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Fitbit Platform Terms of Service

Last revised on January 19, 2017

We are excited to include you as a developer on the Fitbit Platform. The Fitbit Platform, including the Fitbit Web API, is provided as an asset to Fitbit's community members and partners to facilitate innovation in health, wellness, and fitness applications. It is designed to interact with and enhance the Fitbit Products and the Fitbit User Interface. While we try to provide the most open and flexible access we can, we aim to support a balance between developer needs, user privacy, and the integrity of Fitbit's product and business vision.

As a Fitbit User, you have agreed to the [Fitbit Terms of Service](https://www.fitbit.com/legal/terms-of-service) (<https://www.fitbit.com/legal/terms-of-service>). By accessing, developing on, or using the Fitbit Platform, you are entering into an additional legal agreement with Fitbit, Inc. and hereby acknowledge and agree to the terms of service (the "Fitbit Platform Terms of Service" or "Terms") presented herein. In particular, all access to and use of the Fitbit Web API, the Fitbit Data, and/or the Fitbit User Interface, and any documentation or other assets provided to you by Fitbit, shall be governed by these Terms. In the event of any conflict with the Fitbit Platform Terms of Service and the Fitbit Terms of Service, these Terms shall control. We anticipate that the Fitbit Platform, including the Fitbit Web API, and these Terms will evolve and may be updated from time to time. We will always post any such update of these Terms at the [Fitbit Platform Terms of Service](https://dev.fitbit.com/terms) (<https://dev.fitbit.com/terms>) website.

If there is a use case you would like to see covered that is not currently supported by the API or these Terms, please [contact us](https://dev.fitbit.com/docs/help) (<https://dev.fitbit.com/docs/help>) to discuss your needs. Additionally, we encourage all Fitbit developers to participate in the [Fitbit Web API Support Forum](https://dev.fitbit.com/forum) (<https://dev.fitbit.com/forum>).

PLEASE CAREFULLY READ THESE TERMS, INCLUDING WITHOUT LIMITATION ANY ADDITIONAL TERMS AND CONDITIONS LINKED TO OR REFERENCED BELOW, WHICH ARE HEREBY MADE PART OF THESE TERMS. BY USING THE FITBIT PLATFORM, YOU ARE AGREEING THAT YOU HAVE READ, AND THAT YOU AGREE TO COMPLY WITH AND TO BE BOUND BY THE TERMS HEREIN AND ALL APPLICABLE LAWS AND REGULATIONS IN THEIR ENTIRETY WITHOUT LIMITATION OR QUALIFICATION. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN YOU MAY NOT ACCESS OR OTHERWISE USE THE FITBIT PLATFORM. THESE TERMS ARE EFFECTIVE AS OF THE FIRST DATE THAT YOU USE THE FITBIT PLATFORM ("EFFECTIVE DATE").

1. Definitions

"Application(s)" or "Developer Applications" means applications developed by you that interact with any aspect of the Fitbit Platform.

"Customer Data" means any data, including User Data, that is collected, stored, maintained, or used to identify or describe Users of your Application, including but not limited to the names, aliases, physical addresses, URIs, e-mail, or any other User-identifying information.

"Fitbit Web API" or "API" means the Fitbit Application Programming Interface and includes any and all related code, data, documentation, or other materials that are provided by Fitbit and that may be updated by Fitbit from time to time.

"Fitbit Data" means the user data collected from one or more Fitbit Products and made available to you through the Fitbit Web API.

"Fitbit Developer Portal" means the Fitbit services, data, and interface accessible at <https://dev.fitbit.com> (<https://dev.fitbit.com>) .

"Fitbit User Interface" means the Fitbit user interface(s) embodied on Fitbit Products and the Fitbit Web Application.

"Fitbit Web Application" means the Fitbit application, services, data, and interface accessible at <https://www.fitbit.com> (<https://www.fitbit.com>) .

