



[Version Date: June 12, 2019]

THIRD-PARTY DATA PROCESSING AGREEMENT (“ THIRD-PARTY DPA”)

“**API User**”(as defined in the API Agreement) _____

“**Third-Party Provider**” (hired by API User) _____

Date API Agreement is entered into _____

Capitalized terms not defined herein are defined in the zingfit Glossary, which can be found here: <http://www.zingfit.com/legal-docs/glossary-terms/> (or the API Agreement).

WHEREAS, API User and zingfit have entered into an API Agreement as stated above (the “**API Agreement**”), which incorporates and binds the API user to the terms of this Third-Party DPA;

WHEREAS, API User desires to access and/or use the API of zingfit LLC (“**zingfit**”);

WHEREAS, pursuant to the API Agreement any Third-Party Provider is required to consent and agree to be legally bound to certain terms and conditions of the API Agreement as well as the terms of this Third-Party DPA;

WHEREAS, API User has contracted with Third-Party Provider to perform work related to the zingfit API; and

WHEREAS, as consideration for such Third-Party Provider’s agreement with the API User, the Third-Party Provider has agreed to execute this Third-Party DPA so as to be bound by the terms of this Third-Party DPA as well as certain terms of the API Agreement as specified below;

WHEREAS, Third-Party Provider understands that any work, which it performs related to the API, if not done in compliance with the API Agreement or this Third-Party DPA could have substantial and detrimental effects on either the API or the zingfit System.

NOW THEREFORE, as part of the consideration for the agreement between Third-Party Provider and API User, Third-Party Provider and API User acknowledge, consent and agree as follows:

1. Third-Party Provider has reviewed and read the terms of [zingfit’s online API Agreement](https://zingfit.com/api-license/) in its entirety with the opportunity for its own legal counsel to review the same, which can be found here: <https://zingfit.com/api-license/>.
2. Third-Party Provider shall perform all of its work on behalf of API User related to the API according to the terms of [zingfit’s online API Agreement](https://zingfit.com/api-license/).

3. Third-Party Provider shall be bound by the terms of the of the following paragraphs of [zingfit's online API Agreement](#), which can be found here: <https://zingfit.com/api-license/>, as if Third-Party Provider directly contracted with zingfit under [zingfit's online API Agreement](#):
 - a. Paragraph 8.a , titled, "General Usage Restrictions,"
 - b. Paragraph 8.c, titled, "Unauthorized Access to API,"
 - c. Paragraph 8.d, titled, "Right to Investigate,"
 - d. Paragraph 8.e, titled, "Required Authorization for Sharing or Transfer of Reporting Data,"
 - e. Paragraph 8.f, titled, "Legal Fees & Expenses,"
 - f. Paragraph 8.g, titled "Reformation,"
 - g. Paragraph 14.a, titled, "zingfit Intellectual Property Rights,"
 - h. Paragraph 14.c, titled "Legal Remedies,"
 - i. Paragraph 16, titled, "Term; Suspension of Access," and
 - j. Paragraph 18, titled, "Confidential Information."

4. If Third-Party Provider transfers or shares Reporting Data to or with any other Person, then Third-Party Provider and API User shall be jointly and severally liable for the payment of a "Reporting Data Transfer Fee" of \$80,000. The preceding sentence shall not apply if (i) API user and Third-Party Provider each have executed a Personal Data API Access Form with zingfit, and (ii) the Person who receives any Reporting Data from the Third-Party Provider is listed as an authorized person to receive Reporting Data on the signature page to such executed Personal Data API Access Form.

5. Third-Party Provider is committed to protecting personal data and will be able to ensure that adequate security measures are in place and observed so as to comply with the obligations under Article 28 of the GDPR ("Article 28") , which include but are not limited to the following:
 - The Third-Part Provider will only take actions on the written instructions of the "data controller" which is the API User;
 - any person processing personal data on behalf of the Third-Party Provider will do so in a confidential manner;
 - the Third-Party Provider's data processing will only be done in a secure manner using commercially reasonable standards;
 - Third-Party Provider will only engage sub-processors if zingfit and API User have consented in a writing, which has been signed by an authorized officer of the same;

- Third-Party Provider will help the API User in managing access requests and other rights of data subjects;
- Third-Party Provider will assist the API User in meeting its GDPR obligations in relation to:
 - The security of processing;
 - The notification of personal data breaches within seven days; and
 - Data protection impact assessments;
- Third-Party Provider will delete or return all personal data to the API User as requested at the end of its agreement with the API User;
- Third-Party Provider shall submit to audits and inspections and provide information required to ensure both API User and zingfit are meeting their Article 28 obligations; and
- Third-Party Provider shall immediately notify the API User if it is asked to do something that could violate the law or privacy requirements of the GDPR or other data protection laws of the EU or a member state.

