

**END USER LICENSE AGREEMENT  
RUNCENTIVE LLC AND AFFILIATES**

**THIS END USER LICENSE AGREEMENT (“Agreement”)** is made and entered into between Runcentive LLC, a Delaware limited liability company (“**Licensor**”), Licensor’s affiliates (“**Affiliates**”), and the end user (“**Licensee**”) (collectively, the “**Parties**”) as of the date of acceptance by Licensee (the “**Effective Date**”).

**RECITALS:**

**WHEREAS**, Licensor and its Affiliates operate systems or platforms which allows Licensees to access valuable content (the “**Content**”), including materials owned, trademarked, or patented by Licensor or its Affiliates via an application or “app” (the “**Licensed Application**”); and,

**WHEREAS**, Licensor desires to provide Licensee with the right to download and use the Licensed Application and the Content therein and Licensee desires to purchase access to such Content;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

**SECTION 1:  
GRANT OF RIGHTS**

**1. Grant of Rights.** Subject to the terms and conditions of this Agreement, Licensor will grant Licensee the right to access the Licensed Application during the term of the Agreement. Licensor grants Licensee a revocable, non-exclusive right and license to utilize the Content pursuant to the terms and conditions of this Agreement.

**2. Rights Retained by Licensor.** Licensor retains all rights with respect to the Licensed Application and the Content, including, and without limitation, the right to operate or grant other parties, including any person or entity related in any manner whatsoever to Licensor or its Affiliates, the right to utilize the Content.

**3. Scope of License.** Runcentive may make its Content available to users via an application on Apple, Inc.’s (“**Apple**”) “App Store”. For Licensees who download the Licensed Application on any Apple-branded products, the license granted to Licensee is limited to a non-transferable license to use the Licensed Application on any Apple-branded products that Licensee owns or controls and as permitted by the “Usage Rules” set forth in the “App Store Terms of Service”, except that such Licensed Application may be accessed and used by other accounts associated with the Licensee via “Family Sharing” or volume purchasing.

**SECTION 2:  
TERM, FEES, DATA STORAGE RESTRICTIONS, AND AUTHENTICITY**

**1. Term.**

**(a)** The term of this Agreement shall be for twelve (12) months from the Effective Date.

**(b)** This Agreement automatically terminates at the end of the Term, unless renewed or extended by the Parties. Licensee will be prompted within the Licensed Application to choose whether to renew the Term upon the expiration of the original Term. In the event a Licensee chooses not to renew the Term, upon termination, Licensee must immediately cease using the Content for any purpose; destroy or delete all copies and archives of the Content or accompanying materials; and, if requested, confirm to Licensor in writing that it has complied with these requirements within ten (10) business days of Licensor's written request.

**(c)** Licensor reserves the right to elect at a later date to replace the Content with a commercially reasonable alternative from time to time and for any reason. Licensee agrees that Licensor may make updates or modifications to the Licensed Application at any time and without notice to Licensee. Upon Licensee's receipt of notice of such replacement sent to the address or contact information provided to Licensor or its Affiliates by Licensee, the license for the replaced Content immediately terminates, and this license automatically applies to the replacement or updated Content. Upon notice from Licensor, Licensee agrees to immediately terminate use of any Content replaced pursuant to this provision.

**(d)** Upon notice from Licensor, or Licensee's actual or constructive knowledge that any Content is subject to a threatened, potential or actual claim of infringement of another's right for which Licensor may be liable, Licensee must immediately and at its own expense: (i) stop using the Content; (ii) delete or remove the Content from its premises, computer systems and storage (electronic or physical); and (iii) ensure that its clients, printers or ISPs do likewise. Once Licensee has verified in writing that it has completed (i) through (iii) above, Licensor will provide Licensee with replacement Content as detailed in subsection (c) above.

**2. License Fee.**

Licensee shall pay a nonrefundable subscription fee, due in full prior to Licensee's access to the Licensed Application or Content therein.

