



## Terms of Use

Last Modified: 12/1/18

Localfit Terms of Use and Cardholder Agreement

### **DISCLOSURE:**

Localfit attempts to provide access to fitness facilities nationally. However participating facilities, as well as the time and locations for fitness classes and hours of operation may vary depending on individual facility scheduling. **YOU SHOULD CHECK OUR LOCALFIT APP FREQUENTLY FOR CHANGES IN OUR SERVICES AND ALL OFFERINGS INCLUDING UPDATES ON FACILITY PARTICIPATION.** It is not until the User purchases a day pass at the facility, that the facility visit will be reserved and confirmed. If the day pass or fitness class the User wants to see is not available, Localfit will not be held responsible.

**You are expected to read these Terms of Use because your use of our Site and Service constitutes your agreement to the Arbitration Agreement and Class Action waiver described in Sections 17 and 18 below to resolve any disputes with us. You should also read these Terms of Use, in particular Section 2.18, as it describes certain restrictions on your use of the Localfit Site and Service and your Localfit Card, all of which are intended for the sole benefit and use of only you as the approved account holder. Your violation of restrictions set forth in these Terms of Use may trigger our right to terminate your account for such violation.**

**IF YOU CANCEL YOUR LOCALFIT SUBSCRIPTION, YOU MAY NOT SUBSCRIBE TO THE SERVICE AGAIN FOR A PERIOD OF NINE (9) MONTHS.**

### **1. Ownership of Site; Agreement to Terms of Use and Cardholder Agreement of Localfit**

1.1. "Site" as used in these Terms of Use refers to the Localfit Mobile App and the Localfit web site located at [www.Localfitusa.com](http://www.Localfitusa.com).

1.2. "Service" as used in these Terms of Use refers to the Localfit Service, which may be changed from time-to-time, the Localfit Card and the Site.

1.3. The Service and the Site are the property of Localfit Inc. ("Localfit", "we", "us", or "our") with an address of 601 W Rosemary St, Ste 104, Chapel Hill, NC 27516 and its licensors.

1.4 "Terms of Use" refers to these Terms of Use and Cardholder Agreement which govern your access to and use of the Service and Site. **BY USING THE SERVICE AND THE SITE, YOU AGREE TO THESE TERMS OF USE. IF YOU DO NOT AGREE, DO NOT USE THE SERVICE OR SITE.**

1.5. Localfit reserves the right, in its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time, without prior notice. **IT IS YOUR RESPONSIBILITY TO CHECK THESE TERMS OF USE, AND THE LOCALFIT APP PERIODICALLY FOR CHANGES. YOUR CONTINUED USE OF THE SERVICE AND THE SITE FOLLOWING THE POSTING OF CHANGES WILL MEAN THAT YOU ACCEPT AND AGREE TO THE CHANGES.** As long as you comply with these Terms of Use, Localfit grants you a personal, non-transferable, limited privilege to enter and use the Site and Service. Localfit is for your personal use, and not for resale or commercial use under any circumstances.

## 2. Service Subscription Information

2.1. By opening a Localfit account ("Account") and using the Service, you represent and warrant that: (1) you are legally capable of entering into a binding contract; (2) you are at least 18 years of age; and (3) you are a Resident of the United States. You may only sign up for the Service from within the United States.

2.2. Localfit will deduct the Service subscription dues from the form of payment that you provide to us when you create an Account, unless we otherwise communicate a different time period or either party seeks to terminate this agreement. You acknowledge and agree that Localfit is in a direct agreement with you, the individual, and not with the facilities listed on the Site.

2.3. A valid Localfit subscription to the Service entitles you to visit one (1) facility per day outside a 35-mile radius of your Current Living Address. Your Current Living Address is the location in which you spend the most nights over a 60-day period. Localfit is a travel fitness subscription and may not be used within thirty-five (35) miles of your Current Living Address. Users may visit each facility up to five (5) times each month. The Service is available every day of the week, subject to the facility being open, capacity, and usage. Alternative or future Localfit Service subscription plans may include (1) premium plans that provide access to facilities within 35 miles of your Current Living Address, (2) plans that allow purchases of items other than facility day pass access, and (3) capped plans (limited amount of fitness visits per month).

