

LES MILLS BORN TO MOVE LICENCE AGREEMENT

1. **About These Terms:** Les Mills International Limited is in the business of creating, producing and developing exercise programs, and has created the BORN TO MOVE® Content. These terms govern your use of the BORN TO MOVE® Content via the Platform.
2. **Rights Granted:** Les Mills grants to you during the Term, a non-exclusive, non-transferable, non-assignable, non-sublicensable (except as expressly permitted herein), revocable right and license solely within the Territory to:
 - (a) stream the BORN TO MOVE® Content for your Users to exercise to; and
 - (b) to use the BORN TO MOVE® Content, Les Mills Marketing Assets and Trademarks (*Les Mills Materials*),
in accordance with the terms and conditions set out in this Agreement. Les Mills hereby reserve all other rights whatsoever in the Les Mills Materials not expressly granted to Partner under this Agreement.
3. **Access and Credentials:** You will access the BORN TO MOVE® Content solely through the Platform. Access will be provided at an organisation level via login credentials issued by Les Mills. You must:
 - (a) restrict use of such credentials to your own organisation only;
 - (b) not share, distribute or make credentials available to any third party;
 - (c) implement reasonable internal controls to prevent unauthorised access; and
 - (d) notify Les Mills immediately if it becomes aware of any unauthorised use or disclosure of credentials.Les Mills may suspend or revoke access (without liability to you) where it reasonably believes credentials have been shared or misused. You must not host, store, extract, download, replicate or otherwise reproduce the BORN TO MOVE® Content except as expressly permitted under this Agreement.
4. **Use of BORN TO MOVE® Content:**
 - 4.1. Without limitation, you will:
 - (a) use the BORN TO MOVE® Content in its entirety, in its original form without alteration, interpolation or elimination and in accordance with Les Mills' reasonable direction (for example only, the content must be displayed on an individual title-by-title basis, not as separate tracks, unless it is supplied in that form by Les Mills); and
 - (b) ensure that the BORN TO MOVE® Content is only accessed and used through the Platform.
 - 4.2. You will not, and will ensure any User (where applicable) will not:
 - (a) copy, download, reproduce, extract, adapt, modify, create derivative works from, distribute or publicly communicate the BORN TO MOVE® Content; or
 - (b) make the BORN TO MOVE® Content available outside the Platform or share access with any third party; or
 - (c) use the BORN TO MOVE® Content (including, without limitation, the choreography or music contained therein) to learn or instruct any fitness class.
 - 4.3. The BORN TO MOVE® Content may only be streamed via the Platform and must not be made available by way of download.
 - 4.4. You shall not white label the BORN TO MOVE® Content without Les Mills' prior written consent.
5. **Use of Les Mills Materials (including BORN TO MOVE® Content):** You will, and will ensure any User (where applicable) will use the Les Mills Materials only as expressly permitted under this Agreement or as otherwise expressly approved by Les Mills in writing. Without limitation, you will (and will ensure that Users will):
 - (a) comply with all reasonable requirements of which Les Mills advise Partner regarding the use of the Les Mills Materials;
 - (b) comply with Les Mills Brand Guidelines;
 - (c) comply with all applicable laws and regulations; and
 - (d) only use the Les Mills Materials in a way that is not likely to damage, dilute, or diminish Les Mills' reputation or the reputation of LMI or the LES MILLS exercise programs.
- 5.1. You will not, and will ensure any User (where applicable), will not:
 - (a) (except as explicitly authorised in this Agreement) copy, reproduce, publish, transmit, broadcast, archive, download, distribute, modify, display, perform, license, transfer, exchange, translate, create derivative works from, offer for sale, or use the Les Mills Materials without express written permission from us;
 - (b) include Les Mills Materials in connection with or transmit from your Platform, any material that is defamatory, offensive, unlawful, infringing on the rights of anyone else or otherwise objectionable;
