

# END USER LICENSE AGREEMENT

Last updated March 24, 2021

110 Fitness is licensed to You (End-User) by 110 Fitness, located at 200B, Weymouth St. Rockland, Massachusetts 02370, United States (hereinafter: Licensor), for use only under the terms of this License Agreement.

By downloading the Application from the Apple AppStore, and any update thereto (as permitted by this License Agreement), You indicated You agree to be bound by all of the terms and conditions of this License Agreement, and that You accept this License Agreement.

The parties of this License Agreement acknowledge that Apple is not a Party to this License Agreement and is not bound by all of the terms and conditions of this License Agreement, and that You accept this License Agreement.

The parties of this License Agreement acknowledge that Apple is not a Party to this License Agreement and is not bound by provisions or obligations with regard to the Application, such as warranty, liability, maintenance and support thereof. 110 Fitness, not Apple is solely responsible for the licensed Application and the content thereof.

This License Agreement may not provide for usage rules for the Application that are in conflict with the latest [App Store Terms of Service](#). 110 Fitness acknowledges that it had the opportunity to review said terms and this License Agreement is not conflicting with them.

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## 1. THE APPLICATION

110 Fitness (hereinafter: Application) is a piece of software created to enable those living with Parkinson's disease to maintain, track and achieve their customized fitness goals, with encouragement from the 110 Fitness Community. - and customized for Apple mobile devices. It is used to provide users with access to workout video content, give them the capability to log and track their workouts, receive reward points for completed workouts, and to set new health goals with encouragement from the 110 Fitness community.

The Application is not tailored to comply with industry-specific regulations (Health Insurance Portability and Accountability Act (HIPAA), Federal Information Security Management Act (FISMA), etc.), so if your interactions would be subjected to such laws, you may not use this Application. You may not use the Application in a way that would violate the Gramm-Leach-Bliley Act (GLBA).

## **2. SCOPE OF LICENSE**

2.1 You are given a non-transferable, non-exclusive, non-sublicensable license to install and use the Licensed Application on any Apple-branded Products that You (End-User) own or control and as permitted by the Usage Rules set forth in this section and the App Store Terms of Service, with the exception that such licensed Application may be accessed and used by other accounts associated with You (End-User, The Purchaser) via Family Sharing or volume purchasing.

2.2 This license will also govern any updates of the Application provided by Licensor that replace, repair, and/or supplement the first Application, unless a separate license is provided for such update in which case the terms of that new license will govern.

2.3 You may not share or make the Application available to third parties (unless to the degree allowed by the Apple Terms and Conditions, and with 110 Fitness's prior written consent), sell, rent, lend, lease or otherwise redistribute the Application.

2.4 You may not reverse engineer, translate, disassemble, integrate, decompile, integrate, remove, modify, combine, create derivative works or updates of, adapt, or attempt to derive the source code of the Application, or any part thereof (except with 110 Fitness's prior written consent.)

2.5 You may not copy (excluding when expressly authorized by this license and the Usage rules) or alter the Application or portions thereof. You may create and store copies only on devices that You own or control for backup keeping under the terms of this license, the App Store Terms of Service, and any other terms and conditions that apply to the device or software used. You may not remove any intellectual property notices. You acknowledge that no unauthorized third parties may gain access to these copies at any time.

2.6 Violations of the obligations mentioned above, as well as the attempt of such infringement, may be subject to prosecution and damages.

2.7 Licensor reserves the right to modify the terms and conditions of licensing.

2.8 Nothing in this license should be interpreted to restrict third-party terms. When using the Application, You must ensure that You comply with applicable third-party terms and conditions.

### **3. TECHNICAL REQUIREMENTS**

3.1 You acknowledge that it is Your responsibility to confirm and determine that the app end-user device on which You intend to use the Application satisfies the technical specifications mentioned above.

