API LICENSE & AGREEMENT

This API Agreement (defined below) is made as of the Effective Date (as listed on the signature page) by and between ZINGFIT, LLC, a New York limited liability company ("zingfit") and _____ , a _____ _____ (referred to herein as "API User," "you", "your," "You" or "Your") (collectively API User and zingfit are referred to herein as the "Parties" or interchangeably as a "Party"). This API Agreement governs API User's access to, and use of the API.

Incorporated Terms. The terms contained within the following documents are also incorporated into this API Agreement by reference to form a legally binding contract, which can be found under the Glossary (see below) or by visiting http://www.zingfit.com/legal-docs/, or by clicking on the hyperlink (the terms of the API Agreement and the documents incorporated by reference below are all referred to herein as the "API Agreement"):

1. Exhibit A: API Fee Schedule and Payment Authorization Instructions, ("API Fee Schedule"),
2. Exhibit B: Schedule of Authorized Activities,
3. User Terms & Conditions,
4. zingfit Privacy Policy,
5. zingfit Security Policy, and
6. zingfit Branding Requirements.

1. Definitions

Capitalized terms not defined herein are defined in the zingfit Glossary, which can be found here: http://www.zingfit.com/legal-docs/glossary-terms/.

2. License

Subject to API User's compliance with this API Agreement, zingfit grants API User a revocable, limited, non-exclusive, non-sublicensable license to access and use the API solely for one of the following purposes: (i) developing, testing, displaying, using and/or distributing API User's "API Application" (see Glossary for definition), and/or (ii) integrating API User's services or applications so as to assist a (zingfit)

Client (e.g., such as a studio) in the marketing or operation of its business. The license contained herein is granted on the condition precedent that API User will access the API solely for the purposes of using Your API Data in connection with the zingfit System to make Reservations, purchase any incidental products or services related to such Reservations and/or assist a Client in the marketing or operation of its business. In connection with this foregoing license, API User is additionally authorized to engage in those activities as set forth in the Schedule of Authorized Activities, attached hereto as Exhibit B.

3. Account Registration

API User's access to and use of the API requires API User to register and maintain an API Account with zingfit, which will require submitting a contact person on API User's behalf, an email address and creating a password for the API Account. API User is solely responsible for all activity that occurs under API User's API Account, including API User's login credentials. API User agrees not to provide information regarding API User's API Account to any third party or any unauthorized person. API User agrees to notify zingfit immediately of any unauthorized access to API User's API Account, the API or the zingfit System, of which API User becomes aware.

4. API Call Limitations

The number of API calls API User will be permitted to make are limited to 500 calls to the API per a rolling 15-minute interval ("Permitted Call Volume"). Notwithstanding the preceding, zingfit may reduce the Permitted Call Volume to the API in the event that the zingfit System and/or the API is experiencing significant technical issues that threaten the stability of the zingfit System and/or API, and zingfit will provide API User notice of such an event. Furthermore, upon the happening of such an event, zingfit will use commercially reasonable efforts to restore the functionality of the API so as to restore the Permitted Call Volume. API User agrees to pay (and zingfit will charge API User) for its usage of the API as set forth in the API Fee Schedule.

5. Fees and Payments

zingfit calculates and bills its API Fees and charges on a monthly basis for accessing the API. Commencing on the Effective Date and continuing until the Termination Date, API User shall pay zingfit all API Fees charged under this API Agreement, as more fully described in the API Fee Schedule. API User will be responsible for paying all API Fees set forth in the API Fee Schedule. API Fees will be invoiced on a monthly calendar basis in arrears (e.g., fees for API User's

usage and activity are billed in the calendar month following such usage/activity), and shall be due and payable 30 days thereafter. If all API Fees have not been paid, then within 14 days after notice API User's access to the API may be terminated. All payments made by API User under this API Agreement will exclude taxes or any levies by any governmental authority or jurisdiction, and API User will pay, any such taxes or levies (by grossing up API User's payment to zingfit or otherwise) so the amount zingfit receives from API User (or on its behalf) will be the same amount as if no taxes (or levies) had been imposed on the payment.