"Fitbit Platform" means the Fitbit Web API, the Fitbit Data, the Fitbit User Interface, the Fitbit Developer Portal, and the Fitbit Web Application.

"Fitbit Product(s)" means Fitbit's applications, services, and wearable, personal fitness, and electronic body monitoring devices.

"User" means a person or entity that is a registered user of your application, including but not limited to Fitbit customers.

"User Data" means that subset of the Fitbit Data that is associated with a User.

"You" and "Your" means either an individual or an entity, and for an individual representing an entity, such individual having the authority to accept the Terms on behalf of the entity.

2. Usage Policies and Data Access Restrictions

- a. You shall comply with these Terms and use the Fitbit Web API to develop Applications designed either to interact with and enhance the Fitbit Platform or for data backup purposes. The Fitbit Web API is made available for the purposes of extending and improving the Fitbit product experience, and the Fitbit Web API should not be used to create services that replace the Fitbit Platform.
- b. You acknowledge that Fitbit may independently create applications, content, and other products or services that are similar to or competitive with your Application. Nothing in these Terms shall prevent or restrict Fitbit from creating and fully exploiting any applications, content, and other items, with no obligation to you.
- c. You may use the Fitbit Web API to retrieve or write Fitbit Data, subscribe to changes in User Data, and display information in external applications according to these Terms.
- d. If your Application causes a User's account to violate the Terms, access by your Application to the Fitbit Web API may be suspended or revoked.
- e. Fitbit Data accessed via the Fitbit Web API shall be used solely as necessary to provide your Application to Users. Fitbit Data may never be sold or disclosed to data miners or resellers in any form or format.
- f. Fitbit reserves the right to disable or upgrade the Fitbit Platform, the Fitbit Web API, and/or related services at any time without notice to you and without any form of compensation or consideration to you, regardless of the status of any Developer Applications. Fitbit has no obligation to ensure that an upgrade of the Fitbit Web API or related services will continue to be compatible with existing Developer Applications.
- g. Customers and Users must be permitted to express contact preferences, via notice and opt-out, at the point of collection, and in each subsequent marketing piece.
- h. You must have a user agreement and privacy policy that is reasonably consistent with these Terms and Fitbit's Privacy Policy (available at <https://www.fitbit.com/privacy> (<https://www.fitbit.com/privacy>)). In order to collect, maintain, share, store, and/or use User Data, you must obtain the informed consent of each User, and your user agreement and privacy policy shall be made available for a User's review at the point of authorization and from within your Application's User interface. Your user agreement and privacy policy shall at a minimum disclose your practices regarding User Data and the following:
 - o What data you collect;
 - o How you use, store, and/or share the data;
 - o Any additional parties you share data with;
 - o How users may opt-out of your use, storage, and/or sharing of the data, where applicable;
 - o Your data retention policy;