3.2 Licensor reserves the right to modify the technical specifications as it sees appropriate at any time.

### **4. NO MAINTENANCE OR SUPPORT**

4.1 110 Fitness is not obligated, expressed or implied, to provide any maintenance, technical or other support for the Application.

4.2 110 Fitness and the End-User acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the licensed Application.

### **5. USER GENERATED CONTRIBUTIONS**

The Application does not offer users to submit or post content. We may provide you with the opportunity to create, submit, post, display, transmit, perform, publish, distribute, or broadcast content and materials to us or in the Application, including but not limited to text, writings, video, audio, photographs, graphics, comments, suggestions, or personal information or other material (collectively, "Contributions"). Contributions may be viewable by other users of the Application and through third-party websites or applications. As such, any Contributions you transmit may be treated in accordance with the Application Privacy Policy. When you create or make available any Contributions, you thereby represent and warrant that:

1. The creation, distribution, transmission, public display, or performance, and the accessing, downloading, or copying of your Contributions do not and will not

infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret, or moral rights of any third party.

2. You are the creator and owner of or have the necessary licenses, rights, consents, releases, and permissions to use and to authorize us, the Application, and other users of the Application to use your Contributions in any manner contemplated by the Application and these Terms of Use.
3. You have the written consent, release, and/or permission of each and every identifiable individual person in your Contributions to use the name or likeness or each and every such identifiable individual person to enable inclusion and use of your Contributions in any manner contemplated by the Application and these Terms of Use.
4. Your Contributions are not false, inaccurate, or misleading.
5. Your Contributions are not unsolicited or unauthorized advertising, promotional materials, pyramid schemes, chain letters, spam, mass mailings, or other forms of solicitation.
6. Your Contributions are not obscene, lewd, lascivious, filthy, violent, harassing, libelous, slanderous, or otherwise objectionable (as determined by us).
7. Your Contributions do not ridicule, mock, disparage, intimidate, or abuse anyone.
8. Your Contributions are not used to harass or threaten (in the legal sense of those terms) any other person and to promote violence against a specific person or class of people.
9. Your Contributions do not violate any applicable law, regulation, or rule.
10. Your Contributions do not violate the privacy or publicity rights of any third party.
11. Your Contributions do not contain any material that solicits personal information from anyone under the age of 18 or exploits people under the age of 18 in a sexual or violent manner.
12. Your Contributions do not violate any applicable law concerning child pornography, or otherwise intended to protect the health or well-being of minors.
13. Your Contributions do not include any offensive comments that are connected to race, national origin, gender, sexual preference, or physical handicap.
14. Your Contributions do not otherwise violate, or link to material that violates, any provision of these Terms of Use, or any applicable law or regulation.

Any use of the Application in violation of the foregoing violates these Terms of Use and may result in, among other things, termination or suspension of your rights to use the Application.

## **6. CONTRIBUTION LICENSE**

You agree that we may access, store, process, and use any information and personal data that you provide following the terms of the Privacy Policy and your choices (including settings).

By submitting suggestions of other feedback regarding the Application, you agree that we can use and share such feedback for any purpose without compensation to you.

We do not assert any ownership over your Contributions. You retain full ownership of all of your Contributions and any intellectual property rights or other proprietary rights associated with your Contributions. We are not liable for any statements or representations in your Contributions provided by you in any area in the Application. You are solely responsible for your Contributions to the Application and you expressly agree to exonerate us from any and all responsibility and to refrain from any legal action against us regarding your Contributions.

## **7. LIABILITY**

7.1 Licensor takes no accountability or responsibility for any damages caused due to a breach of duties according to Section 2 of this Agreement. To avoid data loss, You are required to make use of backup functions of the Application to the extent allowed by applicable third-party terms and conditions of use. You are aware that in case of alterations or manipulations of the Application, You will not have access to the licensed Application.

## **8. WARRANTY**

8.1 Licensor warrants that the Application is free of spyware, trojan horses, viruses, or any other malware at the time of Your download. Licensor warrants that the Application works as described in the user documentation.