6. Non-Permitted Purposes; API Restrictions

a. <u>General Usage Restrictions</u>. API User is responsible for its own conduct and the conduct of any third party accessing or using the API on or for behalf of the API User and for any consequences thereof. API User will use the API only for purposes that are legal, proper and in accordance with this API Agreement. In addition to the other restrictions contained in this API Agreement, but subject to those activities specifically authorized as set forth in the Schedule of Authorized Activities, attached hereto as Exhibit B, API User agrees that when using the API, API User will not do the following, attempt to do the following, or permit any of API User's end users or other third parties to do the following:

   i. disparage zingfit or knowingly tarnish the name reputation, image or goodwill of zingfit in connection with API User's API Application or the use of the API;

   ii. modify, obscure, circumvent, or disable any element of the API or the zingfit System;

   iii. [intentionally left blank];

   iv. use any portion of the API or the zingfit System in a product or service that competes with products or services offered by zingfit during the term of this API Agreement and thereafter (e.g., the API and the zingfit System are zingfit's intellectual property and this restriction will survive termination of this API Agreement);

   v. attempt to circumvent any security measures or technical limitations of the API;

3

vi.   use the API in any manner or for any purpose that violates any law or regulation, any right of any person, including but not limited to intellectual property rights, rights of privacy;

vii. engage in any activity that would violate any applicable local, state, federal, or international law, or any regulations having the force of law;

viii. use the API and/or the zingfit System in a manner in contravention of this API Agreement that impacts the stability of the zingfit System or the zingfit's servers or impacts the behavior of any users accessing the API;

ix.   create or disclose metrics about, or perform any statistical analysis of the API or the zingfit System during the term of this API Agreement and for a period of 3 years after Termination;

x.   use the API on behalf of any third party, unless specifically provided for herein;

xi.   crawl, screen scrape or data mine zingfit Content;

xii. use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the services offered by zingfit, the zingfit System or the API;

xiii. collect information about users of the API or the zingfit System – unless such information qualifies as Your API Data – for any unauthorized purpose (note, authorized usage of the API is set forth in this API Agreement, including but not limited to §2 and the Schedule of Authorized Activities, attached hereto as Exhibit B);

xiv. use the API or the zingfit System in connection with any of the following content: adult content; pyramid schemes, chain letters or disruptive commercial messages or advertisements; infringing, or obscene content; content promoting or instructing about illegal activities or promoting physical harm or injury against any group or individual; content infringing any patent, trademark, copyright, trade secret or other proprietary right of any party; content defaming, abusing, harassing, stalking, threatening or violating the rights of privacy and publicity; content disparaging of zingfit or its licensors, licensees,

affiliates, or partners; or anything other inappropriate or unlawful content;

xv. transmit any viruses, worms, defects, Trojan horses, or other disabling code, via the API or otherwise, to zingfit, the zingfit System, zingfit subscribers' computers or other third parties' computers;

xvi. access any Client Data or Consumer Data without the authorization of such Client or Consumer;

xvii. Access or use any data, except for Your API Data, through the zingfit System unless specifically authorized in this API Agreement;

xviii. cache (in excess of 48 hours), collect, compile, store, transfer or utilize Client Data or any other data derived from zingfit, the zingfit System or zingfit's database(s), including but not limited to Consumer Data, Consumer addresses, passwords or any other identifying information about any Consumer or end user of the zingfit System;

xix. provide any third party or any Person (other than those employees of the API User with a need to access the API to accomplish the purposes set forth in this API Agreement) with access to the API, except as specifically authorized herein or as specifically authorized by zingfit in a writing signed by a senior officer (such unauthorized access is referred to herein as "Unauthorized Access"); and/or

xx. Perform Bulk Data Migration, except as specifically provided in Paragraph 23.

b. Prohibited Activity.

i. API User shall not engage (and shall not permit any person, directly or indirectly to engage) in a "Prohibited Activity" (as defined below) during the time that this API Agreement is ongoing and/or in effect and for a period of two years from the date after the termination of this API Agreement, within 100 miles of where any client of zingfit has any classroom, studio or other type of location.

    ii. A "<u>Prohibited Activity</u>" is defined to include any of the following activities, subject to the exception of subparagraph iii below:

        1. conducting, executing or carrying on any in-studio point of sales transaction for any person or legal entity, including but not limited to the sale, or

        2. performance of reservation booking or management of any classes, class packages, memberships or merchandise.

    iii. Notwithstanding the preceding subparagraph ii above, a "Prohibited Activity" shall not include any of the activities described in subparagraph ii if (and only if) API User prominently displays its name and brand on each of the webpages, which a person would use (or see), to conduct one of the activities listed in subparagraph ii.