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- How a user can delete or request that you delete their data; and
 - What happens to data collected after a user disables their account with you or revokes your application's access to their User Data.
- i. You must not display or distribute User Data to any external source without receiving the informed consent of a User. You shall not facilitate or encourage the publishing of private or confidential information or User Data. You shall not deliver, allow, or enable the delivery of unauthorized or unsolicited advertising, promotional materials, Junk mail, or spam through your Application. You shall ensure that your Application complies with all relevant privacy and security laws, rules, and regulations.
- j. Your Application must comply with Fitbit's User authentication system for access to User Data. In particular, your Application must not embed Fitbit's authorization pages, nor shall your Application use any authentication interface other than what is provided by Fitbit, in order to access User Data.
- k. You agree to use commercially reasonable measures to maintain the security of User Data collected in connection with any of your products or services offered. At a minimum, you agree to properly configure your systems and software with security measures that ensure the secure operation and storage of User Data. These security measures may include:
- Implementing and maintaining an Information Security Management System as outlined in ISO/IEC 27001 (<http://www.iso.org/iso/iso27001>)
 - Ensuring your Application is robust and free from common security issues as set out by the OWASP Top 10 (https://www.owasp.org/index.php/Category:OWASP_Top_Ten_Project (https://www.owasp.org/index.php/Category:OWASP_Top_Ten_Project))
 - Integrating the principles of your Security Policy into the design of your Application.
 - Using TLS when transmitting Customer Data. Do not transmit any Customer Data in clear plain text.
 - Ensuring proper authentication controls.
 - Engaging third parties to perform periodic technical security assessments of your Application.
- You agree to apply security updates and patches in a timely manner. You agree to promptly notify Fitbit at security@fitbit.com (<mailto:security@fitbit.com>) of any known or suspected security breach or deficiency of Fitbit Data, particularly of any known or suspected security breach or deficiency of User Data that has been collected, maintained, processed, shared, stored, or used, in relation to the purpose of the Application. You agree to cooperate with Fitbit to correct any known or suspected security breach or deficiency, and in any such event, you agree not to make any public statements without the prior written permission of Fitbit.
- l. Use of the Fitbit Web API is subject to restrictions on rate limit, use cases, and method calls as outlined on the Fitbit Developer Portal. You will not circumvent or exceed any rate limitations described within the Fitbit Developer Portal. If Fitbit believes that you have unreasonably exceeded your rate limits or have attempted to circumvent the rate limit or authentication systems, your ability to utilize the Fitbit Web API may be temporarily suspended or permanently revoked. Fitbit may monitor your usage of the Fitbit Web API in order to improve our service and to ensure compliance with our policies.
- m. You are responsible for complying with any request by a user to remove content. Fitbit is not responsible for removing Fitbit Data that has been stored on third-party services or your own services.
- n. Except as expressly authorized by the Terms, you will not attempt or encourage others to:
- reverse-engineer, disrupt, circumvent, decompile, disassemble, translate, or otherwise interfere with the Fitbit Platform;
 - copy or modify the Fitbit User Interface;
 - scrape the Fitbit Platform;
 - e-sell, re-license, or syndicate access, without authorization, to the Fitbit Web API to third parties (third parties must register with Fitbit for Fitbit Web API access);
 - export Fitbit Data for the purpose of account migration, service duplication, and/or reverse-engineering the Fitbit Data;

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- render Fitbit Data within another product without complying with the display guidelines outlined below;
- use the Fitbit Web API for purposes of injecting and/or publishing known bad, harmful, and/or discriminatory data into the Fitbit Platform;
- use or access the Fitbit Web API for the purpose of monitoring the performance or functionality of the Fitbit Platform or for any other benchmarking or competitive purposes;
- obfuscate or hide the Fitbit Data and/or the Fitbit User Interface;
- create user accounts on the Fitbit Web Application for the purpose of load testing;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted;
- use the Fitbit Web API to design or develop anything other than Developer Applications;
- use Fitbit's name or trademarks as part of your name or the name of any Application you offer or in any manner that creates a false sense of endorsement or sponsorship by Fitbit;
- use the Fitbit Web API in an Application that directly or indirectly promotes criminal activity, illicit drug use, or violates any applicable federal or state law;
- use the Fitbit Web API in any inappropriate manner;
- upload or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- interfere with or disrupt servers or other computer systems;
- distribute, sell, lease, rent, lend, transfer, or sublicense any part of the Fitbit Platform, including but not limited to the Fitbit Data, the Fitbit Web API, and any related services or content, to any third party except as included within and necessary to distribute Developer Applications; and
- access or attempt to access any Fitbit server, computer system, service or content except as expressly authorized by Fitbit. If your Developer Application causes technical stress to the Fitbit Platform, Fitbit may disable your access.