**2.4. Localfit reserves the right to change or modify the Service or subscriptions at any time and in its sole discretion, including but not limited to applicable prices, at any time, without prior notice.** Localfit reserves the right to change the rules of facility attendance and availability to members in connection with the Service at any time. Localfit reserves the right to change from time to time the number of eligible passes a member can book per month. Localfit reserves the right to offer members a new price option if they exceed booking a certain amount of passes per month.\*\*

2.5. Localfit makes no guarantee on the availability to any particular facility or class time that is presented in our app. Localfit access may vary from specific facility policies.

2.6 You agree to attend the facility within two (2) hours of booking the pass on the Localfit App, but in no circumstances will you attempt to attend a facility without first booking a pass at least 15 minutes prior to attending the facility. You also agree to only activate your Localfit Card for a single pass purchase by selecting "Book Pass" through the Site or Localfit App, and use your Localfit at the front desk of your selected facility. If you do not purchase a pass for the facility or class time selected, the authorization or value on your Localfit card will be removed by us. Your Localfit Card is only available for use during the day pass transaction, after facility pass booking on the Localfit App. The Book Pass function does not serve as a confirmation; it is only once you have purchased a ticket with your Localfit Card that a day pass has been reserved. Localfit does not influence what facility you select, and Localfit is not responsible if you select the incorrect facility or class time.

2.7 Localfit is currently available for use only in the United States.

**2.8. Once you receive your Localfit Card or use Localfit at a supported facility, you may begin using the Service.**

2.9. If and when Localfit offers a promotion or free trial, you will be billed when you sign up, but your subscription and billing cycle will not begin until the end of the trial period. However, you will be billed a one time set up fee of three dollars (\$3). Your Localfit subscription will enter into a new period once the promotional or free trial period is over unless terminated by you or Localfit. Your Localfit account must be in good standing in order for the Localfit account to be valid.

2.10. If and when Localfit offers a free trial period, such period will begin when you receive your card

and is valid for 14 days. If you are on an alternative free trial offer, your trial will begin when you receive your card and is valid for 7 days. You will not be charged when signing up, but will be charged when your trial period has expired. You must cancel your account before the expiration of your trial period to avoid these charges. All free trial offers are available exclusively to new members only and are valid once per household.

2.11.

(i) Localfit offers three types of subscriptions, three months, six month, and annual paid-in-full. **Localfit will bill upon subscription to the service and then will bill based on the date you receive your card pursuant to the terms of your subscription, unless either party seeks to terminate the agreement. You must cancel your membership before it renews in order to avoid billing of the next month's membership fees to the payment method you provided to us. If you do not cancel your membership before it renews, you will be automatically enrolled in a subsequent term matching the length of the initial term.** If you do not contact us prior to the billing date, your card will be charged for the subsequent term.

(ii) **To cancel, you must notify Localfit in writing via email at least one business day prior to the end of the term stating your intent to cancel and providing the full name and email address on the account. You may also cancel your membership by using the Localfit app.** Cancellations are not effective until confirmation is sent to you via email, and you are responsible for all charges until cancellation is confirmed. Subscription fees may be increased by Localfit to reflect changes in standard day pass prices, inflation, Localfit's costs, and additional taxes and costs not imposed by Localfit. Again, if you wish to terminate your agreement, you must notify Localfit at least one business day prior to the end of current term. Any changes will take place at the end of the period for which fees have been paid, and will be introduced in the next billing cycle. **ONCE YOU CANCEL YOUR LOCALFIT SUBSCRIPTION, YOU MAY NOT SUBSCRIBE TO THE SERVICE AGAIN FOR A PERIOD OF NINE (9) MONTHS.**

2.12. To make a payment, you must provide the cardholder's name and address, the card number, the card security code, and the card expiration date. If you wish to change your payment method, you must visit the Site at least one day prior to the conclusion of the billing cycle. Transactions will occur on the cardholder's bank or card statement as a payment to "Localfit". Payments will occur on the same date every month, unless either party seeks to terminate the agreement.