8.2 No warranty is provided for the Application that is not executable on the device, that has been unauthorizedly modified, handled inappropriately or culpably, combined or installed with inappropriate hardware or software, used with inappropriate accessories, regardless if by Yourself or by third parties, or if there are any other reasons outside of 110 Fitness 's sphere of influence that affect the executability of the Application.

8.3 You are required to inspect the Application immediately after installing it and notify 110 Fitness about issues discovered without delay by e-mail provided in Product Claims. The defect report will be taken into consideration and further investigated if it has been mailed within a period of days after discovery.

8.4 If we confirm that the Application is defective, 110 Fitness reserves a choice to remedy the situation either by means of solving the defect or substitute delivery.

8.5 In the event of any failure of the Application to conform to any applicable warranty, You may notify the App- Store-Operator, and Your Application purchase price will be refunded to You. To the maximum extent permitted by applicable law, the App-Store-Operator will have no other warranty obligation whatsoever with respect to the App, and any other losses, claims, damages, liabilities, expenses and costs attributable to any negligence to adhere to any warranty.

8.6 If the user is an entrepreneur, any claim based on faults expires after a statutory period of limitation accounting to twelve (12) months after the Application was made available to the user. The statutory periods of limitation given by law apply for users who are consumers.

## **9. PRODUCT CLAIMS**

110 Fitness and the End-User acknowledge that 110 Fitness , and not Apple, is responsible for addressing any claims of the End-User or any third party relating to the licensed Application or the End-User's possession and/or use of that licensed Application, including, but not limited to:

- i. product liability claims;
- i. any claim that the licensed Application fails to conform to any applicable legal or regulatory requirement; and
- i. claims arising under consumer protection, privacy, or similar legislation, including in connection with Your Licensed Application's use of the HealthKit and HomeKit.

## **10. LEGAL COMPLIANCE**

You represent and warrant that You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a

"terrorist supporting" country; and that You are not listed on any U.S. Government list of prohibited or restricted parties.

## **11. CONTACT INFORMATION**

For general inquiries, complaints, questions or claims concerning the licensed Application, please contact:

B. Miller

200B, Weymouth St

Rockland, MA 02370

United States

[bmiller@110fitness.org](mailto:bmiller@110fitness.org)

## **12. TERMINATION**

The license is valid until terminated by 110 Fitness or by You. Your rights under this license will terminate automatically and without notice from 110 Fitness if You fail to adhere to any term(s) of this license. Upon License termination, You shall stop all use of the Application, and destroy all copies, full or partial, of the Application.

## **13. THIRD-PARTY TERMS OF AGREEMENTS AND BENEFICIARY**

110 Fitness represents and warrants that 110 Fitness will comply with applicable third-party terms of agreement when using licensed Application.

In Accordance with Section 9 of the "Instructions for Minimum Terms of Developer's End-User License Agreement," Apple and Apple's subsidiaries shall be third-party beneficiaries of this End User License Agreement and - upon Your acceptance of the terms and conditions of this license agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this End User License Agreement against You as a third- party beneficiary thereof.

## **14. INTELLECTUAL PROPERTY RIGHTS**

110 Fitness and the End-User acknowledge that, in the event of any third-party claim that the licensed Application or the End-User's possession and use of that licensed

Application infringes on the third party's intellectual property rights, 110 Fitness , and not Apple, will be solely responsible for the investigation, defense, settlement and discharge or any such intellectual property infringement claims.

## **15. APPLICABLE LAW**

This license agreement is governed by the laws of the Commonwealth of Massachusetts excluding its conflicts of law rules.

## **16. MISCELLANEOUS**

16.1 If any of the terms of this agreement should be or become invalid, the validity of the remaining provisions shall not be affected. Invalid terms will be replaced by valid ones formulated in a way that will achieve the primary purpose.

16.2 Collateral agreements, changes and amendments are only valid if laid down in writing. The preceding clause can only be waived in writing.