**3. Data Storage Restrictions**

Licensee agrees to comply with Licensor's data storage restrictions listed on Licensor's website at: [runcentive.com](http://runcentive.com), which are subject to change upon notice from Licensor to Licensee. Such notice may be affected via an e-mail from Licensor to Licensee or via posting on Licensor's website.

#### **4. Runcentive Collection of Licensee Data.**

Runcentive tracks numerical distances run by Licensees for the purposes of verification of distances run for qualification for a particular raffle or contest sponsored by Runcentive. However, Runcentive does not collect Licensee biometric data or any other Licensee personal health information (“**PHI**”). More information on the Licensee data Runcentive collects and its use of such data, including its prohibition on Licensees submitting or saving PHI on the Licensed Application, is available on Runcentive’s website, [runcentive.com](http://runcentive.com), under the link to the Runcentive Privacy Policy.

### **SECTION 3: RESTRICTIONS ON USE**

#### **1. Prohibited Uses.**

**(a)** Licensee shall not:

**(i)** use the Content in electronic or digital applications intended for resale or other distribution;

**(ii)** use or display the Content on websites or other venues designed to induce or involving the sale, license or other distribution of any product or publication;

**(iii)** use the Content in connection with any goods, services or other items for resale, license or other distribution for profit;

**(iv)** use any of the Content as part of a trademark, design-mark, tradename, business name, service mark, or logo;

**(v)** use or incorporate the Content in any product that results in a re-distribution or re-use of the Content or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file;

**(vi)** use the Content in a fashion that is considered by Licensor as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;

**(vii)** reverse engineer, decompile, or disassemble any part of the source code of the Content or any part of Licensor’s or its Affiliate’s sites or applications;

**(viii)** remove or modify any notice of copyright, trademark or other proprietary right, or any other copyright management information or metadata, from any place where it is on or embedded in the Content;

**(ix)** sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement outside of Licensee’s organization;

**(x)** post a copy or copies of the Content on a network server or web server for use by other users outside Licensee’s organization;

**(xi)** use or display the Content in an electronic format that enables it to be downloaded or shared publicly or with third parties in any peer-to-peer or similar file sharing arrangement;

**(xii)** use the Content for external editorial purposes, including, but not limited to commentary in blogs or social media;

**(xiii)** either individually or in combination with others, reproduce the Content, or an element or part of the Content for purposes other than internal use within Licensee’s organization; or,

**(xiv)** use or reproduce the Content on a social media platform or any other third-party website.

**(xv)** share, publish, distribute, assign, circulate, disseminate, or in any way give out Licensee’s Runcentive username, password, or any other login or account credentials or information.

**(b)** Any instance of a Licensee’s prohibited use of the Content shall be considered a breach of this Agreement entitling Licensor to immediately discontinue Licensee’s access to the Licensed Application and any Content therein.

**2. Representation of Legal Use.** Licensee represents and warrants that (i) he/she/it is not located in or based in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she/it is not listed on any U.S. Government list of prohibited or restricted parties.

#### **SECTION 4: LICENSOR REPRESENTATIONS AND WARRANTIES**

##### **1. Limited Warranty.**

**(a)** Licensor warrants the following, with the express acknowledgement of Licensor and Licensee that in the event of any third-party claim that the Licensed Application or the Licensee’s possession and use of that Licensed Application infringes that third party’s intellectual property rights, Licensor, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim:

**(i)** Licensee’s use of the Content in accordance with this Agreement and in the form delivered by Licensor will not infringe on any copyright, moral right, trademark or other intellectual property right, and will not violate any right of privacy or right of publicity; and,

**(ii)** all necessary releases for use of the Content in the manner authorized under this Agreement, if applicable, have been obtained. Licensor does not grant any right nor

make any warranty with regard to the use of names, people, trademarks, registered logos, designs or works depicted therein.

