



## SERVICES AGREEMENT

### Details

**Fitness business**  
(“we”, “us”, “our”)

Benjamin Russell Taylor trading as The Chronic Pain Trainer™ (ABN 32 238 604 180)

**Client**

Name:

(“you”, “your”)

Address:

Suburb:

Postcode:

Phone:

Mobile:

Email:

Date of Birth:

Gender: F  M

**Start Date**

\_\_\_ / \_\_\_ / \_\_\_\_

**Services**

**Fees**

**Fees**

Payment via Square or any other third party payment system as nominated by us

<b>Joining fee</b>	\$[	]
<b>Administration fee</b>	\$[	]
<b>Fitness assessment</b>	\$[	]
<b>Fee for visit (if applicable)</b>	\$[	]
<b>Exercise consultation</b>	\$[	]
<b>Third-party costs (eg gym entry fee)</b>	To be advised	
[Credit Card surcharge 1%]		
<b>Other fees</b>	\$[	]

**Facilities**

- Zoom or online
- Our premises

- Your premises
- Public areas including parks
- Gym [ ]. You are responsible for the costs of the access to the gym.
- 

**State/Territory** Queensland

### Special Conditions

### Signing section

- I/we have read through this form including the attachments in full before signing.
- By signing here, I/we agree to be bound by the terms of this services agreement:

Signature *X* \_\_\_\_\_ Date: \_\_\_\_\_

Legal guardian if under 18 years of age (Print Name) \_\_\_\_\_

Relationship \_\_\_\_\_ Signature *X* \_\_\_\_\_

#### **FOR OFFICE USE ONLY**

- All details completed, Applicant has read through form, initialled front page and signed above.
- All persons signing have provided a copy of their drivers licence or other satisfactory identification

## Terms and Conditions (**Terms**)

### 1. **Plain terms**

These Terms use fairly plain language, so we want to make sure that some of the words and concepts used are easily understood. For instance, we have included clause headings as a guide but these do not form part of these Terms. Certain recurring words are defined in the details and elsewhere in these Terms and other forms of those words have equivalent meaning.

### 2. **Responsibility for clients under 18**

By signing on behalf of a child, the parent or guardian agrees to be responsible for ensuring the child exercises safely, pays their fees and otherwise follows these Terms.

### 3. **Safety first!**

Your health and safety is important to us. This clause sets out some of the things we require of you to help achieve that objective.

#### (a) **Your physical condition**

A safe and effective exercise program is dependent upon accurate health and fitness profiling. It is therefore essential that you complete all pre-exercise questionnaires and tell us in writing all relevant personal health and fitness information both before (through our pre-exercise questionnaire or otherwise) and during the course of any exercise program or other activity.

You promise that information you disclose to us will be true and accurate and not misleading in any way.

If you happen to use our facilities and services (as defined in the Details page) (**Services**) before disclosing relevant health information to us, you promise that you are in good physical condition and you do not know of any reason why you may not be able to exercise safely. If you feel unsure that you can make this promise, we ask that you do not use the facilities and Services until we have completed your health and fitness profile.

#### (b) **Proper use of equipment**

We will provide you with an instructional consultation before using the facilities and Services which you must attend before use. In any case, you promise to take care when using the facilities and Services and make sure that you use our facilities and Services including equipment appropriately and safely. If you are ever not sure how to operate any equipment properly, please ask us.

#### (c) **Rules of good behaviour**

We display rules that apply to everyone using our facilities and Services in order to promote health and safety and the protection of property (**our Rules**). A copy of our Rules will be provided to you prior to your first session. Please make sure that you read our Rules carefully and ask us if there is anything you are not sure about.

We may occasionally update our Rules to further promote health and safety or to make other improvements. We will seek to tell you of any changes as set out

below, though we expect you to keep familiar with the current version of our Rules by reading our website and signage on a regular basis.

If you break our Rules, the response we take will be at our reasonable choosing and we will try to exercise this right fairly by giving you a warning if we consider the failure is less serious. In this regard however you acknowledge that health and safety of all users and protection of property is very important. Accordingly, if we reasonably consider the failure to follow our Rules is serious or persistent, we may suspend or the Services or terminate this agreement with immediate effect.

**(d) We can refuse you entry**

We can refuse you entry to the facilities and Services immediately if you behave in a way that is seriously risky or inappropriate, such as if you threaten or harass others, deliberately or recklessly damage equipment or facilities or if you use or distribute illegal or performance enhancing drugs.

**(e) Please follow our directions**

You agree to follow our reasonable direction relating to health and safety or any other matter.