 - (c) use BORN TO MOVE® Content in any of your marketing materials in relation to BORN TO MOVE® Content or your Platform generally without Les Mills' prior written approval.
6. **Use within Your Organisation:** You are responsible for ensuring that all persons within your organisation who access the BORN TO MOVE® Content via the Platform do so in accordance with the terms of this Agreement. You will implement appropriate internal policies and controls to ensure compliance and will be liable for any breach of this Agreement caused by any person accessing the BORN TO MOVE® Content through your credentials.
7. **Supply and Withdrawal of BORN TO MOVE® Content:** Les Mills will make the BORN TO MOVE® Content available to you via the Platform. Les Mills may withdraw or modify the BORN TO MOVE® Content at any time. Where Les Mills requests you cease using specific BORN TO MOVE® Content, you will do so as soon as reasonably practicable, and in any event within 48 hours of written notice (*Withdrawal Period*). If you continue to use such BORN TO MOVE® Content after the expiry of the Withdrawal Period, Les Mills will have no liability to you for such content and may exercise its rights in relation to breach of this Agreement (including in relation to claiming damages and/or termination).
8. **Marketing:**
 - (a) Les Mills may provide Les Mills Marketing Assets to Partner.
 - (b) Partner may use the Les Mills Marketing Assets solely for the purpose of promoting the BORN TO MOVE® Content in accordance with this Agreement and the Les Mills Brand Guidelines.
 - (c) On written request from Les Mills, Partner will promptly amend, withdraw or replace any marketing materials referencing the BORN TO MOVE® Content or the LES MILLS brand.
9. **Information Sharing:** Where you share any personal information or analytics data relating to the use of BORN TO MOVE® Content with Les Mills under this Agreement, you will ensure that you have obtained all relevant consents and complied with all applicable privacy and data protection laws to enable Les Mills, LMI and their respective processors and sub-processors to measure, analyse and optimise BORN TO MOVE® Content usage.
10. **Warranty:**
 - (a) Each party warrants that it has the right and authority to enter into and perform its obligations under this Agreement.
 - (b) Les Mills warrants that it owns or is licensed to use the intellectual property rights in the BORN TO MOVE® Content and is entitled to grant the licence set out in this Agreement.
 - (c) You warrant that you will comply with all applicable laws in connection with your use of the BORN TO MOVE® Content and will use the BORN TO MOVE® Content strictly in accordance with this Agreement.
11. **Ownership of Intellectual Property:** You acknowledge and agree that:
 - (a) as between you and Les Mills, all right, title and interest in and to the Les Mills Materials, Intellectual Property and Improvements (collectively the Les Mills IP) and Goodwill is (and will be) owned exclusively by LMI regardless of the media or other form in which it is embodied, now or in the future; and
 - (b) except as specifically set out in this Agreement, you do not have, and will not acquire, any right, title or interest in or to the any of the Les Mills IP or Goodwill.
12. **No challenge or registration:** You will not:
 - (a) do anything inconsistent with LMI's rights in and ownership of the Les Mills IP and Goodwill; or
 - (b) do or permit to be done any act or thing which may in any way impair the rights of LMI or to the Les Mills IP (including without limitation, registering or using a confusingly similar name or mark, opposing any applications or cancelling any registrations of LMI relating to intellectual property).
13. **Rights of Third Parties:** LMI is entitled to enforce the terms of this Agreement. No other person other than you and Les Mills will be entitled to enforce any obligation under this Agreement.
14. **Limitation of Liability:** EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, LES MILLS WILL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, LOST REVENUE, LOSS OF USE,

