

F&P SLEEPSTYLE™ TERMS AND CONDITIONS

Effective as of December 2018

These terms and conditions ("Terms") govern our relationship with users and others who interact with the mobile and/or web-based software application called F&P SleepStyle™ ("Application").

In these Terms, references to "us", "we" and "our" means Fisher & Paykel Healthcare Limited, a company existing under the laws of New Zealand with its registered office at 15 Maurice Paykel Place, East Tamaki, Auckland 2013, New Zealand. References to "you" and "your" means the person downloading, accessing or using the Application.

By using the Application you acknowledge that you have read and agree to be bound by these Terms which form an agreement between us and you. If you do not accept these Terms, you must not use the Application.

1. PRIVACY

- 1.1. The privacy of your information is very important to us. Our F&P SleepStyle Privacy Notice located at <https://sleepstyle.fphcare.com/privacypolicy> is intended to provide you with details regarding our collection, use, disclosure, storage and security of your personal information that is collected through the Application as well as your rights with respect to your personal information. If you have any questions or concerns about privacy matters relating to F&P SleepStyle, please contact our Data Protection Officer at privacy@fphcare.com. Full contact details of Fisher & Paykel Healthcare or its representative in your country can be found at <https://www.fphcare.com/our-company/contact-us/fph-offices/>.

2. GRANT OF LIMITED LICENCE AND RESTRICTIONS

- 2.1. This Application is not intended for use by minors. To the extent permitted by applicable law in your country, we disclaim any and all responsibility or obligation to monitor or verify the age or legal status of the of any user.
- 2.2. We grant you a limited, non-exclusive, non-transferable, non-sublicenseable, revocable licence to access and use the Application along with any content, images, data, information and other material displayed, available on or through the Application (collectively, "Content") on your mobile device or web browser enabled device, subject to the terms and conditions set out in these Terms. The Application and Content is for your own personal and non-commercial use only. We reserve all rights not expressly granted herein.
- 2.3. You agree that the Application is not a permanent record archive. Whilst you will have access to your data in the Application as long as you are an active user, we may de-activate your Application access in accordance with clause 10 (for example if there has been no user log-in to the account for over twelve (12) months). You agree that if you wish to maintain a permanent record of your data as processed in the Application you are solely responsible for doing so.

3. FEES

- 3.1. We do not guarantee that the Application or Content will always be free of charge. We reserve the right to charge fees for your use of the Application or certain parts or features of the Application, provided that we have previously notified you of the fees to be charged. If you do not agree to pay the fees you may de-activate your use of the Application at any time in accordance with the provisions of clause 10.
- 3.2. Certain additional services which are or may be made available via the Application, may have fees associated with their use. We will notify you of the fees which are charged for these services and any discounts which you might be entitled to, and you can decide whether you do or do not wish to utilise these additional services.

4. SECURITY

- 4.1. When you download or register for the Application you will be required to choose a login name and password. You must select a password that you can easily recall but that would be difficult for others to guess. You must take all reasonable steps to safeguard your login name and password. This

includes not revealing them to other people; not leaving your device or computer unattended when logged onto the Application; and not keeping a physical record of your login name and password.

- 4.2. You are responsible for all activities that occur under your account. If you suspect that anyone has gained access to your password, or that it has been lost or stolen, then you must immediately change your password and contact our Application Systems Administrator immediately on softwaresupport@fphcare.com.

5. DISCLAIMER

YOUR USE OF THE APPLICATION IS AT YOUR OWN RISK. TO THE FULLEST EXTENT ALLOWED BY LAW:

