use of and access to Active Bands.
- (b) By clicking on the "I agree" (or similar button) that is presented to you at the time of activating your Active Band or by using Active Bands, you acknowledge that you have read, understood and agree to be bound by these Terms of Service which, together with the Privacy Policy, govern our relationship with you in relation to Active Bands.
- (c) Persons under the age of 15 are not permitted to access or use Active Bands unless they have the consent of their parent or legal guardian. If you are under the age of 15, you should review these Terms of Service with a parent or guardian to ensure you and your parent or legal guardian understand these Terms of Service.
- (d) We reserve the right to change these Terms of Service by posting the revised version on the Active Bands website. Your continued use of Active Bands will indicate your agreement to the revised Terms of Service.

2. DEFINITIONS AND INTERPRETATION

In these Terms of Service unless the context requires otherwise:

- (a) **Active Bands** means the device, associated firmware, applications, software, websites, APIs, products and services.
- (b) **Content** means all text, files, images, graphics, illustrations, information, data (including any personal information, audio, video, photographs and other content and material), in any format, provided by you and that are uploaded, reside in, run on or run through, the System;
- (c) **Intellectual Property Rights** means all intellectual property rights throughout the world including but not limited to the following rights:
 - (i) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names and any right to have confidential information kept confidential;
 - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i); and
 - (iii) all rights of a similar nature to any of the rights in paragraphs (i) and (ii) which may subsist in Australia or elsewhere,
 - (iv) whether or not such rights are registered or capable of being registered.
- (d) **Log-In Credentials** means sign-in identification and password or other method of access we provide you to access the Service;
- (e) **Privacy Policy** means our privacy policy available at www.athletics.com.au/info-hub/constitution-policies
- (f) **Register** means a person creating Log-In Credentials to access Active Bands;

- (g) **Service** means the provision of access to Active Bands;
- (h) **Software** means Active Bands and Software Upgrades;
- (i) **System** refers to the combination of hardware and software components owned, licensed or managed by us from which the Service is provided by us to you;
- (j) **Software Upgrade** means an update or upgrade to Active Bands which we make available to users of Active Bands;
- (k) **us, we** and **our** means Athletics Australia Limited (ABN 72 006 447 294);
- (l) **you** and **your** refers to the person that Registers to use or access Active Bands.
- (m) **Interpretation:** In these Terms of Service, the following rules of interpretation apply unless the contrary intention appears:
 - (i) headings are for convenience only and do not affect the interpretation of these Terms of Service;
 - (ii) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
 - (iii) a reference to:
 - (A) the singular includes the plural and vice versa;
 - (B) a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency;
 - (C) a thing includes a part of that thing;
 - (D) a party includes its successors and permitted assigns; and
 - (E) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and
 - (iv) a rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of these Terms of Service or any part of it.

3. COMMENCEMENT AND TERMINATION

- (a) Your right to access and use Active Bands:
 - (i) is subject always to your compliance with these Terms of Service; and
 - (ii) commences when you first Register to use the Service and shall continue for an ongoing period, unless you delete your account or these Terms of Service are terminated or suspended in accordance with clause 12.
- (b) We reserve all rights not expressly granted to you in these Terms of Service.

4. ACCOUNT CREATION AND CLOSURE

- (a) You agree to provide, maintain and update true, accurate, current and complete information about yourself when you Register to use our Services.
- (b) You agree not to impersonate any person or misrepresent your identity or affiliation with any person, including using another person's username, password or other account information, or another person's name, likeness, voice, image or photograph.
- (c) You agree to notify us promptly of any unauthorised use of your account information, or any other breach of security that you become aware of involving or relating to Active Bands.
- (d) You may request for content to be deleted or for your account to be deleted in its entirety at any time by contacting the Privacy Officer through the Active Bands website or via privacy@athletics.org.au

5. USE OF THE SERVICE

- (a) To receive the Service, you must:
 - (i) use the Log-In Credentials and take all reasonable steps to safeguard your Log-In Credentials;
 - (ii) if you become aware or have reason to suspect that there has been any unauthorised use of your Log-In Credentials, you must notify us immediately;
 - (iii) at all times allow us to perform our obligations under these Terms of Service; and
 - (iv) follow any operating procedures and use any software as may be specified or as may be reasonably notified by us from time to time.
- (b) In using the Service, you must not:
 - (i) violate any applicable laws, or use the Service for any purpose that is unlawful;
 - (ii) distribute viruses, spyware, corrupted files, or any other similar software or programs that may damage the operation of any computer hardware or software; or
 - (iii) engage in any other conduct that inhibits any other person from using or enjoying the Service.
- (c) You acknowledge that you are responsible for all hardware, software and telecommunications services used to access and use Active Bands.