**(b)** While Licensor has made reasonable efforts regarding the accuracy of the Content, Licensor cannot and does not warrant the accuracy of such information. Further, Licensor cannot warrant any Content modified to suit a particular Licensee's purpose. Additionally, Licensor does not warrant the accuracy of any metadata that may be provided with the Content.

**(c)** OTHER THAN AS EXPRESSLY PROVIDED IN THIS SECTION, THE LICENSED APPLICATION AND CONTENT THEREIN ARE/IS PROVIDED "AS IS" WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE CONTENT WILL MEET LICENSEE'S REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. BOTH LICENSOR AND LICENSEE ACKNOWLEDGE THAT APPLE HAS NO OBLIGATION WHATSOEVER TO FURNISH ANY MAINTENANCE AND SUPPORT SERVICES WITH RESPECT TO THE LICENSED APPLICATION.

**(d)** In the event of any failure of the Licensed Application to conform to any applicable warranty, Licensee may notify Apple, and Apple will refund the purchase price for the Licensed Application to that Licensee; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Licensor's sole responsibility.

**(e)** Licensor and Licensee acknowledge that Licensor, not Apple, is responsible for addressing any claims of Licensee or any third party relating to the Licensed Application or Licensee's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation, including in connection with the Licensed Application's use of the HealthKit and HomeKit frameworks.

**(f)** Certain jurisdictions disallow the exclusion of implied warranties, so the above exclusions in this section may not apply to Licensee. In the event the warranty above or limitations on liability herein are found unenforceable by a court of law, the remainder of this Agreement shall remain severable and in full effect.

## **SECTION 5: INDEMNIFICATION AND LIMITATIONS ON LIABILITY**

### **1. Indemnification.**

**(a)** Licensee agrees to indemnify, defend and hold Licensor and its Affiliates, and their respective directors, officers, employees, shareholders, partners and agents harmless from and against any and all claims, liability, losses, damages, costs and expenses (including reasonable legal fees) incurred by Licensor or its affiliates as a result of or in connection with any breach or

alleged breach by Licensee, or anyone acting on Licensee's behalf with regard to any of the terms of this Agreement.

**(b)** Licensor agrees to indemnify, defend and hold Licensee, and its respective directors, officers, employees, and agents harmless from and against any and all claims, liability, losses, damages, costs and expenses (including reasonable legal fees) incurred by Licensee as a result of or in connection with any breach or alleged breach by Licensor or anyone acting on Licensor's behalf provided that the Content is only used in accordance with this Agreement and the claim does not arise directly or indirectly from Licensee's breach of this Agreement.

**(c)** The indemnification set out in this Section is conditioned on a requirement that the party seeking indemnification (the "**Indemnified Party**") must give prompt notification (within five (5) business days from receipt of notice of the claim) in writing to the party against whom indemnification is sought (the "**Indemnifying Party**") of such claim and the Indemnifying Party's right to assume the handling, settlement or defense of any claim or litigation, provided that no settlement or compromise that would admit fault or require payment by the Indemnifying Party may be approved without the written consent of the Indemnified Party. The Indemnified Party agrees to cooperate with the Indemnifying Party in the defense of any such claim or litigation at the Indemnifying Party's expense. The Indemnified Party shall have the right to participate in such litigation at the Indemnified Party's sole expense. The Indemnifying Party shall not be liable for legal fees and other costs incurred prior to the notice of the claim.

## **2. Limitations on Liability.**

**(a)** In no event shall either party or any of its affiliates or their respective directors, officers, employees, shareholders, partners or agents be liable for any incidental, indirect, punitive, exemplary, or consequential damages whatsoever (including damages for loss of profits, interruption, loss of business information, or any other pecuniary loss) in connection with any claim, loss, damage, action, suit or other proceeding arising under or out of this Agreement, including without limitation use of, reliance upon, access to, or exploitation of the Content, or any part thereof. The limitation of damages in this subsection shall not apply to those damages incident to a party's indemnification obligations or in the event of the gross negligence, willful misconduct, or fraud on the part of the Indemnifying Party.