**4. We take your privacy seriously**

**(a) Our privacy policy**

From the Start Date (as defined in the Details page), we will have access to personal information about you, such as information relating to your health and finances. We will protect this information and only use, disclose or deal with this information in accordance with our privacy policy and any applicable laws. The latest version of the privacy policy will be available on our website.

**(b) Video monitoring**

We may use video monitoring in our facilities for health, safety and security reasons. If you have any queries in relation to the use of monitors operating in and around our facilities please contact us.

**(c) Please keep your contact details up to date**

You promise to tell us promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to the Services. This includes any matters that affect the health or safety of you or others.

**5. The Services and our obligations**

**(a) Our obligations**

We agree to perform the Services in a professional manner using reasonable skill, care and diligence. We agree to observe and comply with the provisions of these Terms and all applicable laws in the performance of the Services. We agree that the purpose of the Services is to support you in your fitness and exercise goals, however we do not accept responsibility for the outcome of your efforts, both during and after the Services.

In circumstances where we become unavailable due to circumstances outside our control (for example weather, sickness of government restrictions), we will provide you with as much notice as possible and a suitable replacement or re-scheduling options.

Any other services that you would like us to perform that are not included in these Terms are subject to an additional charge.

## **6. Your obligations**

You agree:

- (a) that you are responsible for your commitment to engage and participate in the Services by attending all sessions. We make no warranty as to your results from engaging and participating in the Services;
- (b) that you will take reasonable care and not act negligently to ensure your safety and the safety of others;
- (c) it is your responsibility to ensure you have the equipment, skills and abilities necessary to engage, participate, and complete the Services;
- (d) to schedule sessions;
- (e) that it is your responsibility to ensure that you comply with any local health and safety directives, rules, laws and regulations that may apply to you;
- (f) the Services are not medical treatment, and it is your sole responsibility to seek such medical advice and guidance as needed; and
- (g) to communicate honestly, be open to feedback and assistance, to provide the time and energy necessary to participate fully in the Services and acknowledge that this is an essential component to the provision of the Services.

## **7. Ending these Terms**

### **(a) If we don't keep our end of the deal**

You can cancel these Terms by written notice to us if we breach any of our obligations under these Terms and we have not remedied that breach within a reasonable time after you have given us a written request that we do so.

You can also cancel these Terms by giving us fourteen (14) days notice.

### **(b) When can we end these Terms**

In addition to our other rights under these Terms, we can terminate these Terms by written notice to you if you fail to act in accordance with any obligation under these Terms (including failure to pay any fees, failure to act with due care and regard for your and other people's safety) and if capable of remedy you do not remedy the failure within a reasonable time of us giving you written notice requiring you do so.

### **(c) What happens when these Terms are terminated?**

If these Terms are terminated, you must pay for all Services which have been provided prior to the termination, and any other outstanding amounts which are due and owing.

## **8. Fees**

### **(a) Fees**

The fees you have to pay are specified in the details. This clause sets out some further rights and obligations that apply in relation to fees.

If you fail to make any payment when due, we can suspend providing the Services until the payment is made, or charge interest on the outstanding amount at the rate of 2% per year above the base lending rate of Australian and New Zealand Banking Group, accruing daily.

**(b) Cancellation fee**

We recognise that life events happen which are outside of your reasonable control. If you need to cancel or re-schedule, you must provide at least forty-eight (48) hours' notice. If no notice (or insufficient notice) is given, we reserve the right to charge our usual fee or count the session as fulfilled.

**(c) Other costs**

You may also be required to pay for any other costs or charges that we incur in providing the Services to you. For example, the costs of any equipment hire or use of gym space for our sessions. We will obtain your approval beforehand and we will require payment before these costs are incurred.

**9. When you pay by direct debit or through a third party payment system**

**(a) Authorisation to deduct fees**

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under these Terms. Accordingly, it is essential that you keep your account details up to date.

**(b) If your payment is late or rejected**

You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.

Any bank fees or other fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the direct debit provider or third party payment system).

If a payment remains outstanding, you agree that, unless we are in breach of our obligations under these Terms, we (or the direct debit provider or third party payment system) may continue to debit or charge the nominated account for the total amount due without notice to you.

**(c) Direct debits**

If you choose to pay fees by direct debit, then this will be through the direct debit provider or third party payment system.

We will provide you with a copy of any relevant terms and conditions that apply to the direct debit services or third party payment system. Those terms and conditions are entirely separate to these Terms and you may have rights and obligations under those terms and conditions.

**10. Liability**

We are not liable for any injury, loss or other claims arising from breach of contract, negligence or otherwise that are suffered by you in connection with any outside provider services, other than to the extent caused by our negligence. In addition, you release us and hold us harmless in relation to any such claims.

We have no responsibility in respect of the fees that you must pay directly to outside providers nor for any associated costs or refunds.

