

## **Terms and Conditions of Use - Mobile Application**

**Last updated: 24 September 2019**

### **Acceptance**

By downloading, installing or using the Heart Foundation Walking Application (the **App**) you (**You, Your, User, and End User**) agree to abide by these Terms and Conditions of Use (**Terms**). The Heart Foundation may, without notice, amend or modify the Terms by posting the amended Terms to the App.

If any of the Terms are found to be invalid or unenforceable, that invalidity or unenforceability will not affect the remainder of the Terms, which will continue in full force and effect.

### **IMPORTANT NOTICE**

**Please note:** By registering, you agree that your first name and the first letter of your surname, your daily and weekly step count, your team name (where applicable) and your team step count will be included in a leader board visible to all App users.

The information provided in the App is not fitness advice or any form of medical advice.

Do not use the App to create a fitness plan appropriate to a person's medical or other health condition, and never ignore professional advice or delay seeking professional advice because of something stated, suggested, implied or otherwise indicated in the App.

Health care providers should rely on their own expertise and enquiries when providing fitness or medical advice.

### *About the App*

The App has been created to help You:

- (a) record and monitor Your statistics including steps taken, minutes of activity and kilometres walked;
- (b) view how You rank against other App users;
- (c) share Your progress with friends via social media;
- (d) compete against other App users during challenge periods;
- (e) maintain motivation by encouraging You to meet set milestones and where applicable be rewarded with in-app badges, with the possibility of being entered into prize draws during challenge periods;
- (f) create and/or join a team;
- (g) compete as a team during a challenge period;
- (h) share Your team with other potential participants via social media.

### **Data charges**

This App is made available to You free of charge for use on Your mobile device. You may be charged rates or fees by wireless or telephone carriers or other parties that are not related to the Heart Foundation, for the download and use of the App.

### **Security**

The personal information entered into the App will be stored on our agent's servers and made available on other mobile devices You have downloaded the App on.

Our agent's servers are based in Australia however they are hosted by Amazon Web Services (AWS). Although stored in "the cloud", the security of Your information is governed by Australian law.

You are responsible for maintaining the security of Your mobile devices, including but not limited to:

- (a) ensuring You are using the latest version of the App;
- (b) ensuring all operating systems and security software of Your mobile devices are the most up-to-date version available;
- (c) maintaining security and confidentiality of any personal identification numbers, account details, passwords and similar that are used on Your mobile device; and
- (d) maintaining the physical security of Your mobile device.

## **Ownership**

The App is owned and operated by the National Heart Foundation of Australia ABN 98 008 419 761 (the **Heart Foundation, We, Us** and **Our**).

We reserve the right to assign the ownership of the App and any such relevant materials or intellectual property, including these Terms and their applicability, to any other party. We will give You notice of any such assignment in advance of any such occurrence.

## **Intended audience**

All information provided via the App has been prepared in accordance with Australian law and is intended for use by residents of Australia. Persons residing outside of Australia use the App at their own risk, and should take into consideration the legislative requirements of their country of residence when accessing the App.

The Heart Foundation makes no warranty or guarantee of the effect of any country's laws upon these Terms.

## **Restrictions on Use**

All information provided via the App has been provided for personal and non-commercial use. It is general information only and should not be relied upon in lieu of professional fitness advice or other medical advice.

***Please consult Your health care provider if You have, or suspect You have, a health problem.***

The information in the App is obtained and developed from a variety of sources including but not limited to collaborations with third parties and information provided by third parties under licence. Where the health information provided has been developed by the Heart Foundation, whether in its own right or in conjunction with any third party, that information is based on independent research and the available scientific evidence at the time of writing. Inclusion of information in the App or links to third party sites is not an endorsement of any organisation, product or service.

While care has been taken in preparing the content of health and fitness material and any other information provided in the App, the Heart Foundation and its employees, related parties, directors, officers, committee members, honoraries, research fellows, servants, agents, volunteers, contractors, subcontractors and collaborators do not accept any liability, including for any loss or damage, resulting from the reliance on this content, or for its accuracy, currency and completeness.

Any use of Heart Foundation materials or information by another person or organisation is at the User's own risk.

## **Intellectual Property**

All Heart Foundation logos and program names are either used under licence by the Heart Foundation or are owned by the Heart Foundation, unless otherwise stated.

All content available via the App including logos, brand names, text, photographs, information, statistics, images and other material is protected by copyright, trademark and intellectual property laws in Australia.

Any logos, trademarks or other marks of the Heart Foundation must not be reproduced or used in any way unless the Heart Foundation provides its prior approval in writing.

Reproduction of any part of the App without the express permission of the Heart Foundation is illegal unless otherwise indicated. Where reproduction is permitted, only one copy of the material may be made, and that copy may only be used for personal or non-commercial purposes. Where reproduction is permitted You must not amend or edit the material in any way, and the Heart Foundation asserts its right to be recognised as the author.

