

## LYNDI COHEN - TERMS AND CONDITIONS

These terms and conditions apply to the use of this Site ([www.lyndicohen.com](http://www.lyndicohen.com)), Back to Basics application, including Back to Basics Pregnancy (**App**) and Keep It Real Program (**Program**) owned and operated by Lyndi Cohen Pty Ltd (**LC**). The Site, App and Program will be collectively referred to in these terms and conditions as “the Services”. In using the Services, you agree to be bound by these terms and conditions. If you do not accept these terms and conditions, please discontinue using the Services. These terms and conditions must be read in conjunction with any other applicable terms and conditions (including any additional guidelines and terms contained in the Program and App) governing the use of the Services.

During your subscription to the Program or App, subject to these Terms,

### DEFINITIONS

**ACL** means the Australian Consumer Law Schedule of the Competition and Consumer Act;

**Consumer** is as defined by the ACL;

**Contract** means any contract for the provision of services through the App or Program;

**Online** means, for the purposes of these terms and conditions, being connected to the internet, whether by laptop, desktop, tablet or mobile device;

**Online Content** means the online content provided by LC to You, including but not limited to the content within the App, Program and other emails provided by LC. It also includes the ability to post comments; access various commentaries and writing; access other user generated content including text, photographs, images, graphics, videos and audio content offered and administered by LC.

**Member Information** has the same meaning as in clause 5 of these Site Terms;

**Services** means the services provided by LC which allows you to access the Online Content, Site, App and Program;

**Site Terms** means these terms and conditions;

**Social Networking Services** means Facebook, Instagram, YouTube and any other Social Networking Service used in member account creation, login, or in relation to the provision of the Services.

**You** means the person, jointly and severally if more than one, using the Site and/or Services.

### APPLICATION OF TERMS OF USE

1. The Services are owned and operated by LC.
2. Through this Site or the App:
  - 2.1 you can register as a member/subscriber;
  - 2.2 purchase access to App or Program; and
  - 2.3 access free content delivered through the Site or by email by subscribing with your name and email address.
3. LC may amend these Terms from time to time without notice. Any amendment will be effective immediately upon being posted on this Site and the App and notification being provided to you such as via an EDM. Your continued use of the Services after any amendment becomes effective and is notified to you will constitute your agreement to be bound by these Terms of Use, as amended.
4. LC grants you a limited, non-commercial, non-exclusive, non-transferable, revocable license to access the Services for your personal use, through a generally available web browser or through a mobile computing device (Mobile Device), to view information on those areas of the Services generally available to all users and those areas of the Services for which you have registered. LC reserves all rights not expressly granted herein in the Services. LC may terminate this license at any time for any reason or no reason.
5. LC reserves the right to vary or modify the information contained on this Site or the App, to change or discontinue any feature or part of this Site or the App, to change the hours of availability and the equipment required to obtain access to this Site or the App, without notice and without liability.

## **MEMBERSHIP AND MEMBER INFORMATION**

6. You may be prompted to register for access to the Services on this Site or the App and to submit certain information in order to fully utilise the App or Program provided (Member Information). The Member Information may include, but is not limited to, your name, contact details and credit card details.
7. Upon becoming a member, you will create a login and password. You are responsible for maintaining the confidentiality and security of your login and password details. You are responsible for any and all activities on this Site, Program or the App which occur under your login and password.
8. You will be able to access and modify your membership details from the Site.
9. Membership is non-transferable.
10. LC may terminate your membership at any time by notice to You. You may terminate your membership by cancelling within your "Plan Settings" page at least 24 hours before the date when your next payment is due (written notice via email is not sufficient).
11. You are responsible for the content of all Member Information entered on this Site. All Member Information you enter must be accurate, complete and not misleading. You are responsible for maintaining and updating your Member Information.
12. You must indemnify LC for any losses, costs, expenses or damages that LC may suffer or incur if any if the Member Information provided by you is not correct.
13. LC will not send unsolicited emails and works hard to ensure email best practices are adhered to. You are responsible to ensure that content emailed to you from LC isn't collected in your own Junk or Spam filters and we cannot be held accountable for a loss of communication if this is the case. You can unsubscribe from email communications from LC at any time.