If we provide our Services to you remotely, you agree that you are solely responsible for ensuring your own safety and the safety of others around you. You agree that prior to conducting the Services, you will make an assessment as to whether the place or space where you will be engaging with our Services are risk and hazard free, and are suitable for your purposes.

You agree to release us from liability in accordance with the Indemnity, Liability and Consent waiver, found at Schedule 1 and which forms part of these Terms.

The parent or guardian who signs these Terms (if any) also agrees to hold us harmless in respect of any claim made by or on behalf of the child against us to the extent that any such claim would have been excluded under these Terms, had the child been an adult and signed these Terms on his or her own behalf.

## 11. Other services

There may be other services offered that do not form part of these Terms but are available for you to purchase separately. We will advise you if any additional terms apply to these services.

## 12. Changes to these Terms

We may need to make changes to these Terms including our Rules during the term of these Terms. However, we will always try to do this in a way that is fair by giving you an opportunity to cancel these Terms or the Services if you do not agree to the change as described in this clause below.

We will tell you in writing of the proposed change in advance and tell you the date that it will come into effect. This effective date will be at least 30 days from the date of our notification unless it is impractical for us to do so. These Terms will be amended with effect from the effective date.

## 13. Our liability to you

### (a) Statutory guarantees

**ACL:** The Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides certain guarantees in sections 60 to 62 (**statutory guarantees**) which generally require that services supplied to you:

- are rendered with due care and skill;
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier and might reasonably be expected to achieve any result you have made known to the supplier; and
- are supplied within a reasonable time (when no time is set).

**Permitted exclusion:** However, the CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the fullest extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from a failure by us to comply with any statutory guarantee.

In the previous sentence, “**injury**” means:

- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);

- the contraction, aggravation or acceleration of a disease; or and
- the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.

**Reckless conduct:** This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

**(b) General exclusions**

Please note that nothing in these Terms excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.

Otherwise, and except as expressly included in these Terms, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from these Terms. In particular, but subject to the preceding paragraph, we are not liable for:

- negligence; or
- breach of terms implied that services will be provided with reasonable care and skill,

at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection with or under these Terms, but to avoid doubt we do not exclude liability for our reckless conduct.

**(c) Loss of property**

You promise that you will not unnecessarily bring valuables in to the facilities and that you are solely responsible for any property brought to the facilities.

**14. Your responsibility for damage**

You agree to pay for any damage to the facilities caused by you or your guests through a wilful act or negligence.

**15. General legal guff**

**(a) Unexpected events**

We are not liable if you cannot use our Services to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, then either you or we can cancel these Terms with immediate effect by telling the other in writing.

**(b) Our logo and intellectual property**

No rights in relation to our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under these Terms, except that any exercise program created for you may be used during the term of the Services for the purpose of your exercise activities.

**(c) Transferring these Terms**



We can transfer the rights or benefit under these Terms or sub-contract our obligations under these Terms to a third party at any time without notice to you but in doing so we will make sure that the transferee agrees to honour these Terms.


**(d) Severability and waiver**

If a court finds that any part of any term of these Terms are or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of these Terms. If we do not enforce our rights under these Terms at any time, it does not mean that we may not do so on future occasions.

**(e) Applicable law**

The law of the State/Territory specified in the details applies to these Terms.

## SCHEDULE 1:

	<b>Health &amp; Fitness Liability Waiver / Informed Consent Form</b>
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### **Assumption of Risk and Release of Liability**

I, the participant specified below, have enrolled in the personalised health and fitness program offered by Benjamin Russell Taylor (ABN 32 238 604 180) trading as The Chronic Pain Trainer™ (**The Chronic Pain Trainer™**). I recognise that the program may involve strenuous physical activity including, but not limited to, muscle strength and endurance training, cardiovascular conditioning and training, and other various fitness activities. I will make The Chronic Pain Trainer™ aware of any injuries, disabilities or ailments that I suffer from and that I will gain clearance from my doctor or an allied health professional if I suffer from any injuries, disabilities or ailments prior to commencing the health and fitness program and any physical activity under the program.

I, the participant specified below, acknowledge that my enrolment and subsequent participation is purely voluntary and in no way mandated by The Chronic Pain Trainer™. I am not obligated to perform nor participate in any activity that I do not wish to do, and that it is my right to refuse such participation at any time during my training session. I understand that should I feel light-headed, faint, dizzy, nauseated, or experience pain or discomfort, I am to stop the activity.