    iv. API User recognizes that if it were to engage in a Prohibited Activity then zingfit would suffer irreparable harm, for which it would be difficult to quantify the damages. As a result, API User further agrees that zingfit shall be entitled, in addition to its other available rights and remedies, to injunctive relief or a decree of specific performance without the necessity of demonstrating actual monetary damage.

c. <u>Inspection Rights</u>. zingfit takes data privacy rights (including its own) very seriously, because a breach of data privacy or data protections contained in this API Agreement will cause zingfit to incur substantial damages, whether in the form of a direct loss of revenue from its business or in the form of reputational harm in the marketplace (that will then lead to a loss of business for zingfit). Therefore, API User agrees to provide zingfit with access to its books and/or email records to determine if a violation has occurred with respect to either subparagraph a.xix or a.xx of Paragraph 6 (e.g., as to whether Unauthorized Access has been provided or a Bulk Data Migration has occurred). The terms of this subparagraph and those subparagraphs addressing Bulk Data Migration and Unauthorized Access to the API are material provisions of this API Agreement.

d. <u>Liquidated Damages</u>. If API User breaches either subparagraph a.xix or a.xx of Paragraph 6 (e.g., by allowing Unauthorized Access or Bulk Data Migration), then at the option of zingfit the API User shall pay to zingfit either its actual damages arising from such breach or the sum of eighty thousand $80,000 as liquidated damages. The Parties

hereby acknowledge and agree that the sums payable to zingfit under this subparagraph shall constitute liquidated damages and not penalties and are in addition to all zingfit's other rights. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred as a breach of this API Agreement is incapable or is difficult to precisely estimate, (ii) the amounts specified in this subparagraph bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred by zingfit in connection with any default of this subparagraph, (iii) one of the reasons for the Parties reaching an agreement as to such preceding amount was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this API Agreement at arm's length.

e. <u>Legal Fees & Expenses</u>. In the event any suit, action or proceeding is brought by zingfit to enforce this Paragraph 6, and zingfit is the prevailing party in such action, then zingfit shall be entitled to recover from API User all costs and expenses of suit, including reasonable attorneys' fees, in addition to whatever other relief the prevailing party may be entitled.

f. <u>Reformation</u>. If any provision within this Paragraph 6 is held to be unenforceable on the grounds that its geographic scope is too broad or its duration too long, such provision shall be reformed (e.g., in geographic scope or duration) only to the extent necessary to make it enforceable. If the liquidated damages provision above is found to be unenforceable, then zingfit is entitled to recover its actual damages from the API User for such breach.

7. Branding Requirements

API User may develop, display or distribute API Applications that interact with the API. API User agrees that it is solely responsible for the API Applications that it develops and that its API Applications must comply with the Branding Requirements, incorporated herein by this reference, which can be found here: http://www.zingfit.com/legal-docs/brand-requirements/.

8. API Modifications & Maintenance

a. <u>Scheduled Maintenance</u>. With 60 days advance notice, zingfit may temporarily suspend access to the API in order to conduct scheduled maintenance.

b. <u>Modifications</u>. zingfit reserves the right to and may perform either of the following; provided however, that zingfit must provide API User with at least 60 days advance notice and the material functionality or material features of API User's API Application, or the features offered by the API, must not be impaired after the same:

i. modify the API and/or the services provided through and/or in connection with the API,

ii. release subsequent versions of the API, which may function in a dramatically different fashion.

9. zingfit Statistical Data Authorization

API User agrees that zingfit may compile aggregate reservation statistics for general analytics and reporting purposes (such as the total number of reservations or cancellations made through the zingfit platform) provided that zingfit shall not use or disclose such aggregate data in a manner that identifies API User or any End Users without first obtaining the prior written consent of either API User or such End User (as the case may be).

10. Export Control

Each Party (e.g., API User and zingfit) shall comply with all applicable export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or other United States or foreign agency or authority, and API User shall not export, or allow the export or re-export of any information or data via the API or the zingfit System in violation of any such restrictions, laws or regulations. API User represent and warrant that it is not located in, under the control of, or a national or resident of any restricted country.