6. OWNERSHIP AND RESTRICTIONS

- (a) Active Bands Service is intended for your personal non-commercial use.
- (b) We retain all Intellectual Property Rights in Active Bands and anything that may be developed by us under or in connection with these Terms of Service.
- (c) Unless expressly authorised by us in writing, you must not:
 - (i) modify or alter Active Bands;

- (ii) remove any patent, copyright, trademark or other Intellectual Property Rights notices that may appear on any part of Active Bands;
 - (iii) display or use in any manner any trademarks owned by us or any other person;
 - (iv) create derivative works based on or from Active Bands;
 - (v) provide, or make the Service available in any manner to a third party;
 - (vi) except as permitted by us in writing, provide or make Active Bands, available in any manner to a third party;
 - (vii) transfer, sublicense, assign, rent, lease, lend, sell, distribute, copy, translate, time-share, or electronically transmit the Service;
 - (viii) use the Service in any way that will infringe our Intellectual Property Rights or the Intellectual Property Rights of any other person; or
 - (ix) reverse engineer, de-encrypt, decompile, disassemble, or attempt to derive the source code of Active Bands.
- (d) You:
- (i) grant to us a non-exclusive, worldwide, royalty-free, irrevocable licence (including a right of sub-licence to our subcontractors) to disclose, use, copy and modify Your Content as required by us; and
 - (ii) warrant that you have the right to grant such licence.
- (e) You understand that any comments, feedback, or ideas you send us are provided on a non-confidential basis and you grant to us a non-exclusive, worldwide, royalty-free, irrevocable licence to use all comments, feedback and ideas you may share with us, without notice, compensation or acknowledgement to you, for any purposes whatsoever.
- (f) You agree to indemnify and hold us (including any of our members, directors, officers, employees, contractors, representatives and advisors) harmless from any claim made by any third party arising out of the disclosure, use, copying or modification of Your Content by us or our subcontractors.
- (g) We may review Your Content and may modify or remove any of Your Content where we reasonably believe it violates these Terms of Service.

7. SECURITY, VIRUSES, ERRORS AND AVAILABILITY

- (a) You acknowledge that:
- (i) the internet is an insecure public network which means there are risks that information sent to or from Active Bands may be intercepted, corrupted or modified by third parties; and
 - (ii) files obtained from or through Active Bands may contain computer viruses, disabling codes, worms or other devices or defects.
- (b) Active Bands may display links or other access to third-party content, promotions, websites, apps, services and resources (**Third-Party Content**) that AA does not control. We provide these links only as a convenience and are not responsible for the products, services, or other content that are available from Third-Party Content. You acknowledge that any Third-Party Content that you use in connection with, or through using, Active Bands are

not part of Active Bands and are not controlled by AA, and you take sole responsibility and assume all risk arising from your interaction with or use of any Third-Party Content. You also acknowledge that these Terms of Service and AA's Privacy Policy do not apply to any Third-Party Content. You are responsible for reading and understanding the terms and conditions and privacy policy that applies to your use of any Third-Party Content.

- (c) You bear the risks and responsibility for any loss or damage caused, directly or indirectly, by the risks described in clause 7(a), and to the extent permitted by the applicable law we accept no liability for any interference with, or damage to, your computer system, device, software or data occurring in connection with your access or use of Active Bands, provided that we have not caused such interference or damage.
- (d) Notwithstanding the foregoing, we will take reasonable steps to maintain the security and the integrity of Active Bands. Specifically, we will:
 - (i) implement administrative, physical and technical safeguards to protect Your Content; and
 - (ii) use commercially reasonable efforts to:
 - (A) prevent unauthorised access to Your Content; and
 - (B) prevent any unauthorised access of, and/or harmful code being introduced into, your IT systems.