**(b)** Notwithstanding any other term herein, Licensor shall not be liable for any damages, costs or losses arising as a result of modifications made to the Content by Licensee or the context in which the Content is used by Licensee.

**(c)** Notwithstanding anything else in this Agreement, the total maximum aggregate liability of Licensor under this Agreement and any other Agreement under which Licensee has licensed the same Content, regardless of the file size, or the use or exploitation of any or all of the Content in any manner whatsoever, the obligation of Licensor under this section shall be strictly limited to the subscription fee Licensee paid for access to the Content. Limitation of liability shall not

apply to a party's indemnification obligations or in the event of the gross negligence, willful misconduct, or fraud on the part of the Licensor.

**(d)** In the event any of this Section 6 is found unenforceable by a court of law, the remainder of this Agreement shall remain severable and in full effect.

## **SECTION 6: CONFIDENTIAL INFORMATION**

### **1. Confidentiality Obligation.**

**(a)** Licensor possesses and will further develop and acquire certain confidential and proprietary information and trade secrets, including, but not limited to, the following categories of information, methods, techniques, procedures and knowledge developed or to be developed by Licensor or its Affiliates or their consultants, contractors or designees, (the "**Confidential Information**"):

- (i)** Methods, techniques, equipment, and specifications (including design specifications, source code, standards, policies, procedures, information, algorithms, formulae, concepts, and systems relating to and knowledge of and experience in the development, operation of the Content and web-based applications);
- (ii)** marketing and promotional materials for the Content; and,
- (iii)** information concerning product sales, operating results, financial performance and other financial data.

### **2. Use of Confidential Information.**

**(a)** Licensee acknowledges and agrees that the Confidential Information is confidential to and a valuable asset of Licensor, is proprietary, includes trade secrets of Licensor and is disclosed to Licensee solely on the condition that Licensee and its employees, independent contractors or affiliates who have access to the Confidential Information agree, and Licensee does hereby agree that, during and after the Term of this Agreement, Licensee, and such employees, independent contractors and affiliates:

- (i)** will not use the Confidential Information in any other business or personal capacity;
- (ii)** will maintain the absolute confidentiality of the Confidential Information;
- (iii)** will not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and,
- (iv)** will adopt and implement all reasonable procedures prescribed from time to time by Licensor to prevent unauthorized use or disclosure of the Confidential Information.

### **3. Disclosure.**

**(a)** Notwithstanding anything to the contrary contained in this Agreement and provided Licensee shall have obtained Licensor's prior written consent, the restrictions on Licensee's disclosure and use of the Confidential Information shall not apply to the following:

**(i)** information, methods, procedures, techniques and knowledge which are or become generally known other than through disclosure (whether deliberate or inadvertent) by Licensee or any other party having an obligation of confidentiality to Licensor; and,

**(ii)** the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that Licensee is legally compelled to disclose such information, provided Licensee has notified Licensor in writing prior to disclosure when permitted by applicable law, so that Licensor may elect to pursue an appropriate protective order or other assurance satisfactory to Licensor of confidential treatment for the information required to be so disclosed.

## **SECTION 7: INDEPENDENT CONTRACTORS**

**Relationship of Parties.** It is understood and agreed by the Parties that this Agreement does not create a fiduciary relationship between them, that Licensor and Licensee are and shall be independent contractors, and that nothing in this Agreement is intended to make either party a general or special agent, joint venturer, partner, or employee of the other for any purpose. Licensee shall conspicuously identify itself, where appropriate, in all dealings with customers, suppliers, vendors, public officials, Licensee personnel, and others as a licensee of Licensor.