11. Security

a. API User's API Application should clearly explain to its End Users what it does.

b. To the extent that Personally Identifiable Information, Client Data or Consumer Data is accessed or held by one of the Parties (or its subcontractors), such Party will and/or will require its subcontractors to (i) implement and maintain reasonable security procedures and

practices appropriate to the nature of such data, (ii) take such other actions as are necessary to maintain conformance with industry standards of security with respect to such data, (iii) publish privacy policies, describing how such Party handles and protects data obtained from users, and (iv) protect such data against any loss or unauthorized or illegal access or use.

c. The Parties agree that at all times during the term of this API Agreement, they will comply with their respective obligations (including but not limited to the handling of data in connection with the API) under all applicable foreign and domestic privacy, security and data protection laws, rules and industry standards, guidelines and practices with respect to privacy, security and data protection.

d. API User further agrees that its handling of all data in connection with the API shall comply with its own terms and conditions and/or privacy policies that are currently in effect.

e. In the event of any unauthorized access to Client Data, Consumer Data or Personally Identifiable Information, the Party experiencing such unauthorized access agrees to (i) promptly notify the other Party, (ii) take commercially reasonable efforts to investigate and remediate the cause thereof, and (iii) cooperate with the other Party in the investigation of such breach and the mitigation of damages.

12. Support

a. <u>Initial Integration</u>. During the first 30 days of the initial Term of this API Agreement, zingfit shall provide API User (at API User's request) with up to 3 hours of initial integration support in an effort to enable API User's software to function with the API. As consideration for such initial integration support, API User shall pay zingfit $500 upon the execution of this API Agreement. For any integration support beyond such 5 hours of initial integration support, API User agrees to pay zingfit's current hourly support rates upon being invoiced for the same.

b. <u>Ongoing support</u>. Other than for initial integration support as provided in the preceding subparagraph, technical support shall be provided as set forth below.

  i. In the event that API User experiences any technical issues related to the zingfit System, API User must resolve such technical issues directly with the zingfit Client with whom API

User is attempting to make or book a Reservation (and/or make a related purchase) – e.g., API User must resolve such technical issues directly with such zingfit Client.

ii.   With respect to technical issues regarding the functionality of the API, zingfit agrees to provide support to API User Monday through Friday from 8am to 6pm EST to address such technical API issues. For issues that arise outside of these standard business hours, API User can submit an urgent ticket via zingfit's support website, which will notify zingfit's support staff. zingfit agrees to use commercially reasonable efforts to resolve technical issues that might arise with respect to the functionality of the API.

iii.   Absent a formal written agreement between API User and zingfit, the only support for the API (other than the support as specified above) will be provided at zingfit's sole discretion via zingfit's website in the form of instructions, "help" explanations, user forums, FAQ's, or other internet-based documentation (e.g., support will not be provided so as to educate how the zingfit System or API can or may be used).

13. Intellectual Property of the Parties

a.   <u>zingfit Intellectual Property Rights</u>. API User agrees that at no time during and/or after the termination of this API Agreement that API User will attempt to do or do any of the following (directly or indirectly):

i.   register or buy any trademarks or (web) domain names, which are derived from or confusingly similar to the zingfit Marks those of zingfit, and/or otherwise arrange to use any such preceding domain names to redirect internet traffic or content to API User's website from zingfit's domain names or websites;

ii.   sell, lease, or sublicense any functionality of the API or the zingfit System;

iii.   use any portion of the API or the zingfit System in a product or service that competes with products or services offered by zingfit during the term of this API Agreement;

    iv.   develop (or assist in the development of) an application programming interface or a service or product that competes with the products or services offered by zingfit; and/or

    v.   API User will not, and will not permit any person, directly or indirectly, to reverse engineer, disassemble, reconstruct, decompile, translate, modify, copy, rent, modify, or alter, other than as explicitly permitted hereunder, create derivative works of the API, the zingfit System or any other portion of the zingfit website or the services offered by zingfit.

b. <u>API User's Intellectual Property Rights</u>. zingfit agrees that at no time during or after the termination of this API Agreement that zingfit will attempt to do or do any of the following (directly or indirectly):

    i.   register or buy any trademarks or (web) domain names, which are derived from or confusingly similar to those owned by API User, and/or otherwise arrange to use any such preceding domain names to redirect internet traffic or content to zingfit's website from API User's domain names or websites; and/or

    ii.   sell, lease, or sublicense any functionality of API User's API Application.