8. PHYSICAL ACTIVITY

Risk Warning

- (a) Your participation in any physical activity while using Active Bands (**Physical Activity**) is dangerous. You acknowledge that you are exposed to certain risks during any participation in Physical Activity, including but not limited to physical injury, death or property damage, and that accidents can and often do happen.
- (b) Prior to undertaking any Physical Activity, you should ensure you are aware of all of the risks involved, including those risks associated with any health condition you may have.
- (c) By agreeing to these Terms of Service, you acknowledge, agree, and understand that participation in the Physical Activity may involve risk. You agree and undertake any such risk voluntarily and at your own risk. You acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

Release and Indemnity

- (d) To the extent permitted by law, you:
 - (i) release and forever discharge us from all action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Physical Activity (**Claims**) that you may have or may have had but for this release arising from or in connection with your participation in the Physical Activity;
 - (ii) release and indemnify us against any Claim which may be made by you or on your behalf for or in respect of or arising out of your death whether caused by the negligence or breach of these Terms of Service by us or in any other manner whatsoever; and

- (A) indemnify and will keep indemnified and hold us harmless to the extent permitted by law in respect of any Claim by any person:
- (B) arising as a result of or in connection with you undertaking the Physical Activity; and
- (iii) against us in respect of any injury, loss or damage arising out of or in connection with your failure to comply with our directions or those of Active Bands,

save that the above releases and indemnities shall not apply to the extent that the loss, damage or injury that is the subject of the Claim is caused or contributed to by our grossly negligent act or omission.

Warranty

- (e) You warrant that prior to undertaking any Physical Activity you:
 - (i) are and must continue to be medically and physically fit and able to undertake and participate in the Physical Activity;
 - (ii) are not a danger to yourself or to the health and safety of others; and
 - (iii) are not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for you to take part in the Physical Activity.

9. PRIVACY AND YOUR DATA

- (a) For purposes of this clause 9:
 - (i) "**Personal Data**" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; and
 - (ii) "**Applicable Data Protection Laws**" means the Australian *Privacy Act 1988* (Cth) and any other laws, regulations, binding legislative and regulatory requirements and codes of practice relating to data protection and the processing of Personal Data, as may be applicable to either Party or to Active Bands.
- (b) You agree that we may use the services of third parties to provide part of Active Bands (for example app developers) ("**sub-processor**") and that the sub-processor may, as required for the purposes of providing Active Bands, process Personal Data provided to us by you.
- (c) Each Party warrants to the other that in relation to these Terms of Service, it will comply strictly with all requirements of any Applicable Data Protection Laws, whether enacted as at the date you Register for the Services or enacted subsequently.
- (d) In using Active Bands you must ensure that you are permitted to provide us with any Personal Data you provide to us, and that you have made any disclosures or obtained any consents necessary under any Applicable Data Protection Laws. Subject to these Terms of Service, we will establish and maintain appropriate, reasonable technical and organisational security

measures in accordance with good industry practice to keep Your Content secure.

- (e) We may only transfer any Personal Data you provide to us across a country border in the event that such action is required for the purpose of providing Active Bands or otherwise in accordance with our Privacy Policy and complying with our obligations under these Terms of Service. We will further ensure that the transfer of any Personal Data across a country border complies with Applicable Data Protection Laws.
- (f) We may use and disclose to our service providers anonymous data about your use of Active Bands for the purpose of helping us to improve Active Bands. Any such disclosure will not include details of your identity unless prior consent has been provided for such disclosure.
- (g) The personal information you provide when you Register to use Active Bands (including but not limited to your Log-in Credentials) is collected, used and disclosed in accordance with our Privacy Policy available on our website at www.athletics.com.au/info-hub/constitution-policies
- (h) We may use and disclose your personal information for the purposes of conducting and administering Active Bands and the sport of athletics in Australia and any other related activities across Australia, providing you with our services or promotional material, complying with legal obligations or otherwise in accordance with our Privacy Policy.
- (i) We may share your information with third parties such as our affiliates, companies we engage to carry out functions and activities on our behalf (including direct marketing), our professional advisers (including our accountants, auditors and lawyers), our insurers, relevant sporting bodies (including the International Association of Athletics Federations (IAAF) and Sport Australia) however, subject to clause 9(e), your information is not generally disclosed to anyone outside Australia.
- (j) Our Privacy Policy contains information about how you may access and request correction of your personal information held by us or make a complaint about the handling of your personal information, and provides information about how a complaint will be dealt with by us.
- (k) Your access and use of Active Bands may be rejected if the information is not provided.
- (l) If you do not wish to receive promotional material from our sponsors and third parties you must advise us via email or telephone or via the specific opt-out procedures provided in the relevant communication,
- (m) When users subscribe to and use Active Bands, their activities (including runs, walks and other physical activity) will be collected while wearing their Active Band, and AA will process the activity and training data to enable you to analyse your activity data and track your performance and progress. AA will not collect location tracking data from a child under the age of 15.
- (n) To better understand how our users interact with Active Bands to enhance user experience and functionality of Active Bands, we may collect analytical information. This includes the date and time users use Active Bands, version used, language settings, information downloaded to Active Bands, user behaviour (features used, frequency of use), information relating to how Active Bands functions.
- (o) By using Active Bands, you (or if you are under the age of 15, your parent or legal guardian) consent to using your personal information for these