REMEDIAL COSTS, OR LOSS OF GOODWILL ARISING OUT OF, RELATING TO, OR RESULTING FROM THIS AGREEMENT OR LES MILLS' OBLIGATIONS HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, LES MILLS' AGGREGATE LIABILITY FOR ANY CAUSE WHATSOEVER ARISING AS A RESULT OF OR IN CONNECTION WITH THIS AGREEMENT, WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY PARTNER TO LES MILLS UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE APPLICABLE CLAIM AROSE HEREUNDER.

15. **Disclaimer:** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, LES MILLS AND LMI EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LES MILLS AND LMI MAKE NO WARRANTIES, REPRESENTATIONS OR GUARANTEES WHATSOEVER ABOUT THE QUALITY, RELIABILITY OR SUITABILITY OF THE LES MILLS CONTENT OR THE SERVICES PROVIDED BY US. PARTNER WILL MAKE NO REPRESENTATIONS OR WARRANTIES ON LES MILLS' (OR LMI'S) BEHALF WITHOUT ITS EXPRESS PRIOR WRITTEN CONSENT, INCLUDING, WITHOUT LIMITATION, THE QUALITY OR SUITABILITY OF THE LES MILLS CONTENT, RESULTS OR ANTICIPATED RESULTS OF THE LES MILLS CONTENT, FITNESS RESULTS OR WEIGHT LOSS.
16. **Term:** By accessing or using the Platform, you agree to these terms. This Agreement continues until terminated under clause 17.
17. **Termination:** Les Mills may terminate this Agreement with immediate effect by giving written notice to Partner if:
- (a) you breach a material term and fail to remedy such breach within 14 days of notice;
 - (b) you engage in conduct that could damage, dilute or impair the Les Mills IP or Les Mills' reputation; or
 - (c) Les Mills no longer has the rights to sublicense the BORN TO MOVE® Content.
- 17.1. Either party may terminate this Agreement without cause on 30 days' written notice.
- 17.2. On termination or expiry, you must:
- (a) immediately cease all use of the BORN TO MOVE® Content;
 - (b) permanently delete or remove all copies of the BORN TO MOVE® Content (including from any third-party service provider); and
 - (c) cease all use of the Les Mills IP.
18. **Obligations survive termination:** All your obligations which are to be performed in whole or in part after the termination of this Agreement will survive termination.
19. **Confidentiality:** Neither party will disclose or use for any unauthorised purpose any confidential information disclosed by the other party, unless that information is or becomes publicly available or is required to be disclosed by law.
20. **Relationship of Parties:** This Agreement does not create a partnership, joint venture or agency between the parties.
21. **Severance:** Any term found to be unenforceable will be severed without affecting the remainder of this Agreement.
22. **Waiver:** No delay in exercising any right constitutes a waiver of that right. No waiver is effective unless in writing.
23. **Inadequacy of Damages:** Les Mills will be entitled without having to provide special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this Agreement by Partner.

24. **Whole Agreement:** This Agreement is the entire agreement of the parties on this subject matter. Any amendment must be in writing signed by both parties.
25. **Assignment:** Les Mills may assign this Agreement at any time. You may not assign without Les Mills' prior written consent.
26. **Governing Law:** This Agreement and any dispute arising in connection with it (including in relation to non-contractual obligations) will be governed by the laws of New Zealand. The Parties submit to the non-exclusive jurisdiction of the courts in New Zealand.
27. **Counterparts:** The parties may sign this Agreement in any number of counterparts (including facsimile copies). All counterparts, when taken together, will constitute one and the same agreement.

28. **Definitions and Interpretation:**

Agreement means this BORN TO MOVE® Licence Agreement.

BORN TO MOVE® Content means the BORN TO MOVE® (or such other name Les Mills determines and advises Partner from time to time) fitness videos and associated materials (including the choreography, instruction, script, sound recordings, musical compositions and related intellectual property or other rights owned or licensed by LMI incorporated therein) supplied by Les Mills under this Agreement.

Goodwill means all goodwill in the Les Mills IP.

Improvements means all modifications made to or based on the Les Mills Materials or Intellectual Property which are developed or acquired by LMI, Les Mills, you or any other person (whether alone or jointly with any person).

Intellectual Property means all intellectual property created, developed, obtained, acquired, incorporated or used by LMI and/or its affiliated companies in, for, as part of, on and/or in relation to the BORN TO MOVE® Content, whether existing at the date of this Agreement or subsequently created, and all rights and interests therein. Intellectual Property includes, without limitation: (a) registered or unregistered trademarks, service marks or trade names, including the Trademarks; (b) know-how, trade secrets, trade dress and other distinctive get-up or information; (c) copyrights, including copyright licences; and (d) patents, registered and unregistered designs.

Les Mills means Les Mills International Limited.

Les Mills Brand Guidelines means the brand guidelines provided by LMI or Les Mills to you from time to time.

Les Mills IP has the meaning in clause 11(a) of this Agreement.

Les Mills Marketing Assets means promotional imagery, logos and marketing materials in relation to BORN TO MOVE® Content provided online or delivered digitally to you by Les Mills from time to time.

Les Mills Materials has the meaning in clause 2 of this Agreement.

LMI means Les Mills International Limited.

Platform means the website or hosted solution operated by Les Mills through which Partner is granted access to the BORN TO MOVE® Content.

Territory means the country in which you access the BORN TO MOVE® Content via the Platform.

Term means the period commencing when you accept these terms (by clicking to accept, creating an account, or otherwise accessing or using the Platform) and continuing until this Agreement is terminated in accordance with clause 17.

Trademarks means any registered or unregistered trademarks, service marks, or trade names used by Les Mills or LMI on, in or in relation to the BORN TO MOVE® Content and/or Les Mills Marketing Assets.

User means a person who has been given access to the Platform by you and the BORN TO MOVE® Content thereon.

You and your means the organisation or person that accepts these terms (by clicking to accept, creating an account, or otherwise accessing or using the BORN TO MOVE® Content and/or the Platform), and (where applicable) its personnel and Users.