c. <u>Legal Remedies</u>. In the event any suit, action or proceeding is brought by one Party to enforce this Paragraph 13, the prevailing party in such action shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees in addition to whatever other relief the prevailing party may be entitled. The Parties further agree that the prevailing party shall be entitled, in addition to its other available rights and remedies, to injunctive relief or a decree of specific performance without the necessity of demonstrating actual monetary damage as it is difficult to quantify the damages associated with the interference of intellectual property rights. If any provision within this Paragraph 13 is held to be unenforceable on the grounds that its geographic scope is too broad or its duration too long, such provision shall be reformed (e.g., in geographic scope or duration) only to the extent necessary to make it enforceable.

14. Independent Contractors

a. API User may work with Third Party Providers as necessary to facilitate API User's performance under this API Agreement only if all the following conditions are met:

i. API User conducts due diligence on any such Third Party Providers according commercially reasonable standards;

ii. API User provides zingfit with advance notice of the names of such Third Party Providers before granting such Third Party Providers access to the API; and

iii. Such Third Party Provider and the API User each agree to be bound by the terms of the "Data Processing Addendum," which is attached hereto (and which can be accessed at the above hyperlink or at this hyperlink: https://zingfit.com/legal-docs/) and the terms of which are incorporated into and made a part of this API Agreement.

b. In exchange for allowing such Third Party Providers to access the API, API User agrees to the indemnification provisions of Paragraph 19 of this API Agreement and further acknowledges and agrees that any act or omission by its Third Party Providers, which amounts to a breach of this API Agreement, will be deemed a breach by API User, and therefore, API User acknowledges and agrees to assume such liability for the same.

15. Term and Termination

a. Term. The initial term of this API Agreement shall start on the Effective Date (as specified on the signature page) and continue thereafter for 12 months ("Term"), at which point the Term shall automatically renew for another 12 months, unless terminated as set forth herein. Upon renewal of the Term, this API Agreement shall be amended to include the terms of any documents incorporated into it by reference or made a part of this API Agreement, unless this API Agreement is terminated according to this Paragraph 15.

b. Termination, Suspension, or Discontinuance by zingfit.

i. Termination for Breach. zingfit in its sole discretion reserves the right to suspend or terminate API User's access to the API at any time without liability if (i) API User or its Third Party Providers have violated a material provision of this API Agreement (including the documents incorporated by reference), and (ii) API User has failed to cure such violation(s) within 10 days after notice. For the purposes of this API Agreement, zingfit's actions to suspend or terminate

API User's API access shall be deemed to be in good faith if based upon advice of its legal counsel.

    ii.   <u>Voluntary Termination</u>. For any reason or no reason at all zingfit may terminate this API Agreement with at least 60 days advance notice to API User before the expiration of the then current Term and termination shall be effective upon the expiration of the then current Term.

c. <u>API User's</u> <u>Termination</u>. For any reason or no reason at all API User may terminate this API Agreement with at least 60 days advance notice to zingfit before the expiration of the then current Term, and termination shall be effective upon the expiration of the then current Term.

d. <u>Automatic Termination At End of Term</u>.

    i.   <u>Upon Expiration of the Current Term</u>. This API Agreement shall terminate automatically upon the expiration of the then current Term if

        1. zingfit has notified API User (at least 60 days in advance before the expiration of the then current Term) of a proposed change of any of the terms of this API Agreement (including any documents incorporated into it by reference or made a part of this API Agreement); and

        2. API User does not provide its written consent prior to the end of the then current Term to be bound by those proposed terms so as to have this API Agreement amended to include such terms.

    ii.   <u>Immediately</u>. This API Agreement shall terminate immediately if

        1. zingfit has notified API User of a change of any of the terms of this API Agreement (including any documents incorporated into it by reference or made a part of this API Agreement);

        2. the new terms (e.g. as notified by zingfit) have been made in a good faith effort (e.g., based on the opinion of zingfit's legal counsel shall be sufficient to establish

good faith) so as to comply with government rules, regulations, court decisions or legislation; and

3. API User does not provide its written consent to amend this API Agreement to conform to the new terms within 30 days thereafter.

e. <u>Effect of Termination</u>. Upon any termination of the API, API User will (i) promptly delete and remove all calls to the API from all web pages, scripts, widgets, applications, and other software in API User's possession or under its control; (ii) promptly destroy and remove from all computers, hard drives, networks and other storage media all copies of the API; and (iii) promptly certify in writing to zingfit that such actions have been taken. Additionally, API User agrees to pay all amounts outstanding under this API Agreement within 30 days of termination. As a result of any termination of this API Agreement, API User's API Applications shall cease to function properly (or at all) with the zingfit System or the API, and zingfit shall have no liability to API User or any users of API User's API Applications in connection with such termination.