2.13. Localfit makes reasonable attempts to provide access to facilities nationwide, however the time and locations for fitness classes may vary based on facility policies and availability. If the facility you want to visit is not available, Localfit will not be held responsible. Localfit is not responsible if the selected day pass is unavailable, and we recommend that you frequently check facility availability in the Localfit App and call the facility ahead of time to confirm hours of operation. Localfit will not be held responsible if day passes are not available for Localfit members, but the specific facility still has day passes available to other customers.

2.14. You may use the Localfit Card to purchase a day pass at the front desk of approved fitness facilities. You must bring with you a valid drivers license or other government-issued photo ID. You may not use Localfit Card for any other purpose, including but not limited to, unauthorized purchases or purchases exceeding the value of a single day pass. Localfit allows for a single valid transaction for a fitness facility day pass. You acknowledge and agree that all funds on your Localfit Card are the property of Localfit. You do not have the right to stop payment on any transactions made with Localfit. Your Localfit Card is valid through the Valid Thru date printed on the Localfit Card, except in states where prohibited by law. No reproduction will be accepted. Localfit is non-refundable and non-transferable. **IF YOUR LOCALFIT CARD IS LOST OR STOLEN, PLEASE CONTACT LOCALFIT CUSTOMER SUPPORT IMMEDIATELY. THERE WILL BE A \$10 REPLACEMENT FEE**

## **CHARGED TO THE PAYMENT METHOD THAT YOU PROVIDED TO US.**

2.15. Localfit is not directly affiliated or associated with any fitness facility or facility chain. All references to facilities and class times do not imply direct or indirect affiliation. All listed facilities do not necessarily have the ability to accept Localfit, and their listing on this site does not imply such. Localfit makes all efforts to accurately list facilities and class times available to the general public, and listed facilities and class times may be subject to change.

2.16. You agree to respect and abide by the facility regulations set forth by the venue you have selected a day pass for. Localfit will not be held responsible for the facility's actions if the venue agreements are violated. If you do not purchase a valid day pass and keep the receipt, you may be required to leave the premises. You should keep your receipt with you at all times in order to re-enter the facility. Localfit is not responsible if you are excluded from your workout under any condition. All day passes are subject to normal restrictions. You have no preferential right of access to any facility except for special events organized for Localfit. You are not entitled to use Localfit in conjunction with any other promotions offered by Localfit unless stated otherwise. Localfit is not responsible for facility scheduling, cancellations, restrictions, or regulations.

2.17. If Localfit experiences an outage, Localfit will refund customers if they are not able to purchase a day pass after an eight (8) hour period. An outage is defined as a period of time when paying subscribers are unable to use the service due to system issues. To obtain a refund, the subscriber must take a picture of their receipt and email it to Localfit.

2.18. You agree that Localfit may, at its sole discretion and without prior notice, suspend your subscription or terminate your Account and Localfit Card on a temporary or permanent basis, and block your access to the Site at their sole discretion if:

(i) You miss a payment. Localfit will contact you by email and if payment is made within 10 days after we send our email, Localfit will reactivate the account within 48 hours of payment. You will not be permitted to use the account until it has been reactivated. If you miss more than one payment, we reserve the right to permanently bar you from subscribing to or using the Service. The Localfit system records the necessary information to turn over to collection agencies. When required, Localfit reserves the right to use a collection agency to retrieve any outstanding balances. Localfit reserves the right to seek appropriate punitive damages.

(ii) Localfit suspects that you provided incorrect or false information to Localfit when creating an Account or signing up for a subscription.

(iii) A breach of these Terms of Use by you.

(iv) You permit another person to use your Localfit Card to purchase a day pass or you use another subscriber's Localfit Card other than your own to purchase a day pass. Your Localfit Card is intended only for your own use and benefit as an approved account holder and your use thereof is subject to these Terms of Use.

(v) You attempt to purchase a day pass to a facility that is different from the facility you reserved in the Localfit App, or you attempt to purchase a day pass in violation of Section 2.3 such as purchasing more than one day pass within any one calendar day.

(vi) You purchase a day pass on any third-party source using your Localfit Card.

(vii) You give (including as a gift), sell, or attempt to give or sell purchased Localfit day passes to other patrons.

(viii) You purchase day passes for a purpose other than exercising.