3. Principles and Best Practices

When developing with the Fitbit Platform, we ask that you honor the following Principles and Best Practices:

- a. Do not be destructive of User Data.
- b. When posting Customer Data from your Application to Fitbit, the User should be notified.
- c. Do your best to be true to user intent when accessing, displaying, storing, and writing User Data. You will take reasonable steps to ensure that any Customer Data you provide to Fitbit is reasonably accurate. Fitbit may remove or refuse any data from our service that we determine to be inaccurate, inappropriate, or misleading.
- d. Do not overwrite or delete User Data without first challenging a User's intent and receiving confirmation from the User that they intend to overwrite or delete their User Data.
- e. Do not misrepresent data to a User after retrieval from or before submission to the Fitbit Platform. For example, when displaying User Data to be submitted to the Fitbit Platform, represent the data as it will be submitted, without potentially confusing summarization, aggregation, or exchange of units.
- f. Respect Users and their privacy settings within your Application.
- g. Offer Users a clear path back to their Fitbit Account.
 - Always provide clear documentation and links for Users to access their Fitbit Account from your Application.
 - Paths to Fitbit User accounts should be available wherever User Data is displayed.
 - Paths to Users' Fitbit accounts should be available in "Setting," "Account," or a similar location from within your Application.
 - When displaying Fitbit Data in your Application, Fitbit must be noted as the source of Fitbit Data using the text link and/or logo icon made available to you through Fitbit's Developer Portal.

h. Be a good partner to Fitbit.

- Work to compliment or extend the Fitbit Platform with your Application, without replacing the use of the Fitbit User Interface.
- Respect the intellectual property rights of others.
- Respect the features and functionality of the Fitbit Products and do not try to disrupt, circumvent, or disable any of those features or functionalities.

4. License and Ownership of Certain Intellectual Property

- a. Subject at all times to your full compliance with these Terms, Fitbit grants you a nonexclusive, revocable, non-sublicensable, non-transferable, royalty-free license to use the Fitbit Platform solely to develop, reproduce, and distribute Developer Applications. Fitbit has no obligation to provide any type of support for the Fitbit Platform, in particular including the Fitbit Web API, or any services or content related thereto.
- b. You hereby grant a worldwide, royalty-free license to Fitbit under all rights that are or would be necessary for Fitbit to copy, display, and/or modify your name(s), logo(s), content, and information for the sole and strictly-limited purpose of demonstrating your Application and/or promoting the Fitbit Platform. However, Fitbit has no obligation to use or promote any Developer Application.
- c. You represent and warrant that you have all rights, including all copyright, trademark, and other intellectual property rights, in the Developer Applications necessary to offer the Developer Applications to end users and to grant the license described in Section 4 (b) to Fitbit in these Terms.
- d. You, and not Fitbit, are responsible for providing all customer and technical support and maintenance for your Developer Applications.

5. Website Links, Developer Application Naming Restrictions, and Use of Fitbit Marks

- a. Subject at all times to your full compliance with these Terms, and in compliance with Fitbit's Trademark Policy (available at www.fitbit.com/legal/trademark-policy), Fitbit grants you a nonexclusive, revocable, non-sublicensable, non-transferable royalty-free license to use the Fitbit logo solely for and strictly limited to the promotion and integration of your Application with the Fitbit Platform.
- b. You acknowledge and agree that these Terms do not include any unauthorized right to use any Fitbit logo (each a "Fitbit Logo") as part of any brand for the Developer Applications themselves, or as part of any brand(s) or trade name(s) or other designators for your business or non-tested products. Only the variation(s) of the Fitbit Logo made available to you through Fitbit's Developer Portal may be used to label or designate data records fetched from the Fitbit Platform, or to identify Fitbit as a service a User has connected to their account via your Application. You may not use the Fitbit Logos in any other unauthorized manner, including but not limited to use on promotional materials, standalone technical support or consulting services, or other goods or services without Fitbit's explicit written permission.
- c. You may establish a link to the Fitbit website (www.fitbit.com (<https://www.fitbit.com>)), provided that the link does not state or imply that Fitbit sponsors or endorses you or your Application, any other web site, or presents Fitbit in a false, misleading, defamatory or derogatory manner. This permission to link to the Fitbit website does not permit you to use any Fitbit materials or content, unless separately agreed to in these Terms or some other agreement with Fitbit.
- d. You may not use "Fitbit" or "bit," including but not limited to the names of Fitbit Products, whether registered or not, or any variation thereof, in the name of your Developer Applications, or your business name, or in any domain name, email address, keyword or social media user name. You may not use a name to refer to Developer Applications, your business, or in any other way that would be confusingly similar to "Fitbit" or the names of Fitbit Products, whether registered or not, as such confusion is to be determined in the sole and reasonable discretion of Fitbit.
- e. You may make truthful, factual references to Fitbit in plain-text prose descriptions of your Developer Applications' features and benefits (including references to a Developer Application's interoperability with Fitbit). For example, the Fitbit trademark can only be used in the manner shown in one of the referential descriptions below:
 - "Designed for use with the Fitbit® platform"