16. Third-Party Products and Services

Through the zingfit System or the API, zingfit may make available third-party products or services ("Third Party Services"). Any usage by API User of such Third Party Services or any exchange of data between API User and any provider of Third Party Services, is solely between API User and such provider of the Third Party Services. zingfit does not warrant or support Third Party Services, whether or not they are designated by zingfit as "certified" or otherwise.

17. Disclaimer of Any Warranty

THE API AND ANY AND ALL ZINGFIT CONTENT ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. API USER EXPRESSLY AGREE THAT USE OF THIS THE API AND THE ZINGFIT SYSTEM, INCLUDING ALL CONTENT OR DATA DISTRIBUTED BY, DOWNLOADED OR ACCESSED FROM OR THROUGH THE API AND/OR THE ZINGFIT SYSTEM, IS AT API USER'S SOLE RISK. ZINGFIT DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY REGARDING THE API AND/OR THE ZINGFIT SYSTEM, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AS TO THE INFORMATION, MATERIALS, AND

CONTENT ON OR MADE AVAILABLE THROUGH THE API OR THE ZINGFIT SYSTEM. FURTHER, ZINGFIT DISCLAIMS ANY WARRANTY THAT API USER'S USE OF THE API OR THE ZINGFIT SYSTEM WILL BE UNINTERUPTED, ERROR FREE, SECURE, TIMELY, COMPLETE, RELIABLE, OR CURRENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR IN WRITING, OBTAINED BY API USER FROM ZINGFIT WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE API AGREEMENT.

18. Limitation of Liability

a. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY SHALL -- EXCEPT FOR THOSE LIMITED CIRCUMSTANCES AS PROVIDED FOR IN SUBPARAGRAPH b OR SUBPARAGRAPH c OF THIS PARAGRAPH 18 -- BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH USE OF THE API -- INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE) -- OR ANY OTHER PECUNIARY LOSS, REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. EXCEPT AS SPECIFICALLY PROVIDED FOR UNDER THIS API AGREEMENT (E.G., SUCH AS PROVIDED OR IN SUBPARAGRAPH C BELOW), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY AMOUNT IN EXCESS OF THE AMOUNT OF COMPENSATION PAID TO SUCH FIRST PARTY UNDER THIS API AGREEMENT FOR THE 12 MONTHS PRECEDING THE DATE WHEN SUCH DAMAGES WERE INCURRED; HOWEVER, THE PRECEDING LIMITATION SHALL NOT APPLY TO THE EXTENT A PARTY IS LIABLE FOR GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL CONDUCT THAT CAUSED THE OTHER PARTY TO SUFFER DIRECT DAMAGES – IN SUCH AN EVENT THE FIRST PARTY SHALL ONLY BE LIABLE TO THE OTHER PARTY FOR SUCH OTHER PARTY'S DIRECT DAMAGES ARISING FROM SUCH CONDUCT IN AN AMOUNT THAT SHALL NOT EXCEED $1,000,000 OR THE FIRST PARTY'S AVAILABLE INSURANCE COVERAGE FOR SUCH CONDUCT.

c. NOTWITHSTANDING THE PRECEDING LIMITATIONS OF THIS PARAGRAPH 18, A PARTY SHALL BE LIABLE FOR ALL DAMAGES UP TO BUT NOT EXCEEDING $1,000,000 AS A RESULT OF (ii) SUCH PARTY'S INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS API AGREEMENT, (ii) A VIOLATION OF THE CONFIDENTIALITY PROVISIONS CONTAINED IN THIS API AGREEMENT, (iii) A VIOLATION OF PARAGRAPH 6, OR (vi) WHERE SUCH DAMAGES ARE IN CONNECTION WITH UNAUTHORIZED USE OR ACCESS TO DATA OR A CYBERSECURITY BREACH OF DATA BY A THIRD PARTY PROVIDER.