6. The Third-Party Provider represents and warrants the following:

- a. that it does not and shall not during the term of this Third-Party DPA and for the one-year period following the termination of this Third-Party DPA, generally offer for sale or make available for sale a point of sale system to fitness studios through which fitness studios sell their own classes, products and services directly to consumers;
- b. it will not use the API and/or will not conduct work related to the API in a manner that is competitive to the business of zingfit, and
- c. will use the API for only the following purposes (check all that apply):

_____ Native app development

_____ Development for an in-studio kiosk

_____ Data analytics or business intelligence

_____ Third-party integration (if checked please describe):

_____ Other (please describe):

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7. The undersigned represents and warrants that he or she has the authority to bind the Third-Party Provider and has received all necessary approvals to so bind the Third-Party Provider to the terms contained herein.
 8. The Third-Party Provider understands that both API User and zingfit will be relying on the Third-Party Provider's representations and covenants set forth herein and that a breach of the same could cause significant damage to API User and/or zingfit.
 9. If it becomes necessary to enforce the terms of this Third-Party DPA (including the accompanying terms of the API Agreement), then (i) the Third-Party Provider and the API User jointly and severally shall reimburse zingfit for all costs related thereto (including attorney fees), (ii) the Third-Party Provider, API User and zingfit hereby agree to submit to the exclusive jurisdiction of the state and/or federal courts in New York, New York to resolve any such disputes, and (iii) this Third-Party DPA (including the terms of the API Agreement) shall be governed by the laws of the state of New York.
 10. If any provision of this Third-Party DPA 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.
 11. A Party's failure to exercise or enforce any right or provision of this Third-Party DPA shall not constitute a waiver of such right or provision.
 12. Any terms of this Third-Party DPA that indicate they will apply after termination of the API Agreement and/or the purpose of which are intended to apply after termination of the API Agreement shall accordingly survive termination of the API Agreement.
 13. The Paragraph headings and subheadings contained in this addendum are included for convenience only, and shall not limit or otherwise affect the terms of this Third-Party DPA. Any construction or interpretation to be made of the terms contained within this app addendum shall not be construed against the drafter. The terms of this Third-Party DPA constitute the entire agreement between the Parties with respect to the subject matter hereof, and such terms cannot be modified unless API User, Third Party Provider and zingfit sign a document (e.g., modification cannot be via an email) that sets forth such modifications.

[Signature Page to Follow]



The Third-Party Provider hereby acknowledges, consents to and agrees to be bound by the terms contained in this Third-Party DPA as well as the terms contained in the API Agreement.

THIRD PARTY PROVIDER:

[Print Name]

By: _____

[Signature]

[Print Name]

[Title]

[Date]

Address:

[Street]

[City, State Zip]

Email

API User acknowledges that it has hired the above Third Party Provider and that it shall remain liable for the actions and/or omissions of the Third Party Provider as set forth in the API Agreement.

API USER:

[Print Name]

By: _____

[Signature]

[Print Name]

[Title]

[Date]



OAuth Apps Authorization Schedule

Third-Party Provider and API User acknowledges that Third-Party Provider is authorized to use only those OAuth Apps where an “X” has been placed in the above “Access Requested” column. **Except where indicated, zingfit API Fees apply.*

Access Request	OAuth App (Name)	Description
	Performance Metrics	Delivers enrollment data, ingests metrics data to be displayed in the customer profile. <i>* zingfit subscription fees are assessed.</i>
_____	a. Athlios	
_____	b. Gusto	
_____	c. Performance IQ	
_____	d. RISE	
_____	e. SPIVI	
_____	f. Stages	
	Class Aggregators	Implement third-party consumer bookings. <i>*Third-party fees apply, no zingfit subscription fees or API fees apply.</i>
_____	a. ClassPass	
_____	b. Esquared	
_____	c. FitPass	
_____	d. FitReserve	
_____	e. FitYu	
_____	f. Go2Practice	
_____	g. GroupMove	
_____	h. Gympass	
_____	i. Peerfit	
_____	j. StudioHop	
	Partners	Branded OAuth Apps of zingfit certified partners (excluding Performance Metrics partners above). <i>* Third-party subscription fees apply; no zingfit subscription fees or API fees apply.</i>
_____	a. chartyn	
_____	b. Domo	
_____	c. iKizmet	
_____	d. Yombu	
_____	e. Brandbot	
_____	f. Zenrez	
_____	Reporting	Contains PII data – data on customer profile info, purchases, and attendance. <i>API User Must Execute a Separate “Personal Data API Access Form” for the Reporting OAuth App.</i>
_____	Independent Developer	Permits development of customer-facing functionality including mobile apps (excluded kiosk development).
_____	Kiosk	Permits development of customer-facing kiosk for check-in.
_____	Custom Integration	For integrations not listed above.