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- "For use with Fitbit® [insert particular feature/product name]"
- "Syncs with Fitbit® [insert particular feature/product name]"
- "Designed to interact with Fitbit® data"

These phrases can appear near, but must be completely separate and apart from the name/logo of the Developer Application. The font size of phrases using the Fitbit mark should not be larger than the surrounding font, and should not appear more prominently than the name/logo of the Developer Application.

- f. In all materials that contain an approved phrase as set out above, including product packaging, the following legend must also be placed in the fine print of such materials. The legend may be in a small type size, but must still be legible: "Fitbit is a registered trademark or trademark of Fitbit, Inc. in the United States and certain other countries. A list of Fitbit trademarks can be found at www.fitbit.com/legal/trademark-list. The _____ [Insert name of the Developer Application] _____ application is designed for use with the Fitbit platform. This application is not authored by Fitbit, and Fitbit does not service or warrant the functionality of this application."

6. Reservation of Rights and Ownership

The Fitbit Web API is licensed, not sold, and Fitbit reserves all rights not expressly granted to you by these Terms. The Terms in no way convey any ownership right to you in the Fitbit Platform, the Fitbit Web API, the Fitbit Data, the User Data, or any Fitbit content accessed through your Developer Application(s).

7. Compliance with Laws, Representations, and Warranties

You are solely responsible for compliance with all laws applicable to Fitbit Data and User Data and agree to indemnify and hold Fitbit harmless for any uses contrary to such laws. This includes, but is not limited to:

- a. Fitbit Data and User Data used in connection with clinical human subject research;
- b. Fitbit Data and User Data used to determine insurance eligibility, pricing or terms; health care treatment eligibility; credit eligibility; or to determine employment eligibility, promotion or retention; and
- c. The requirements of the Health Insurance Portability and Accountability Act ("HIPAA") and/or the use of Fitbit Data and User Data in relation to a product or service that qualifies as a medical device in section 201(h) of the Federal Food Drug & Cosmetic ("FD&C") Act.

For each of the above uses, you must receive express consent from each User in order to use that User's User Data for that purpose.

You represent and warrant to Fitbit that, apart from the information, data, and materials delivered to you by Fitbit, you have the right to use, copy, display, perform, reproduce, transmit, and distribute your Application, and that the use of your Application does not violate the rights of another person or entity, including the patent, copyright, trademark, trade secret, privacy, publicity, or any other proprietary rights of another person or entity.

You agree that your Developer Application will not:

- a. upload or otherwise transmit any content that is unlawful, threatening, abusive, disparaging, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable;
- b. harm minors in any way;
- c. impersonate any person or entity, including, but not limited to, any Fitbit representative, or misrepresent your affiliation with any person or entity;
- d. upload or otherwise transmit any content that you do not have a right to transmit under any law or under contractual relationships;
- e. upload or otherwise transmit any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any person; and
- f. violate any applicable law or regulation, including, but not limited to, laws regarding the export of technical data.