### **Indemnity, Disclaimer and Limitation of Liability**

Whilst due care has been taken in the preparation of the content of the App, We make no representations regarding the accuracy, currency or reliability of the information provided unless otherwise indicated, and note there may be errors, omissions and typographical errors contained in the material provided.

The App and the material it contains are provided on an as-is basis, and to the fullest extent permitted by law We disclaim all warranties. In addition, We do not warrant that this App is error-free or that the App and/or the servers it is hosted on are free of viruses, Trojans or other malicious software or malware.

The Heart Foundation and its employees, directors, officers, committee members, honoraries, research fellows, servants, agents, volunteers, contractors, subcontractors and collaborators will not be liable for any loss or damage other than that which cannot be excluded by law arising as a result of use of the App or reliance on any information provided via the App.

You agree to indemnify the Heart Foundation including its employees, directors, officers, committee members, honoraries, research fellows, servants, agents, volunteers, contractors, subcontractors and collaborators from any loss or damage which it may suffer as a result of Your use of the App.

### **Use of the App**

When You use the App and its content, in addition to Your responsibilities listed above under "Security", You are solely responsible for:

1. Any damage to Your device, and any loss or corruption of information that You store in the device that results from the use of the App or its content or the interaction of the App or its content with other applications or programs that You may download or use.
2. Maintaining the security and confidentiality of any personal identification numbers, account information, passwords and the like related to Your use of the App or its content.
3. Maintaining the security and confidentiality of Personal Information that You store on Your device. "Personal Information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
  1. whether the information or opinion is true or not; and
  2. whether the information or opinion is recorded in a material form or not.

Common examples of Personal Information include your name, email address, date of birth and telephone number.

When You use the App and its content, You may not:

1. Modify, edit, improve, resell, reverse engineer, change or otherwise interfere with the operation of the App in any way.
2. Engage in systematic copying and widespread distribution of the content to the public.
3. Violate these Terms.

The App will only track steps from the date of download and registration on your mobile device. Steps cannot be backdated.

### **Heart Foundation Programs and Merchandising**

The Heart Foundation runs various programs, events and functions including but not limited to "Heart Foundation Walking", "My Marathon", and "My Heart My Life". Should You choose to participate in or attend any of these programs or events, You do so at Your own risk. Should the program or event You choose to participate in involve physical exertion or exercise, We

recommend You consult Your health care provider prior to commencement to determine the suitability of Our program/event to Your level of fitness.

Heart Foundation programs and events may have their own specific terms and conditions, which are separate and in addition to these Terms. Where an inconsistency exists between the program or event terms and these Terms, the program or event terms will prevail.

The Heart Foundation may from time to time make available for purchase on its website/s or via the App certain Heart Foundation merchandise (including but not limited to booklets and brochures, cook books, apparel, umbrellas, DVDs or videos, pedometers, skipping ropes and personal accessories).

Under the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*), a number of Consumer Guarantees may attach to goods purchased from the Heart Foundation from 1 January 2011 onwards. Should You have any queries or concerns regarding goods purchased from the Heart Foundation after this date, please contact Our Customer Service Officer on 13 11 12 or [walking@heartfoundation.org.au](mailto:walking@heartfoundation.org.au)

Unless otherwise provided for, We expressly limit Our liability for breach of a consumer guarantee to the provision of a full refund of the purchase price, or the repair or replacement of the goods or supply of equivalent goods at Our sole discretion.

All prices listed in the App include GST wherever it is applicable.

### **Hyperlinks, Advertising, Sponsors and Third Party Content**

The App may contain the content of third parties (Third Party Content). This content may include, but is not limited to, hyperlinks to external (third party) websites, paid advertisements and mention of program sponsors. None of these things is to be taken as an endorsement, recommendation or approval of the third party, advertiser or sponsor or their products or services. The Heart Foundation accepts no responsibility for the accuracy, currency or suitability or otherwise regarding Third Party Content. Any use or reliance on such content is at Your own risk and the Heart Foundation does not accept liability for any loss, damage, costs or expenses arising as a result of the use or reliance.

The Heart Foundation does not endorse or recommend any brands, products (including medicines), test treatments or procedures, mentioned in the App or the content. Reference to brands, products, tests, treatments or procedures is for the purposes of providing information only.

Where hyperlinks to third party websites are provided, the Heart Foundation makes no claims regarding the suitability or otherwise of the third party's products or services to Your needs, nor does it warrant the third party website is free of viruses, Trojans or other malicious software or malware.

Should You have any queries, concerns or complaints regarding a third party's website, please direct Your query, concern or complaint to that third party.

### **Contact Details**

Should You have any queries or concerns regarding this App please contact us at [walking@heartfoundation.org.au](mailto:walking@heartfoundation.org.au).

For more information regarding privacy, please refer to our privacy notice which can be found at [www.heartfoundation.org.au](http://www.heartfoundation.org.au)