- 5.1. THE CONTENT AND SERVICES PROVIDED VIA THE APPLICATION ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED;
- 5.2. WE DO NOT PROVIDE MEDICAL ADVICE. THE APPLICATION AND THE CONTENT AND SERVICES PROVIDED VIA THE APPLICATION ARE FOR EDUCATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE MEDICAL, TREATMENT OR DIAGNOSTIC ADVICE OR SERVICES AND ARE NOT A REPLACEMENT FOR, PROFESSIONAL MEDICAL EVALUATION, ADVICE, DIAGNOSIS OR TREATMENT. THE APPLICATION AND THE CONTENT AND SERVICES PROVIDED VIA THE APPLICATION ARE NOT INTENDED FOR USE IN THE EVENT OF A MEDICAL EMERGENCY;
- 5.3. YOU HEREBY AGREE THAT, BEFORE USING THE APPLICATION, YOU WILL CONSULT YOUR PHYSICIAN OR OTHER HEALTH CARE PROVIDER FOR MEDICAL ADVICE, PARTICULARLY IF YOU HAVE ANY HEALTH CONDITIONS THAT PUT YOU AT RISK FOR PHYSICAL OR MENTAL INJURY OR ILLNESS.
- 5.4. WE DO NOT WARRANT THAT THE APPLICATION WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR THAT THE CONTENT WILL BE ACCURATE, ADEQUATE, CURRENT OR COMPLETE, OR THAT IT IS SUITABLE FOR YOUR INTENDED USE;
- 5.5. WE MAY AT ANY TIME AND WITHOUT NOTICE MODIFY THE APPLICATION, OR WITHHOLD, SUSPEND OR RESTRICT ANY SERVICE AVAILABLE THROUGH THE APPLICATION;
- 5.6. WE EXPRESSLY DISCLAIM ANY LIABILITY WHICH IS BASED ON, OR ARISES OUT OF, THE INFORMATION, DATA OR MATERIAL; AND ACCESSED USING THE APPLICATION.

6. LIMITATION OF LIABILITY

- 6.1. Nothing in these Terms shall exclude or limit the application of any provision of law or regulation (including any statutory consumer guarantees) in the territory in which you are ordinarily resident where to do so would contravene that law or regulation or cause any part of these Terms to be void, and these Terms shall be read down (only) to the extent necessary to comply with such applicable law or regulation.
- 6.2. To the maximum extent permitted by law, we will not be liable to you or any third party for any direct, indirect or consequential costs, claims, demands, actions, losses, damages or other liabilities ("Losses") arising out of or in connection with these Terms or the Content or services provided pursuant to it, including any Losses resulting from:
- a. your use of the Application; or
 - b. any unauthorised use of your login name and password; or
 - c. any delay or loss of access to, or use of the Application at any time, or any fault or error in the design, content or engineering of the Application; or
 - d. any suspension or restriction of any service available through the Application; or
 - e. malfunction of any equipment or system, or any telecommunications link failure; or

- f. any cause or event reasonably beyond our control.
- 6.3. In no event shall we be liable to you or anyone else for any amount in excess of the amounts (if any) paid to us for your access to the Application.
- 6.4. The limitations of liability set out in this clause 6 shall not apply to:
- a. liability arising from death or injury to persons caused by negligence;
 - b. liability arising as a result of fraud; and
 - c. anything else which cannot be excluded or limited at law,
- to which no limit applies.
- 6.5. The Application may contain information relating to, and/or links to other websites operated by, third parties. Such links and information are provided solely for you to obtain further information about other relevant products and organisations. We have no control over such information or the products or services on them and therefore we make no representations regarding the accuracy or suitability of such information, services, or products. You acknowledge sole responsibility for, and assume all risk arising from, your use of any third-party websites or resources. Please make sure to review the applicable agreements and policies when visiting any third-party websites, including their respective terms of use and privacy policies.

7. YOUR OBLIGATIONS AND RESTRICTIONS ON USE

- 7.1. You will ensure that all information and data that you provide to us is true and correct and kept up to date for so long as you continue to use the Application. You can remove the information and data you provide to us by deleting it from the Application, however in some instances some of your information or data may not be completely removed and copies may continue to exist on the Application. Subject to applicable law, you may have the right to have your personal information deleted. If you wish to exercise this right, please contact us at privacy@fphcare.com and provide a copy of your valid ID document (valid national ID card, driver's license or passport) with your request.
- 7.2. You must not:
- a. modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on the Application or otherwise attempt to alter the Application;
 - b. use any device, including any software or routine, which interferes with the usual operation of the Application;
 - c. access, store or transmit any information or software that contains a virus, spyware, worm or Trojan horse or any other harmful component;
 - d. use the Content or Application to provide services to third parties;
 - e. attempt to undermine the integrity or security of the Application or our, or any third party's, systems, networks or resources used in the provision or functioning of the Application;
 - f. attempt to gain unauthorised access to any information or materials other than those to which you have been given express permission to access as part of the Application;
 - g. post, upload, publish, submit or transmit any information and data through our Application that:
 - (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy;
 - (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability;
 - (iii) is fraudulent, false, misleading or deceptive;
 - (iv) is defamatory, obscene, pornographic, vulgar or offensive;
 - (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group;
 - (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or
 - (vii) promotes illegal or harmful activities or substances;

- h. send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation through the Application;
- i. violate any applicable law or regulation; or
- j. encourage or enable any other individual to do any of the foregoing.