(ix) On more than one occasion during any thirty (30) day period you do not visit the facility to which

you purchased a day pass with your Localfit Card.

(x) Localfit determines or suspects that you have opened or attempted to open multiple Localfit accounts

(xi) If you use your Localfit Card for any purpose other than to purchase a day pass at a facility, or we have reason to believe that you have done so.

**(xii) You acknowledge and agree that we have the right to charge a fee of \$25 (twenty-five U.S. dollars) ("Misuse Fee") per occurrence for misuse of your Localfit Card on the form of payment you provided to us for your Localfit subscription. You further agree that the amount of this fee is a reasonable measurement of the probable loss to us for each misuse of your Localfit Card. If you believe that you have been charged a Misuse Fee in error, you may contact customer service to dispute the charge within 60 days of incurring such charge.**

### **3. Content**

3.1. All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code contained on the Site (collectively, "Content"), including but not limited to the design, structure, selection, coordination, expression, "look and feel" and arrangement of such Content, is owned, controlled or licensed by or to Localfit, and may not be used without prior written consent from Localfit.

3.2. Except as expressly provided in these Terms of Use, no part of the Site and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way (including "mirroring") to any other computer, server, web site or other medium for publication or distribution or for any commercial enterprise, without Localfit's express prior written consent.

### **4. Your Use of the Site**

4.1. You may not use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Site or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or any Content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Site. Localfit reserves the right to bar any such activity.

4.2. You may not attempt to gain unauthorized access to any portion or feature of the Site, or any other systems or networks connected to the Site or to any Localfit server, or to any of the services offered on or through the Site, by hacking, password "mining" or any other illegitimate means.

4.3. You may not probe, scan or test the vulnerability of the Site or any network connected to the Site, nor breach the security or authentication measures on the Site or any network connected to the Site. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to the Site, or any other customer of Localfit, including any Localfit account not owned by you, to its source, or exploit the Site or any service or information made available or offered by or through the Site, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the Site.

4.4. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Site or Localfit's systems or networks, or any systems or networks connected to the Site or to Localfit. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Service or Site or any transaction being conducted on the Site, or with any other person's use of the Site.

4.5. You may not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to Localfit on or through the Site or any service offered on or through the Site. You may not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity.

4.6. You may not use the Site or any Content for any purpose that is unlawful or prohibited by these Terms of Use, or to solicit the performance of any illegal activity or other activity which infringes the rights of Localfit or others.

## **5. Purchases; Other Terms and Conditions**

5.1. Additional terms and conditions may apply to purchases of goods or services and to specific portions or features of the Site, including contests, promotions or other similar features, all of which terms are made a part of these Terms of Use by this reference. You agree to abide by such other terms and conditions, including where applicable representing that you are of sufficient legal age to use or participate in such service or feature. If there is a conflict between these Terms of Use and the terms posted for or applicable to a specific portion of the Site or for any service offered on or through the Site, the latter terms shall control with respect to your use of that portion of the Site or the specific service. Localfit is not for resale or commercial use under any circumstances.

5.2. Localfit's obligations, if any, with regard to its products and services are governed solely by the agreements pursuant to which they are provided, and nothing on this Site should be construed to alter such agreements.

5.3. Localfit may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without prior notice. Localfit reserves the right to change the rules of fitness attendance and day pass availability to members at any time. The materials on the Site with respect to products and services may be out of date, and Localfit makes no commitment to update the materials on the Site with respect to such products and services.

## **6. Accounts, Passwords and Security**

6.1. Certain features or services offered on or through the Site may require you to open an account (including setting up a password). You are entirely responsible for maintaining the confidentiality of the information you hold for your account, including your password and card, and for any and all activity that occurs under your account as a result of your failing to keep this information secure and confidential. You agree to notify Localfit immediately of any unauthorized use of your account, password, card, or any other breach of security. You may be held liable for losses incurred by Localfit or any other user of or visitor to the Site due to someone else using your Localfit password, account, or card as a result of your failing to keep your account information secure and confidential.

6.2. You may not use anyone else's Localfit password, account, or Localfit Card at any time. Localfit cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations.