8. Your Feedback

Any feedback, suggestions and ideas ("Feedback") that you provide to Fitbit regarding the Fitbit Platform, the Fitbit Web API, the Fitbit website, Fitbit Products, or content or services related thereto will be treated by Fitbit as non-confidential, and Fitbit may, in its sole discretion, use the Feedback you provide to Fitbit in any way, including in future modifications of the Fitbit Web API, Fitbit Products, and/or advertising and promotional materials relating thereto. You hereby grant Fitbit a perpetual, worldwide, fully transferable, irrevocable, royalty free license to make, use, sell, offer for sale, reproduce, modify, create derivative works from, distribute, and display the Feedback in any manner and for any purpose.

9. Termination

You may terminate any license granted to you hereunder at any time by ceasing your access to, development, and/or use of the Fitbit Platform and any use of the Fitbit Data. We may immediately suspend your access to the Fitbit Platform, the Fitbit Web API, and the Fitbit Data, or, if necessary, terminate these Terms, in part or in their entirety, at any time for any reason. We may discontinue the availability of some or all of the Fitbit Web API at any time for any reason. We may also terminate any license provided to you hereunder at any time for any reason. Fitbit will not be liable for any costs, expenses, or damages that may result from termination of these Terms. Any termination under this Section may be exercised by Fitbit without notice to you.

The following Sections of the Terms shall survive any termination or expiration: Sections 2 (Usage Policies and Data Access Restrictions), 3 (Principles and Best Practices), 9 (Termination), 10 (Confidentiality), 11 (Disclaimers), 12 (Limitation of Liability), 13 (Indemnification), 14 (Government Use), 15 (Assignment), 16 (No Agency, Partnership, or Joint Venture), 17 (Governing Law & Forum for Legal Disputes), 18 (Waiver & Severability), 19 (Email Notice), 20 (Notice for California Users), 21 (Force Majeure), and 22 (Export Restrictions).

Upon any termination of the Terms: (a) you will immediately stop using the Fitbit Platform, the Fitbit Web API, and the Fitbit Data, and (b) all licenses granted to you by Fitbit will cease.

10. Confidentiality

You may be given access to certain non-public proprietary information, software, and specifications related to the Fitbit Platform and Fitbit Products (the Confidential Information). You may use this Confidential Information only as necessary in exercising the rights granted to you by these Fitbit Platform Terms of Service. You may not disclose any Confidential Information to any third party without our prior written consent and you agree that you will protect this Confidential Information from unauthorized use, access, or disclosure in the same manner that you would use to protect your own confidential and proprietary information of a similar nature and in any event with no less than a reasonable degree of care. This Section shall survive termination of these Terms.

11. Disclaimers

EXCEPT AS EXPRESSLY SET OUT IN THESE API TERMS, NEITHER FITBIT NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY SPECIFIC PROMISES ABOUT THE API. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE FITBIT DATA ACCESSED THROUGH THE API, THE SPECIFIC FUNCTIONS OF THE API, OR ITS RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. THE FITBIT DATA, THE API, AND THE FITBIT PLATFORM, ALONG WITH ANY OTHER MATERIALS PROVIDED BY FITBIT IN CONNECTION WITH YOUR USE OF THE FITBIT API ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OF DATA, AND ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FITBIT DOES NOT WARRANT THAT THE API, THE FITBIT PLATFORM, OR ANY OTHER MATERIALS PROVIDED HEREUNDER WILL MEET YOUR REQUIREMENTS, BE ERROR FREE, UNINTERRUPTED, VIRUS FREE, OR SECURE.