19. Hold Harmless and Indemnity

Subject to the limitations of liability in Paragraph 18 c and to the maximum extent permitted by applicable law, each Party (the "Indemnifying Party") agrees to hold harmless and indemnify the other Party and its subsidiaries, affiliates, officers, agents, licensors, co-branders or other partners, and employees (collectively referred to herein as the "Indemnitee") from and against any third-party claims arising from or in any way related to the Indemnifying Party's (as well as any of such Indemnifying Party's Third Party Providers) tortious acts or omissions, including any liability or expense arising from all claims, losses, damages (actual and/or consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature ("Indemnifiable Damages"). Additionally, each Party agrees to indemnify the other Party for any damages arising from the use of the API in contravention of this API Agreement by such first Party and/or any of such first Party's Third Party Providers, and the term "Indemnifiable Damages" shall also include any damages resulting therefrom. If a Party becomes aware of a claim or cause of action that could result in indemnifiable Damages against such Party (e.g. so as to become an Indemnitee under this Paragraph), then such potential Indemnitee shall (i) provide prompt notice of such Indemnifiable Damages to the other Party (e.g., the potential Indemnifying Party). The Indemnifying Party shall have the right to conduct and control, through counsel of its choosing, the defense of any Indemnifiable Damages, and the Indemnifying Party may compromise or settle such Indemnifiable Damages, provided that the Indemnifying Party shall give the Indemnitee advance notice of any proposed compromise or settlement. The Indemnifying Party shall also permit the Indemnitee to participate in the defense of any such action or suit through counsel chosen by the Indemnitee, provided that the fees and expenses of such counsel shall be borne by the Indemnitee (subject to reimbursement as provided herein).

20. Confidential Information

As of the signing of this API Agreement, if API User and zingfit have entered into a separate agreement in the past, which addresses confidential information ("Separate Confidentiality Agreement"), then the terms of such Separate Confidentiality Agreement will continue to exist and apply to API User and zingfit, regardless of any other conflicting terms contained herein (including the User Terms & Conditions). If a Separate Confidentiality Agreement has not been so executed, then the terms in the User Terms & Conditions, which address Confidential Information, shall apply.

21. Publicity

A Party may not represent to any third party (including but not limited to the media or via a press release) that their software or applications are created or endorsed by the other Party. A Party may not issue any press release via traditional or online media, which mentions the other Party, without the other Party's prior written approval, which shall not be unreasonably withheld. Each Party has the right to generally reference that they are working together pursuant to this API Agreement.

22. Insurance

   a. <u>Required Insurance</u>. API User and zingfit shall each obtain, at their own respective expense, and keep in effect during the term of this API Agreement the following insurance coverage:

      i. commercial general liability insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than $1 Million per occurrence/$2 Million general aggregate – this coverage shall include contractual liability insurance for the indemnity provided under this API Agreement; and

      ii. Cyber Risk insurance on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this API Agreement. Limits are $1Million per claim/annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by API User in this API Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright,

trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

b. <u>Miscellaneous Requirements</u>.

   i.   As evidence of the insurance coverage required by this API Agreement, each Party hereby agrees to furnish a certificate of insurance to the other Party.

   ii. The above required insurance coverage shall include the other Party and the other Party's agents, officers, and employees" as an additional insured.

   iii. A Party shall not permit a cancellation, material change, exhaustion of aggregate limits or intent not to renew the above required insurance coverage without 60 days written notice by such Party to the other Party. A lapse in any required insurance coverage during this API Agreement shall be a material breach of this API Agreement.

23. Bulk Data Migration

Bulk Data Migration shall only be allowed if all of the following conditions have been met:

a. API User provides zingfit with no less than 6 weeks advance notice of its intent to conduct Bulk Data Migration; and

b. API User pays to zingfit those Bulk Data Migration Fees as set forth in zingfit's prices (e.g., as listed on zingfit's website or as may be obtained directly from zingfit upon request).