## **7. Privacy**

Localfit's [Privacy Policy](#) applies to use of our Site and Service, and its terms are made a part of these Terms of Use by this express reference. Additionally, by using the Site or Service, you acknowledge and agree that Internet transmissions are never completely private or secure. You understand that any message or information you send to the Site may be read or intercepted by others, even if there is a special notice that a particular transmission (for example, credit card information) is encrypted.

## **8. Links to Other Sites and to the Localfit Site**

This Site may contain links to other independent third-party Web sites ("Linked Sites"). These Linked

Sites are provided solely as a convenience to our visitors. Such Linked Sites are not under Localfit's control, and Localfit is not responsible for and does not endorse the content of such Linked Sites, including any information or materials contained on such Linked Sites. Our Terms of Use or Privacy Policy do not apply to such Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites after you have reviewed such Linked Sites' own Terms of Use and Privacy Policies.

## **9. Disclaimers**

**9.1. Localfit Does Not Promise That The Site Or Any Content, Service Or Feature Of The Site Or Service Will Be Error-Free Or Uninterrupted, Or That Your Use Of The Service Or Site Will Provide Specific Results. The Service, Site And Its Content Are Delivered On An "As-Is" And "As-Available" Basis. All Information Provided On The Site Is Subject To Change Without Notice. Localfit Cannot Ensure That Any Files Or Other Data You Download From The Site Will Be Free Of Viruses Or Contamination Or Destructive Features. Localfit Disclaims All Warranties, Express Or Implied, Including Any Warranties Of Accuracy, Non-Infringement, Merchantability And Fitness For A Particular Purpose. Localfit Disclaims Any And All Liability For The Acts, Omissions And Conduct Of Any Third Parties In Connection With Or Related To Your Use Of The Service And Site. You Assume Total Responsibility For Your Use Of The Service, Site And Any Linked Sites. Your Sole Remedy Against Localfit For Dissatisfaction With The Service, Site Or Any Content Is To Stop Using The Service, Site Or Any Such Content.**

9.2. The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

9.3. Localfit reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) to modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

9.4 YOU UNDERSTAND THAT LOCALFIT IS NOT A GYMNASIUM, PLACE OF AMUSEMENT OR RECREATION, HEALTH CLUB, FACILITY, FITNESS STUDIO OR SIMILAR ESTABLISHMENT AND THE DAY PASSES AND CLASSES THEY PROVIDE ARE OPERATED AND DELIVERED BY THE APPLICABLE VENUE AND NOT BY LOCALFIT. LOCALFIT IS NOT RESPONSIBLE FOR THE QUALITY OF ANY DAY PASS OR CLASS PROVIDED BY A VENUE OR THIRD PARTY (INCLUDING BUT NOT LIMITED TO THE FACILITY, INSTRUCTOR, OR CURRICULUM). YOU ARE SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE CLASS OR RECOMMENDATIONS AVAILABLE ON OR THROUGH THE SITE AND/OR CLASSES ARE RIGHT FOR YOU.

YOU UNDERSTAND THAT THERE ARE CERTAIN INHERENT RISKS AND DANGERS IN EXERCISING AND THAT THE FACILITIES AND CLASSES YOU MAY ATTEND OR PARTICIPATE IN OFFER A RANGE OF ACTIVITY AND INTENSITY LEVELS. BY USING LOCALFIT (INCLUDING BUT NOT LIMITED TO ATTENDING, PARTICIPATING IN OR USING A FACILITY OR CLASS), YOU ACKNOWLEDGE AND AGREE, ON BEHALF OF YOURSELF, YOUR HEIRS, PERSONAL REPRESENTATIVES AND/OR ASSIGNS THAT YOU ARE AWARE OF THESE RISKS WHICH INCLUDE, BUT ARE NOT LIMITED TO, PROPERTY DAMAGE, ILLNESS, LOSS AND BODILY INJURY OR DEATH. YOU ACKNOWLEDGE THAT SOME OF THESE RISKS CANNOT BE ELIMINATED AND YOU SPECIFICALLY ASSUME THE RISK OF INJURY OR HARM.

YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR RESPONSIBILITY TO CONSULT WITH YOUR PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL PRIOR TO USING LOCALFIT (INCLUDING BUT NOT LIMITED TO ATTENDING, PARTICIPATING IN OR USING A FACILITY OR CLASS) AND TO DETERMINE IF AND HOW PARTICIPATING IS APPROPRIATE FOR YOU. DO NOT USE FACILITIES OR CLASSES IF YOUR PHYSICIAN OR HEALTH CARE PROVIDER ADVISES AGAINST IT. IF YOU EXPERIENCE FAINTNESS, DIZZINESS, PAIN OR SHORTNESS OF BREATH AT ANY TIME WHILE EXERCISING, YOU SHOULD STOP IMMEDIATELY.

YOU ALSO UNDERSTAND AND AGREE THAT THE SITE OFFERS FITNESS AND RELATED INFORMATION THAT IS DESIGNED FOR INFORMATIONAL, EDUCATIONAL AND ENTERTAINMENT PURPOSES ONLY. NOTHING STATED OR POSTED ON OR OTHERWISE AVAILABLE THROUGH ANY ASPECT OF THE SITE AND/OR A FACILITY OR CLASS IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICAL, PROFESSIONAL OR COUNSELING CARE. YOU SHOULD NOT RELY ON ANY INFORMATION ON OR THROUGH THE SITE AND/OR A FACILITY OR CLASS AS A SUBSTITUTE FOR, NOR DOES IT REPLACE, PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH OR FITNESS LEVEL, YOU SHOULD ALWAYS CONSULT A PHYSICIAN OR OTHER HEALTH-CARE PROFESSIONAL. DO NOT EVER DISREGARD, AVOID OR DELAY OBTAINING MEDICAL OR HEALTH RELATED ADVICE FROM YOUR HEALTH-CARE PROFESSIONAL BECAUSE OF SOMETHING YOU MAY HAVE READ OR HEARD ON OR THROUGH THE SITE AND/OR A FITNESS FACILITY OR CLASS. THE USE OF ANY OF THE CONTENT, RECOMMENDATIONS AND INFORMATION PROVIDED ON OR THROUGH LOCALFIT IS SOLELY AT YOUR OWN RISK.

THE SITE IS CONTINUALLY UNDER DEVELOPMENT AND LOCALFIT MAKES NO WARRANTY OF ANY KIND, IMPLIED OR EXPRESS, AS TO ITS ACCURACY, COMPLETENESS OR APPROPRIATENESS FOR ANY PURPOSE. IN THAT REGARD, DEVELOPMENTS IN RESEARCH MAY IMPACT THE FITNESS OR RELATED ADVICE THAT APPEARS ON OR IN CONNECTION WITH THE SITE. NO ASSURANCE CAN BE GIVEN THAT THE ADVICE OR RECOMMENDATIONS CONTAINED IN OR THROUGH THE SITE AND/OR A FACILITY OR CLASS WILL ALWAYS INCLUDE THE MOST RECENT FINDINGS OR DEVELOPMENTS WITH RESPECT TO THE PARTICULAR MATERIAL OR CONTENT.

THEREFORE, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU RELEASE, INDEMNIFY, AND HOLD HARMLESS LOCALFIT, ITS PARENT, SUBSIDIARIES OR AFFILIATED ENTITIES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, CONSULTANTS, CONTRACT EMPLOYEES, REPRESENTATIVES AND AGENTS, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, FROM ANY AND ALL RESPONSIBILITY, CLAIMS, ACTIONS, SUITS, PROCEDURES, COSTS, EXPENSES, DAMAGES AND LIABILITIES ARISING OUT OF OR IN ANY WAY RELATED TO YOUR PARTICIPATION IN OR USE OF THE SITE AND/OR ATTENDANCE AT, PARTICIPATION IN, PURCHASE OF AND/OR USE OF ANY FACILITY OR CLASS) INCLUDING BUT NOT LIMITED TO WITH RESPECT TO BODILY INJURY, PHYSICAL HARM, LOSS, ILLNESS, DEATH OR PROPERTY DAMAGE.