8. INTELLECTUAL PROPERTY

- 8.1. You are responsible for all mobile, cable or other internet service provider charges incurred by you for accessing and using the Application, and we assume no responsibility or liability for any such charges including but not limited to, data charges, long distance charges, per minute (or unit) surcharges, and/or equipment or line costs, incurred by you while accessing the Application.
- 8.2. You acknowledge and agree that:
 - a. We, our affiliates or licensors own all copyright, trademark and other intellectual property rights in the Application and the Content; and
 - b. other than the right to use the Application and Content in accordance with these Terms, you do not and will not acquire any rights or ownership of the Application or Content as a consequence of these Terms or your use of the Application.
- 8.3. You may download or print out Content from the Application for your own personal and non-commercial use only. Any other copying, modification, distribution or use of the Content from the Application without our prior written consent is strictly prohibited.

9. OPEN SOURCE SOFTWARE

- 9.1. The Application may contain or be accompanied by open source software components that are provided to you under the terms of a separate open source license agreement or copyright notice accompanying such software ("Open Source Components"). Details of any Open Source Components distributed with or as part of the Application and the applicable license agreement or copyright notice ("Open Source Terms") are identified in the "Settings" section of the Application. You agree that the licensing terms that apply to such Open Source Components are governed by the relevant Open Source Terms and not the licensing provisions included in these Terms but that any more permissive licensing or use of rights stated in the Open Source Terms apply to the relevant Open Source Components only and not to the Application as a whole.

10. MODIFICATION OR WITHDRAWAL OF THE APPLICATION

- 10.1. You acknowledge that we upgrade and update the Application and that the Application is continually evolving. You agree that we may transmit updates and upgrades to you from time to time and that you may be required to install these upgrades and updates to the Application or to upgrade the device you use to access the Application or the operating system running on that device in order to continue to use the Application.
- 10.2. You may de-activate your use of the Application at any time by deleting the Application from your device or computer.
- 10.3. We may de-activate your access to the Application at any time by giving you notice which we consider (at our sole discretion) is reasonable in the circumstances. We will de-activate access to your account in the Application if there has been no user log-in to the account in over 12 months or you no longer consent to the use of your personal information processed for the purposes of this Application. We may suspend or de-activate your access to the Application immediately:
 - a. upon your death, or if we become aware that you lack legal capacity;
 - b. if you breach these Terms;
 - c. if we have reason to believe your use of or access to the Application has been compromised; or

- d. if we consider we have other reasonable grounds to do so.

11. ASSIGNMENT AND SUB-LICENSING

You may not:

- 11.1. assign your licence in whole or part to any third party;
- 11.2. allow any other person to use or access the Application using your login and password; or
- 11.3. sub-license the rights to use the Application without our prior written consent.

12. ALTERATION OF TERMS

- 12.1. These Terms may be amended in whole or in part by us from time to time. Amendments will be effective immediately upon posting of the amended Terms on the Application. You are responsible for ensuring you are familiar with the latest Terms. Your continued use of the Application represents your agreement to be bound by the Terms as amended.

13. APPLE ACKNOWLEDGEMENT

- 13.1. By downloading the Application from Apple Inc's App Store, you agree that Apple Inc and its subsidiaries are third-party beneficiaries of these Terms and, therefore, Apple Inc will have the right to enforce these Terms against you.

14. OTHER

- 14.1. These Terms make up the entire agreement between the parties regarding the Application and supersede any prior agreements.
- 14.2. If any portion of these Terms is found to be unenforceable, the remaining portion will remain in full force and effect.
- 14.3. If we fail to enforce any of these Terms, it will not be considered a waiver.
- 14.4. All of our rights and obligations under these Terms are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
- 14.5. You will comply with all applicable laws and regulations when using or accessing the Application.
- 14.6. To the extent permitted by law, these Terms are governed by the laws of New Zealand and when you use or access the Application you submit to the exclusive jurisdiction of the courts of New Zealand in connection with all disputes arising out of or relating to your use of the Application. Notwithstanding the foregoing, nothing in these Terms shall exclude or limit the application of any provision of applicable law or regulation where to do so would contravene that law or regulation or cause any part of these Terms to be void, and the Terms shall be read down (only) to the extent necessary to comply with such applicable law or regulation.