24. General Terms

a. <u>Relationship of the Parties</u>. Notwithstanding any provision hereof, for all purposes of this API Agreement, API User and zingfit shall be and act independently (e.g. and be considered independent contractors with respect to each other) and not as partner, joint venturer, agent, employee or employer of the other. Neither Party shall have any

authority to assume or create any obligation for or on behalf of the other Party, express or implied, and neither Party shall attempt to bind the other Party to any agreement or contract.

b. <u>Invalidity of Specific Terms</u>. If any provision of this API Agreement is found by a court of competent jurisdiction to be invalid, the Parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision and that the other provisions remain in full force and effect to the maximum extent possible.

c. <u>Law & Enforcement Issues</u>. This API Agreement and the relationship between API User and zingfit shall be governed by the laws of the State of New York without regard to its conflict of law provisions. API User and zingfit agree to submit to the personal jurisdiction of the courts located within the county of New York, NY. Notwithstanding this, API User agrees that zingfit shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any applicable jurisdiction. The prevailing Party in any lawsuit or legal proceeding shall be entitled to receive reimbursement from the other Party for any and all costs (including attorney fees) attributable to enforcement of its rights hereunder in such lawsuit or legal proceeding.

d. <u>No Waiver of Rights</u>. A Party's failure to exercise or enforce any right or provision of this API Agreement shall not constitute a waiver of such right or provision.

e. <u>Conflict with Other Agreements</u>. If API User and zingfit either have entered into an the App Hosting Agreement or other separate agreement in the past or enter into an the App Hosting Agreement or other separate agreement in the future ("Separate Agreement"), then any terms of such Separate Agreement will control if they directly conflict with the terms of this API Agreement, however, to the extent possible, the terms of this API Agreement shall supplement the terms of any Separate Agreement.

f. <u>Successors and Assigns</u>. This API Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. Neither Party may assign this API Agreement (including any rights or obligations hereunder) without the prior written and signed consent of the other Party.

g. <u>Miscellaneous</u>. The Paragraph headings and subheadings contained in this API Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this API Agreement. Any construction or interpretation to be made of the terms contained within this API Agreement shall not be construed against the drafter. The terms of this API Agreement constitute the entire agreement between zingfit and API User with respect to the subject matter hereof, and such terms cannot be modified unless API User and zingfit sign a document (e.g., modification cannot be via an email) that sets forth such modifications.

h. <u>Time for Bringing a Claim</u>. Regardless of any statute or law to the contrary, any claim or cause of action that a Party may have arising out of or related to the use of the API or the zingfit System or otherwise under this API Agreement must be filed within one (1) year after such Party learns about such claim or cause of action; otherwise, such Party is hereby forever barred from asserting or bringing such claim.

i. <u>Survival.</u> Any terms of this API Agreement that indicate they will apply after this API Agreement or after termination of this API Agreement and/or the purpose of which are intended to apply after termination of this API Agreement shall accordingly survive termination of this API Agreement.

j. <u>Mutual Representations and Warranties</u>. Notwithstanding anything in the API Agreement to the contrary, each Party represents and warrants to the other that they each have: (a) all requisite legal and corporate power to execute and deliver this API Agreement; (b) taken all corporate action necessary for the authorization, execution and delivery of this API Agreement; (c) no agreement or understanding with any third party that interferes with or will interfere with the performance of their respective obligations under this API Agreement; (d) obtained and shall maintain all rights, approvals and consents necessary to perform their respective obligations under this API Agreement; and (e) taken all action required or necessary to make such agreements legal, valid and binding obligations upon them.

[SIGNATURE PAGE TO FOLLOW FOR NON-CLIENTS (EACH CLIENT WILL EXECUTE THE APP HOSTING AGREEMENT WHICH WILL BIND SUCH CLIENT TO THE TERMS OF THIS API AGREEMENT, INCLUDING THE API FEE SCHEDULE, THEREFORE, CLIENTS WILL NOT NEED TO SIGN AGAIN)]

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound, has duly executed this API Agreement by its authorized representative as of the Effective Date listed below zingfit's authorized signature. By signing below, API User explicitly acknowledges that it consents to the liquidated damages clause as specified in Paragraph 6.d.

ZINGFIT: **API USER:**

ZINGFIT, LLC
a New York Limited Liability Company

By: _____   By: _____
[Signature]   [Signature]

_____   _____
[Print Name]   [Print Name]

_____   _____
[Title]   [Title]

_____   _____
("Effective Date")   [Date]

Address: Address:

2051 Dogwood Street, Suite 110   _____
Louisville, Colorado 80027   [Street]
Facsimile: 631-899-2531
                                                           _____
                                                           [City, State Zip]

_____   _____
Email   Email