## **10. Venue Waiver and Terms**

Members attending facilities and classes are deemed to agree to the liability waivers and terms of individual venues and may be required to sign waivers and terms at individual venues. Your attendance to any facility and participation in any class may be subject to additional policies, rules or conditions of the applicable venue and you understand and agree that you may not be permitted to reserve or attend classes or services if you do not comply with these Terms or the policies of the



venues or as otherwise determined by a venue. If you have questions about a venue's waiver or other terms, please see the applicable venue's website or contact the venue directly.

## **11. Limitation of Liability**

In No Event Will We, Our Affiliates Or Their Licensors, Service Providers, Employees, Agents, Officers Or Directors Be Liable For Damages Of Any Kind, Under Any Legal Theory, Arising Out Of Or In Connection With Your Use, Or Inability To Use, Our Service, The Site, Any Websites Linked To It, Any Content On The Site Or Such Other Sites Or Any Services Or Items Obtained Through The Site Or Such Other Sites, Including Any Direct, Indirect, Special, Incidental, Consequential Or Punitive Damages, Including But Not Limited To, Personal Injury, Pain And Suffering, Emotional Distress, Loss Of Revenue, Loss Of Profits, Loss Of Business Or Anticipated Savings, Loss Of Use, Loss Of Goodwill, Loss Of Data, And Whether Caused By Tort (Including Negligence), Breach Of Contract Or Otherwise, Even If Foreseeable. The Foregoing Does Not Affect Any Liability Which Cannot Be Excluded Or Limited Under Applicable Law.

To The Fullest Extent Permitted By Law, And Not Withstanding Any Other Provision Of These Terms Of Use, The Total Liability, In The Aggregate, Of Localfit, Its Officers, Directors, Partners, Employees And Subcontractors, And Any Of Them, To You And Anyone Claiming By Or Through You, For Any And All Claims, Losses, Costs Or Damages, Including Attorneys' Fees And Costs And Expert-Witness Fees And Costs Of Any Nature Whatsoever Or Claims Expenses Resulting From Or In Any Way Related To Your Use Of Our Service Or Site From Any Cause Or Causes Shall Not Exceed \$500. It Is Intended That This Limitation Apply To Any And All Liability Or Cause Of Action However Alleged Or Arising, Unless Otherwise Prohibited By Law.\*\*

## **12. Violation of These Terms of Use**

12.1. Localfit may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of the Service or Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) Localfit's rights or property, or the rights or property of visitors to or users of the Service or Site, including Localfit's members. Localfit reserves the right at all times to disclose any information that Localfit deems necessary to comply with any applicable law, regulation, legal process or governmental request. Localfit may also disclose your information when Localfit determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

12.2. You acknowledge and agree that Localfit may preserve any transmittal or communication by you with Localfit through the Site or any service offered on or through the Site, and may also disclose such data if required to do so by law or Localfit determines that such preservation or disclosure is reasonably necessary to (1) comply with legal process, (2) enforce these Terms of Use, (3) respond to claims that any such data violates the rights of others, or (4) protect the rights, property or personal safety of Localfit, its employees, members of or visitors to the Site, and the public.

12.3. You agree that violation by you of these Terms of Use constitute your forfeiture of paid subscription dues, and that Localfit possesses the right to collect payment for usage of the Service, in addition to an early termination or misuse fee. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair practice, and will cause irreparable harm to Localfit, for which monetary damages would be inadequate. You consent to Localfit seeking to obtain

any injunctive or equitable relief that Localfit deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies Localfit may have at law or in equity, or otherwise provided in the Terms of Use.

12.4. You agree that Localfit may, in its sole discretion and without prior notice, terminate your account, and thereby access to the Site, which includes (but is not limited to) (1) requests by law enforcement or other government agencies, (2) a request by you (self-initiated account deletions), (3) discontinuance or material modification of the Site or any service offered on or through the Site, or (4) unexpected technical issues or problems.

12.5. If Localfit does take any legal action against you as a result of your violation of these Terms of Use, Localfit will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action as permitted by law, in addition to any other relief granted to Localfit. You agree that Localfit will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

### **13. Void Where Prohibited**

Although the Site is accessible worldwide, not all features, products or services discussed, referenced, provided or offered through or on the Site are available to all persons or in all geographic locations, or appropriate or available for use outside the United States. Localfit reserves the right to limit, in its sole discretion, the provision and quantity of any feature, product or service to any person or geographic area. Any offer for any feature, product or service made on the Site is void where prohibited. If you choose to access the Site from outside the United States, you do so on your own initiative and you are solely responsible for complying with applicable local laws.