## **PAYMENT TERMS**

### **Free Trial and App Billing Cycle**

14. Membership for the App is purchased on a recurring monthly/quarterly or annual basis. Membership fees are outlined on the Site and checkout pages and may vary from time to time.
15. A free trial may apply to new user subscriptions. Each user is only entitled to one free trial and your payment for the selected subscription will be processed after the free trial period (unless cancelled prior).
16. If you have already had a free trial, you authorise LC to collect/deduct payment immediately upon signup to the App and thereafter on an automatic monthly , quarterly or annual basis, as applicable.
17. Where a member cancels their membership, they will continue to have access to the program until the end of their current billing cycle.
18. If payment fails on the monthly, quarterly or annual billing date, payment will be put through on the evening following the monthly billing date, and if payment fails on the second attempt, payment will be put through on the second evening following the monthly billing date, and if payment fails on the third attempt, subscription will be cancelled (but all outstanding fees will continue to be owed).
19. The recurring payment for the App is not a contract. Members can cancel the recurring payment by cancelling before the date when their next payment is due.

### **Program Billing**

20. The Program fee is billed via a one-off payment or 3 x monthly instalments.
21. Upon full payment of the Program fee, you have access to the Program for as long as the Program remains published.

## **PRIVACY**

22. LC may collect, use, store, record and transmit your personal information entered on this Site. For further details, please refer to LC's Online [Privacy Policy](#). Your continued use of the Site and your provision of your personal information constitutes your approval for LC to deal with your personal information

#### **SECURITY OF INFORMATION**

23. No data transmission over the internet can be guaranteed as totally secure. Whilst we strive to protect such information, we do not warrant and cannot ensure the security of any Member Information which you transmit to us. Accordingly, any Member Information which you transmit to us is transmitted at your own risk.
24. Nevertheless, once we receive your transmission, we will take reasonable steps to preserve the security of such Member Information. You agree that you will not share your password, let anyone else access your account, or do anything that might put the security of your account at risk.
25. We reserve the right to remove your username or similar identifier in respect of your account if appropriate. You acknowledge sole responsibility for and assume all risk arising from your use of this Site or the App.

#### **LINKS TO OTHER SITES**

26. You may be able, through hypertext or other computer links, to gain access to other sites operated either by LC, its affiliates or other third parties (Linked Sites) from time to time. Unless otherwise specified, the Linked Sites are not under LC's control. The Linked Sites may have different terms and conditions and privacy requirements. Unless otherwise specified, LC is not responsible for the content of any Linked Sites, or any changes or updates to such sites. LC provides these links for your convenience only. You link to any such Linked Sites at your own risk. LC is not a party to any transaction between you and a Linked Site. Unless specified, LC does not sponsor, endorse, adopt, confirm, guarantee or approve of any material or representations made in those Linked Sites.

#### **DISCLAIMER (USE OF THE SITE OR THE APP)**

27. LC does not warrant, guarantee or make any representation regarding the accuracy, adequacy, reliability, completeness or timeliness of the information available on this Site or the App (Information) or that it is suitable for your intended use. The Information is provided by LC in good faith on an "as is" basis without warranty of any kind.
28. LC does not warrant or represent that the Information is free from human or mechanical error, technical inaccuracies or other typographical errors or defects. The use of this Site or the App and the Information is at your own risk.
29. All warranties, representations and statutory guarantees and any liability which may arise in relation to your access to or use of this Site or the Information is expressly excluded to the maximum extent permitted by law.
30. LC makes no warranties, guarantees or representations that the material in this Site or the App will not cause damage or that the material is free from any computer virus or other defects. It is your responsibility to complete a virus check on any Information accessed or downloaded.
31. LC recommends that you consult with a medical practitioner or other provider if you have concerns in relation to the Information. The information provided on this Site or the App is not intended as or to substitute for medical advice from a medical practitioner or other certified health care provider.
32. All of the information on this site assumes that if you are pregnant, you are in good physical and mental health, and that your pregnancy is without risk factors or complications. The Site, App and video content is for informational purposes only and is not intended to offer medical advice, or replace the recommendations of your Doctor, Midwife, Physical Therapist or Medical Practitioner. Always consult your Doctor before beginning any exercise program.