I, the participant specified below, am aware that there are significant risks involved in all aspects of athletic activities and physical training. These risks include, but are not limited to: falls which can result in serious injury or death; injury or death due to negligence on the part of myself, my training partner, or other people around me; injury or death due to improper use or failure of equipment; strains and sprains. I am aware that any of these above mentioned risks may result in serious injury or death to myself and or my partner(s).

I accept all risks involved in my participation in this exercise program. In consideration of my participation in this program, I hereby release The Chronic Pain Trainer™ and its principals, agents, employees, trainers, and volunteers from any claims, demands, and causes of action as a result of my voluntary participation and enrolment.

I, the participant specified below, fully understand that I may injure myself as a result of my enrolment and subsequent participation in this program and I hereby release The Chronic Pain Trainer™ and its agents from any liability now or in the future for conditions or injuries that I may obtain. These conditions and injuries may include, but are not limited to, heart attacks, muscle strains, muscle pulls, muscle tears, broken bones, shin splints, heat prostration, trauma, anxiety, fears, injuries to knees, injuries to back, injuries to foot, or any other illness or soreness that I may incur, including death.

I agree that I have consulted with The Chronic Pain Trainer™ in his capacity as a strength and conditioning coach, sports trainer and personal trainer and his consultation and exercise program do not constitute medical treatment, medical opinion or allied health services, advice to me as a registered medical practitioner or allied health professional or to diagnose or treat an injury or disability, nor do his services replace the services of registered medical professionals and allied health professionals. I understand that The Chronic Pain Trainer™ strongly recommends that in addition to any services he provides, that I also maintain treatment and advice from any other necessary qualified professionals, including for medical treatment, allied health services and other relevant professional advice.

### **Remote services**

If I participate in the program or any services offered by The Chronic Pain Trainer™ remotely, I acknowledge and agree that The Chronic Pain Trainer™ has no control over the environment or space that I participate in the program, and that I am solely responsible for ensuring my own safety and the safety of

others around me. I agree that prior to each session or services offered, I am solely responsible for, and will make an assessment of, whether the environment or space I am using to participate in the program is safe, risk and hazard free, and is suitable for my purposes.

### **Emergency Medical Services**

I, the participant specified below, give permission for The Chronic Pain Trainer™ staff and trainers to seek emergency medical services for me should I become injured or ill, with the understanding that I am responsible for any expense incurred.

If I am signing on behalf of a minor child, I also give full permission for any person connected with Off the Track Training to administer first aid deemed necessary, and in case of serious illness or injury, I give permission to call for medical and or surgical care for the child and to transport the child to a medical facility deemed necessary for the well being of the child.

### **Indemnity**

I, the participant specified below, accept financial responsibility for any injury that I may cause either to myself or to any other participant or third party due to my negligent act or omission.

I further agree to indemnify and hold harmless The Chronic Pain Trainer™, their principals, agents, employees, trainers, and volunteers from liability for the injury or death of any person(s) and damage to property that may result from my negligent or intentional act or omission while participating in

activities offered by The Chronic Pain Trainer™. This includes but is not limited to parks, recreational areas, playgrounds, areas adjacent and/or any area selected for training by The Chronic Pain Trainer™, and any other environment or space that I use to participate in the program.

### **Photographed or video**

I, the participant specified below, acknowledge that I may be photographed or videotaped during training. I hereby consent to the use of these photographs and/or videos without compensation, on the The Chronic Pain Trainer™ website or in any editorial, promotional or advertising material produced and/or published by The Chronic Pain Trainer™.

### **Important Note:**

**I am aware that this agreement is ongoing and will apply to all future occasions I participate in athletic activities and training with or at the direction of The Chronic Pain Trainer™.**

**This agreement shall be binding upon me, my successors, representatives, heirs, executors, assigns, or transferees. If any portion of this agreement is held invalid, I agree that the remainder of the agreement shall remain in full legal force and effect.**

**I have read and understand the above statements. I understand that by signing it obligates me to indemnify the parties named for any liability for injury or death of any person and damage to property caused by my negligent or intentional act or omission.**

**OR (for participants under 18)**

**As a parent or guardian of the participant (a) I agree to the above for myself and on behalf of the participant and (b) I understand that by signing it obligates me to indemnify the parties named for any liability for injury or death of any person and damage to property caused by my negligent or intentional act or omission.**

**Details and Execution**

**Details of participant:**

**Participant's Name Date of Birth:**

**Address:**

**Email:**

**Phone:**

**Signature of participant (If the participant is **over** the age of **18**):**

**Participant's Signature:**

**Date:**

**Signature of Parent/Guardian (If the participant is **under** the age of **18**),**

**Name of Parent/Guardian:**

**Signature of Parent/Guardian:**

**Date:**

## **Fitness Business Rules**

- Pre-activity questionnaire

(Please find the attached questionnaires with this document.)