purposes. You can withdraw your consent at any time by making a request for your content to be deleted or for your account to be deleted in its entirety by contacting the Privacy Officer through the Active Bands website or via privacy@athletics.org.au. If we learn that we have collected the personal information of a child under the age of 15 without parental consent, we will take steps to delete the information as soon as possible. Parents or guardians who believe that their child has submitted personal information to us and would like to have it deleted may contact our Privacy Officer: privacy@athletics.org.au

10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

- (a) No representation or warranty (express or implied) is made as to the currency, completeness, accuracy, reliability, suitability or availability of any information on Active Bands.
- (b) Subject to clauses 10(c), 10(d) and 10(e), we warrant that the Service will operate in a good, safe and workmanlike manner, in accordance with the applicable laws.
- (c) If the Service (including the functionality of the Software) fails to operate in accordance with clause 11(b), our liability will be limited:
 - (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired (at our election).
- (d) Notwithstanding any other clause in these Terms of Service:
 - (i) we do not warrant that the Service will perform error-free or uninterrupted or that we will correct all errors; and
 - (ii) to the extent not prohibited by applicable law, the warranty in clause 10(b) is exclusive and there are no other express or implied warranties including, but not limited to, warranties of merchantability or fitness for a particular purpose.
- (e) For the avoidance of doubt, nothing in these Terms of Service will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law and which by law cannot be excluded, restricted or modified, even if any other term of these Terms of Service would otherwise suggest that this might be the case.

11. LIMITATION OF LIABILITY

- (a) To the extent permitted by applicable law, in no event will we be liable for:
 - (i) any loss incurred arising out of accessing, downloading, using or relaying any information on our Website;
 - (ii) loss of profits;
 - (iii) business interruption;
 - (iv) loss arising out of, or related to, your access or use of, or inability to access or use, the Service; or

(v) any incidental, special, indirect, pecuniary or consequential loss,

however caused, regardless of the nature of liability (contract, tort or otherwise) and even if we have been advised of the possibility of such loss or interruption.

- (b) To the extent permitted by applicable law and excluding liability arising from the breach of clause 10, our aggregate liability for any damages or loss arising out of or in connection with the Software and your use of the Service, whether in contract, tort or otherwise, will not exceed on any date an amount equal to :
- (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired (at our election).

12. VARIATION, SUSPENSION AND TERMINATION

- (a) Without prejudice to any other rights or remedies that we may have against you under these Terms of Service or at law, if you breach any provision of these Terms of Service, we may, by written notice to you and with immediate effect, terminate these Terms of Service and/or suspend or disable your access to Active Bands, without any liability to you.
- (b) We may, in our absolute discretion:
- (i) change all or part of Active Bands (including the availability of a feature or content) or suspend access to Active Bands at any time for any reason, without having to give you notice; or
 - (ii) impose limits on certain features or restrict your access to all or part of Active Bands, without having to give you notice.

13. GENERAL

- (a) **Entire agreement:** These Terms of Service, together with the Privacy Policy, constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- (b) **Severability:** If any part of these Terms of Service is void or unenforceable, it is severed and will be deemed to be omitted to the extent that it is void or unenforceable, and the remainder of these Terms of Service will remain in full force and effect.
- (c) **Waiver:** A waiver by either party in respect of a breach of these Terms of Service will not be taken to be a waiver in respect of any other breach. The failure to enforce any term of these Terms of Service will not be interpreted as a waiver of that term.
- (d) **Governing law and jurisdiction:** These Terms of Service and the Privacy Policy is governed by and will be construed in accordance with the laws of Victoria, and each party agrees to submit to the exclusive jurisdiction of the courts of Victoria.