### **LIMITATION OF LIABILITY (USE OF THE SITE OR APP)**

33. LC will not be held responsible or liable for any claim that relates to any circumstances, conditions or injuries that result directly or indirectly from information provided or actions taken whilst using the Site or App.
34. LC will in no way be liable to any party for any injury, loss or damage arising out of or related to the use (or the inability to use) the Information on this Site or the App. Under no circumstances will LC be liable for any direct, indirect, incidental, special or consequential loss or damage, including loss of programs or data, loss of business, business interruption, or lost profits. If your use of the Site or the App results in the need for servicing or replacing of equipment, LC will not be liable for those costs.
35. Where liability cannot be excluded, any liability incurred by LC is limited to the re-supply of the Information on the Site or the App or the reasonable costs of having the Information re-supplied.
36. LC Cannot guarantee device compatibility with the App, or smooth running of the App on the member's wireless carrier.

### **THIRD PARTY MATERIAL**

37. Certain Information may include material from third parties.
38. You agree that LC is not responsible for examining or evaluating the content or accuracy of the third party material and LC does not warrant and, to the fullest extent permitted by law, will not have any liability or responsibility for any third party material.
39. You agree that you will not use any third party material in a manner that would infringe or violate the rights of any other party and that LC is not in any way responsible for any such use by you.

### **INTELLECTUAL PROPERTY**

40. © Lyndi Cohen Pty Ltd. All rights reserved.
41. You acknowledge and agree that all content, coding, graphics, and Information available on this Site is protected by copyright, trade mark or other intellectual property rights and laws and remains the property of LC or third party suppliers as the case may be.
42. No part of the Information may be copied, reproduced, modified, republished, uploaded, posted, transmitted or distributed in any form or manner without LC's prior written consent. However, you may download and print these Site Terms and the Online Privacy Policy for your personal non-commercial use.
43. All trade marks and trade names which appear on this Site are proprietary to LC and/or its affiliates. Use of these trade marks without the owner's consent will infringe the owner's intellectual property rights. Nothing in this Site should be interpreted as granting any rights to use or distribute any names, logos or trade marks except with the express written consent of the respective owner.

### **COPYRIGHT CLAIMS**

44. LC takes responsibility for investigating any claims of IP infringement. Should you have any questions, claims or complaints surrounding potential IP infringement by LC or individuals, groups or companies interacting with the Services, you can notify us at [hello@lyndicohen.com](mailto:hello@lyndicohen.com)

### **SPAM**

45. The publication of LC's email addresses on this Site is to facilitate communications relating to the App, Program and Services supplied by LC. It must not be inferred as consent by LC to receive unsolicited commercial electronic messages

### **MEMBER SUBMISSIONS**

46. From time to time, you may be able to post reviews and/or comments regarding the features of this Site, App or Program (Member Submissions). You irrevocably grant to LC a non-exclusive, royalty free, perpetual right to use, reproduce, modify, adapt, publish, translate,

- create derivative works from, distribute and display such reviews and comments throughout the world in any media. You expressly waive in favour of LC all moral rights in any jurisdiction.
47. You agree not to post any review or comment that contains any unlawful, threatening, abusive, defamatory, obscene, or infringing material. If you do, you agree to indemnify LC for any losses, costs, expenses or damages that LC may suffer or incur as a result.
  48. LC reserves the right, but not the obligation, to review, edit or delete any Member Submissions that LC deems to be illegal, offensive or otherwise inappropriate.

#### **NATURE OF CONTRACT**

49. From time to time, LC will offer various Apps and Programs for sale.
50. These Site Terms apply exclusively to every Contract.
51. Any quotation, displayed price, order list or order confirmation provided by LC to you for the proposed supply of content is an invitation to treat only, and is subject to you placing an order which is your offer to enter into a Contract with LC on these Site Terms.
52. A Contract is formed when LC confirms acceptance of your order and receipt of your payment.
53. You must not purchase the App or Program for the purpose of re-supply.
54. LC in its absolute discretion may refuse to accept any order from you.

#### **PRICING AND PAYMENT FOR APP AND PROGRAM**

55. You agree to pay for App and/or Program in the manner specified in these Terms and on the Site.
56. Payment for the App and/or Program must be made by credit card immediately prior to confirmation of your order. You will not be able to access the App or Program until payment is received.
57. You may have access to the Site as a returning customer and will be logged in as a member under your login and password.