12. Limitation of Liability

WHEN PERMITTED BY LAW, FITBIT, FITBIT'S SUPPLIERS, AND DISTRIBUTORS, WILL NOT BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY,

PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR YOUR USE OF THE API OR FITBIT PLATFORM, WHETHER ARISING FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. IN ANY CASE, FITBIT'S AND ITS SUPPLIERS' AND DISTRIBUTORS' AGGREGATE LIABILITY UNDER THESE TERMS WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100.00) OR THE AGGREGATE FEES YOU PAID FOR ACCESS TO THE API DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

IN ALL CASES, FITBIT, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY EXPENSE, LOSS, OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

13. Indemnification

You will indemnify, defend and hold Fitbit, its subsidiaries, affiliates, officers, employees, and users harmless from and against any and all claims, damages, losses, liabilities, actions, judgments, costs, and expenses (including reasonable attorneys' fees) brought by a third party arising out of or in connection with: (a) any act or omission by you or your Users in connection with your use of the Fitbit Web API, the Fitbit Platform, or the Fitbit trademarks; (b) your use or your User's use of the Fitbit Web API, Fitbit Platform or the Fitbit trademarks other than as expressly allowed by these Fitbit Platform Terms of Service; (c) your or your User's breach or alleged breach of the terms, restrictions, obligations or representations included in these Terms; (d) any content or data routed into or used with the Fitbit Web API by you, those acting on your behalf, or your Users, or (e) your Application. You will assume control of the defense and settlement of any claim subject to indemnification by you; provided, however, that Fitbit may, at any time, elect to take control of the defense and settlement of any such claim. In any event, you will not settle any such claim without Fitbit's prior written consent. This section, and the Limitation of Liability section above, shall survive termination of these Terms.

14. Government Use

If you are part of an agency, department or other entity of the U.S. Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Fitbit Web API are restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The API constitutes a "commercial item," "commercial computer software," and "commercial computer software documentation." In accordance with such provisions, any use of the API by the U.S. Government shall be governed solely by these Terms.

15. Assignment

You may not assign these Terms or any rights or obligations hereunder, without prior written consent of Fitbit. Any attempted assignment without such prior written consent shall be void. Fitbit may assign these Terms upon prior written notice to you.

16. No Agency, Partnership, or Joint Venture

These Terms do not create or imply any partnership, agency, or joint venture between the parties hereto.

17. Governing Law and Forum for Legal Disputes

These Terms will be governed by the laws of the State of California, without regard to or application of conflicts of law rules or principles. All claims arising out of or relating to these Terms will be brought exclusively in the federal or state courts of San Francisco County, California, USA and you consent to personal jurisdiction in those courts.

18. Waiver and Severability

These Terms constitute the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and communications between the parties with

respect to that subject matter. No waiver by Fitbit of any covenant or right under these Terms will be effective unless such waiver is in writing and duly authorized by Fitbit. If any part of these Terms is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the remaining provisions of these Terms will remain in full force and effect.

19. Email Notice

All notices to you in connection with these Terms may be delivered via email at the email address provided to Fitbit by you.

20. Notice for California Users

California residents may have these Terms mailed to them electronically by sending to Fitbit the User's email address and a request for these Terms. California's Civil Code Section 1789.3 provides that Users of the Fitbit Platform are entitled to the following consumer rights notice:

- The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210.

21. Force Majeure

Fitbit is not responsible for any failure to perform, loss of service, or delay attributable in whole or in part to any cause beyond its reasonable control including, but not limited to, acts of God (e.g., fire, storms, floods, earthquakes, etc.), acts of terrorism, civil disturbances, disruption of telecommunications, disruption of power or other essential services, interruption or termination of services by any third party providing service to Fitbit, labor disturbances, vandalism, cable cut, computer viruses or other similar occurrences, or any malicious or unlawful acts of any third party.

22. Export Restrictions.

You acknowledge that you will comply with U.S. Export Administration Regulations. You will not export or re-export this product, directly or indirectly, to: (1) any countries that are subject to U.S. export restrictions; (2) any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government; or (3) any end user who you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons.

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