F&P SLEEPSTYLE™ PRIVACY POLICY

GENERAL

Fisher & Paykel Healthcare Limited ("F&P", "us", "we" or "our") respects your concerns about privacy. This Privacy Policy is intended to provide you with information regarding how we collect, store, use and disclose the personal information you submit to us when accessing or using our mobile and/or web-based software application called F&P SleepStyle ("Application").

This Privacy Policy also informs you about your data protection and privacy rights, including how you may exercise such rights. Personal information is any information about an identified or identifiable individual (it does not include aggregate or anonymised information). For the purposes of this Privacy Policy, personal information also includes personal health information. Personal health information is personal information

that relates to your physical/mental health and medical details, such as treatment information. Personal health information also includes information about the provision of healthcare services, which reveals information about your health status.

COLLECTION OF INFORMATION

The Application collects your Information (defined below) actively and passively. When you choose to download or use the Application, we will request that you provide us with certain information (including personal information), such as your name, date of birth, email address, serial number of your F&P CPAP device or other F&P device ("Device") and details of your mask. You will also be asked to create a username and password to access your account in the Application. You are not obliged to provide us with the information requested. However, failure to do so may mean that we are unable to provide you with the Application or certain information or services we may offer via the Application.

After your Device is registered for use with the Application, if you consent, data relating to the usage of your Device and your therapy will be collected ("Device Information"). Device Information may also constitute sensitive personal information including personal health information and includes:

- times and dates of use of your Device;
- your Device's personalized settings;
- details of mask leak; and
- other sleep therapy information, including your sleep hours and your Apnoea Hypopnea Index (AHI).

Device Information may be collected by the Application by the transfer of data:

- from your Device to your mobile device;
- from a modem contained in or connected to your Device; or
- by other means applicable to your particular Device.

If you are an existing user of a Device, your healthcare provider, physician or sleep laboratory ("Provider") may already provide certain of your Device Information to us through a separate clinical monitoring application. This Device Information is uploaded by your Device or your Provider to that application only where you have consented to such collection and use. We may also collect Device Information from this source for the purposes of providing the Application (in addition to Device Information collected by the methods detailed above).

Like many other mobile applications, certain information may be passively collected using various technologies. For example, when you access the Application we may collect your Internet Protocol (IP) address, your mobile device ID and mobile device type by automated means.

PURPOSES OF COLLECTION & USE OF YOUR INFORMATION

We will use your personal information, including Device Information (together, "Information"), for the purpose of providing you with the Application and any information or services we make available to you via the Application (or for purposes which are directly related to that purpose), namely:

- to create a unique user account on the Application;
- to allow you to review data relating to your usage of your Device and to provide you with educational material and information relating to your therapy;
- to maintain your account in the Application and manage and provide access to that account for you;
- to better understand your preferences and communicate with you based on those preferences through push notifications or other means (if you specifically consent to this);
- to reply to any queries you may have about our use of your Information;
- to perform data analytics to improve our products and services; and
- as otherwise authorised by you or permitted by law.

We will use your Information for the above purposes only if we have obtained your consent or if it is necessary in order to perform the F&P SleepStyle Terms and Conditions, which form an agreement between us and you, or if we have a legitimate interest to do so (including a legitimate interest in enforcing the F&P SleepStyle Terms and Conditions, and performing data analytics).

STORAGE AND SECURITY OF YOUR INFORMATION

We may de-activate your account on the Application if there has been no user log-in to the account in over twelve (12) months or if you advise us that you no longer wish to use the account. To the extent permitted by applicable law, we will retain your personal information for as long as you are using your account on the

Application and in any event for as long as necessary to provide you with the information or services we offer via the Application.

Depending on where you are located and the requirements of local law, your Information will be stored on dedicated servers located in the European Union or the United States that are operated by a third party service provider ("Service Provider"). The Service Provider strictly acts on our behalf and in accordance with our instructions and is not permitted to use Information uploaded into the Application for its own purposes

Information uploaded into the Application will be encrypted in transit and storage. We have also put into place contractual safeguards with the Service Provider to require them to take steps to ensure that your Information is kept safe.

Your data is protected using appropriate security standards. These standards are regularly reviewed and updated to ensure that we always use appropriate security measures.

If you are using the Application on your mobile device, certain Information may also be stored on this device, including:

- Your name, date of birth, e-mail address, serial number of your Device and details of your mask;
- Data relating to the usage of your Device and therapy, transferred from your Device or transferred from the servers associated with the Application; and
- Your username and password, if you choose to have the Application remember this information.