#### **DELIVERY OF APP/PROGRAM**

58. Subject to scheduled and unscheduled maintenance which may impact access to the Site, App or Program, LC will make the App and/or Program available for access from the Site.
59. LC will use its best endeavours to provide advance notice of any maintenance that may impact access to the Site.
60. LC will not be held liable for the inability to access the Site, App or Program that is due to a third party's actions or failures that are beyond its direct control.
61. You must advise LC in writing within 72 hours after been advised that the App and/or Program is available for access from the Site:
  - o of the inability of the App and/or Program to be accessed;
  - o if there is damage to the App and/or Program; or
  - o that the wrong App and/or Program has been received.

#### **CANCELLATIONS AND REFUNDS**

62. If LC is unable to deliver or provide the App and/or Program, then it may cancel your order (even if it has been accepted) by notice to you. In such circumstances, LC will refund to you the purchase price.
63. LC reserves the right, but not the obligation to issue a refund, if requested by the customer in writing within 30 days of purchase.

#### **USE OF APP/PROGRAM**

64. You acknowledge and agree that all App and/or Program is protected by copyright or other intellectual property rights and laws and remain the property of LC or third party suppliers as the case may be.
65. Other than as required to use the App and/or Program for your personal enjoyment and improvement, you may not and may not authorise any third person to:

- copy, distribute, transmit, transfer, communicate, disseminate, display, perform, reproduce, publish, license, transfer, or sell the App and/or Program;
  - modify or make any alterations, additions or amendments to any part of the App and/or Program;
  - create derivative works from, any content, information, software, App and/or Program;
  - convert the App and/or Program into an electronic format other than the one in which it was supplied;
  - reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of the App and/or Program or reproduce all or any portion of the said components;
  - remove, alter, circumvent or tamper with any trade marks, copyright notices, copyright protection devices, disclaimers or other legal notices.
66. Regardless of whether the App and/or Program includes security technology that limits your use of the App and/or Program, you must comply with these provisions or you may infringe copyright.

### **DISCLAIMER AND RELEASE**

67. LC will not be held liable for any circumstance, injury or damages that may occur directly or indirectly as a result of using the App, Program or Site. By purchasing the App or Program or continuing to use the Site you release LC and any of its associates from any claim or liability that you may have by using the information provided.
68. LC does not warrant or represent that the App and/or Program are free from human or mechanical error, technical inaccuracies or other typographical errors or defects.
69. App and/or Program may include material from third party authors or suppliers.
70. You agree that LC is not responsible for examining or evaluating the content or accuracy of the third party material and LC does not warrant and, to the fullest extent permitted by law, will not have any liability or responsibility for any third party material.
71. LC, its authors or its suppliers may make changes to App and/or Program at any time in their sole discretion without notice or liability.
72. LC reserves the right to suspend, remove, or disable access to App and/or Program at any time without notice or liability.

### **LIABILITY**

73. Except as the Site Terms or Exam Terms specifically state, or as contained in any express warranty provided in relation to the App and/or Program or Services, the agreement between you and LC does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the App and/or Program or the Services or any contractual remedy for their failure.
74. If you are a consumer, nothing in the Site Terms restricts limits or modifies your rights or remedies against LC for failure of a statutory Nothing in the Site Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or services which cannot be so excluded, restricted or You acknowledge that you have not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by LC in relation to the App and/or Program or the Services or their use or application.

### **MISCELLANEOUS**

75. By accessing and using this Site, you agree to submit to the exclusive jurisdiction of the Courts of NSW. If you access this Site from other jurisdictions, you are additionally responsible for compliance with local laws.

76. LC's failure to enforce any of these Site Terms shall not be construed as a waiver of any of LC's rights.
77. If any term is unenforceable it shall be read down so as to be enforceable or, if it cannot be read down, the term shall be severed from the Site Terms without affecting the enforceability of the remaining terms.
78. A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

**LICENSED APPLICATION – ACKNOWLEDGMENT**

79. These Terms and the license granted herein are between LC and You. Where you create and register an account with the App Store, Apple is not responsible for this licensed application and the content thereof. This license is limited to a non-transferable license to use the licensed application on any Apple-branded products the user owns or controls. Apple is not responsible for any maintenance and support, warranty, production claims, intellectual property infringement claims.