### **14. Miscellaneous**

If any of the provisions of these Terms of Use are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use shall remain in full force and effect. These Terms of Use constitute the entire agreement between you and Localfit with regard to your use of the Site, and any and all other written or oral agreements or understandings previously existing between you and Localfit with respect to such use are hereby superseded and cancelled. Other than as provided in a purchase agreement you enter into with Localfit, Localfit will not accept any counter-offers to these Terms of Use, and all such offers are hereby categorically rejected. Localfit's failure to insist on or enforce strict performance of these Terms of Use shall not be construed as a waiver by Localfit of any provision or any right it has to enforce these Terms of Use, nor shall any course of conduct between Localfit and you or any other party be deemed to modify any provision of these Terms of Use. These Terms of Use shall not be interpreted or construed to confer any rights or remedies on any third parties.

### **15. Feedback and Information**

Any feedback you provide at this site shall be deemed to be non-confidential. Localfit shall be free to use such information on an unrestricted basis.

### **16. Applicable Law**

All matters relating to the Localfit Service, the Site and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction).

## 17. Arbitration And Small Claims Proceedings

### PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

(i) EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

(ii) IF A DISPUTE IS ARBITRATED, YOU AGREE TO GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER IN ANY CLASS CLAIM YOU MAY HAVE AGAINST US IN STATE OR FEDERAL COURT INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

(iii) DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.\*\*

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute, between you and us or our employees, agents, successors or assigns, which arises out of or relates to (a) these Terms of Use or the existence, breach, termination, enforcement, interpretation or validity thereof; (b) your access to or use of our Site at any time, whether before or after the date you agreed to these Terms of Use ; or (c) any resulting transaction or relationship (including any such relationship with third parties who do not agree to these Terms of Use) **SHALL, AT YOUR OR OUR ELECTION, BE RESOLVED BY NEUTRAL, BINDING ARBITRATION AND NOT BY A COURT ACTION.** If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. **YOU EXPRESSLY WAIVE ANY RIGHT YOU MAY HAVE TO BRING OR PARTICIPATE IN A CLASS ACTION WHETHER BROUGHT IN ARBITRATION OR IN ANY STATE COURT.** Localfit agrees to participate in arbitration in the state of your residence. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 ([www.adr.org](http://www.adr.org)), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.\*\*

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted at a location reasonably accessible to you and in accordance with the rules of the chosen arbitration organization. We will pay the filing, administration, service, case management, arbitrator, and hearing fees that we are required to pay as set forth in the Consumer Arbitration Rules for the American Arbitration Association or as set forth in the applicable rules of the chosen organization, unless the law requires us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination or transfer of these Terms of Use. If any part of this Arbitration Provision, other than waivers of class action rights, is deemed or found to be unenforceable for any

reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Provision shall be unenforceable.

**NOTWITHSTANDING THE ARBITRATION PROVISION IN THIS SECTION, YOU AND WE ALSO RETAIN THE RIGHT TO SEEK REMEDIES IN SMALL CLAIMS COURT FOR DISPUTES OR CLAIMS WITHIN THAT COURT'S JURISDICTION, UNLESS SUCH ACTION IS TRANSFERRED, REMOVED OR APPEALED TO A DIFFERENT COURT IN WHICH CASE THE ARBITRATION PROVISIONS HEREIN SHALL APPLY.**

**YOUR SUBSCRIPTION TO LOCALFIT SPECIFICALLY CONSTITUTES CONSENT TO THE PROVISIONS OF SECTION 16.**

#### **18. Jurisdiction for Dispute Proceedings**

For purposes of seeking injunctive or equitable relief or in the event the Arbitration provision above is found unenforceable, any legal suit other than a suit in small claims court, action or proceeding arising out of, or related to, these Terms of Use or the Website shall be instituted exclusively in the federal or state courts located in the State of North Carolina in each case located in the City of Raleigh and County of Wake. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

**19. The information contained in these Terms of Use or the Site is subject to change without notice.**