You should take appropriate steps to ensure that your mobile device or computer is secure by following any security practices recommended by your mobile device or operating system manufacturer.

DISCLOSURE OF YOUR INFORMATION

Your Information will be disclosed to:

- duly authorised staff of F&P in New Zealand, who will process your Information for the purposes set out in this Privacy Policy on a need-to-know basis. If there are language differences which may impede communication, we may also share your personal data with other Fisher & Paykel Healthcare staff (for example in your country of residence) so that they can communicate with you; and
- third party service providers that we engage to provide us with services that are directly related to the Application and any information or services we offer via the Application. In such circumstances we ensure that appropriate protections are in place with such parties, including contractual safeguards, to require them to take steps to ensure that your Information is kept safe.

We will not disclose your personal information to any other third parties, except if:

- we are required or authorized by law to do so, for example if a court issues a subpoena;
- you have consented to the disclosure; or
- we believe we need to disclose information to protect our rights or property, or the rights or property of others, or to enforce this Privacy Policy or the F&P SleepStyle Terms and Conditions, or in the event of a sale of our business or a merger with another entity.

Your Information will not otherwise be shared with unrelated third parties, except as required or permitted by law. We will never sell your Information.

We may also disclose to third parties data which, although derived from your Information, is in an aggregated and anonymised form (so that you will not be personally identifiable from such data). We may do this in order to perform data analytics to improve our products and services or for commercial or business purposes that are unrelated to the Application.

CROSS BORDER TRANSFER

Your Information will be stored and processed at the locations where our third party Service Providers operate the dedicated servers (as set out in the section 'Storage and Security of your Information'). We may also transfer your Information outside of your country to our duly authorised staff in New Zealand for the purpose of operating the Application and providing you with the information or services we offer via the Application. All your Information may be transferred for these purposes. You agree to the transfer of your Information to countries outside of your residence.

YOUR RIGHTS

Subject to applicable law in your country, you may have the right to 1) know what information is being

collected about you, 2) access a copy of your personal information, 3) request deletion of your personal information, 4) know whether your personal information is sold or disclosed (and to whom), 4) opt out of the sale of your personal information, and 5) equal service and price, even if you exercise your privacy rights. If you wish to exercise any of these rights (to the extent applicable in your country), please contact us at softwaresupport@fphcare.com and provide a copy of your valid ID document (valid national ID card, driver's license or passport) with your request. We will comply with your request as soon as reasonably possible in compliance with applicable law.

You may also withdraw your consent to the collection of your Information at any time by 1) sending an e-mail to that effect to softwaresupport@fphcare.com and 2) turning off the Bluetooth function of your Device. If you do so, F&P will not further collect your Device Information via the SleepStyle Application. This will not affect the lawfulness of the use of your Device Information previously collected.

WHAT IS THE PROCESS FOR COMPLAINING ABOUT A BREACH OF PRIVACY

If you believe that your privacy or rights have been breached, please contact us using the contact information below so that we can investigate it. You also have the right to lay a complaint with a privacy regulator.

If you complain to us about a breach of your privacy, we request that complaint be made in writing, so we can be sure about the details of the complaint.

We will treat your complaint confidentially, investigate your complaint and contact you in an effort to resolve your complaint within a reasonable time (and in any event within the time required by applicable laws, if applicable).

After we have completed our enquiries, we will contact you, usually in writing, to advise the outcome and invite a response to our conclusions about the complaint. If we receive a response from you, we will assess it and advise if we have changed our view. If you are unhappy with the outcome and our further response, you may still lay a complaint with a privacy regulator.

CHANGES TO THIS PRIVACY POLICY

We may change or otherwise update this Privacy Policy from time to time. Such changes or updates are effective immediately after we give notice of the change or update, which we may do by posting on the Application and/or by any other means that provide reasonable notice and, where applicable law so requires, we obtain your consent.

HOW TO CONTACT US

F&P has its registered office at 15 Maurice Paykel Place, East Tamaki, Auckland 2013, New Zealand. For full contact details of F&P or its representative in your country, please visit <https://www.fphcare.com/our-company/contact-us/fph-offices/>

If you have any questions or concerns about privacy matters relating to the Application, please contact our Data Protection Officer at privacy@fphcare.com

This Privacy Policy was last updated by Fisher & Paykel Healthcare Limited effective from December 2018.