## **SECTION 8: REMEDIES**

**1. Injunctive Relief.** Nothing in this Agreement shall bar Licensor's right to seek specific performance of the provisions of this Agreement and injunctive relief against threatened conduct that will cause it loss or damages, including applicable rules for obtaining restraining orders and preliminary injunctions. Licensee agrees that Licensor may seek such injunctive relief in addition to such further or other relief as may be available at law or in equity.

**2. Costs and Legal Fees.** The prevailing party in any suit or proceeding arising from this Agreement shall be entitled to recover from the non-prevailing party all of its reasonable costs of litigation or arbitration, including but not limited to reasonable attorney's fees.



### **3. Applicable Law and Dispute Resolution.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction). This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Hennepin County, Minnesota shall be the appropriate venue and jurisdiction for the resolution of any disputes hereunder. Both parties hereby consent to such personal and exclusive jurisdiction.

(b) The Parties hereto shall aim to settle any disputes between them first through friendly negotiation, then, if unsuccessful in negotiation, binding arbitration in Minneapolis, Minnesota under the rules of the American Arbitration Association (“AAA”).

### **SECTION 9: GENERAL PROVISIONS**

**1. Other Agreements.** Licensee agrees and acknowledges that it has, in addition to reviewing the terms of this Agreement, reviewed any other agreements which may be incorporated by reference herein, and to the extent of their incorporation in this Agreement, Licensee agrees to be bound by them. In the event of any inconsistency, the terms of this Agreement shall govern.

**2. Waiver.** Licensor’s failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.

**3. Assignment.** This Agreement is personal to Licensee and is not assignable without Licensor’s prior written consent. Licensor may assign this Agreement without Licensee’s consent to any other party so long as such party agrees to be bound by its terms.

**4. Amendments.** Except for as provided herein, no terms or conditions may be added to or deleted from this Agreement unless made in writing and either accepted in writing by an authorized representative of both Parties or issued electronically by Licensor and accepted by action (including clicking an “I Agree” or “I Acknowledge” acknowledgement button in a click-through agreement) of Licensee or its authorized representative.

**5. Severability.** If all or part of any provision of this Agreement is wholly or partially unenforceable, the Parties or, in the event the Parties are unable to agree, a court of competent jurisdiction, shall put in place of such whole or part provision an enforceable provision or provisions, that as nearly as possible reflects the terms of the unenforceable whole or part provision.

**6. Notices.** Licensee questions, complaints or claims with respect to the Licensed Application should be directed to Runcentive LLC, (i) via telephone at 651.528.2737, (ii) via e-mail at [ryan@Runcentive.com](mailto:ryan@Runcentive.com), or (iii) via U.S. Mail at Runcentive LLC, 5245 Wayzata Blvd., Apt. 302 Saint Louis Park, Minnesota 55416.

**7. Export Regulations.** Licensee understands that Licensor is subject to regulation by agencies of the U.S. Government, including the U.S. Departments of Commerce and State, which prohibit export or diversion of certain technical products to certain countries. Licensee warrants that it will comply in all respect with the export and re-export restrictions set forth in the export license for the Content and all other applicable export regulations. Licensee agrees to indemnify and hold Licensor harmless from any loss, damages, liability or expenses incurred by Licensor, including all costs, damages, or reasonable attorney's fees awarded as a result of Licensee's failure to comply with any export regulations or restrictions.

**8. Survival.** Sections 3, 4, 5, 6 7, 8, and 9 hereof shall survive the termination of this Agreement.

**9. Third-Party Sites, Terms of Use, and Third-Party Beneficiary.** Licensor does not control and is not responsible for performance or availability of third party websites and/or hosting sites (collectively, "**Third-Party Sites**"). Licensor cannot endorse or make any representations about Third-Party Sites, or any material found there, or any results that may be obtained from using them. Consequently, (i) if Licensee accesses any of the Third-Party Sites linked to the Licensed Application or the Content, Licensee does so entirely at its own risk, (ii) if Licensee accesses the Licensed Application, it must comply with applicable third-party terms of agreement when using the Licensed Application – for example, the Licensee must not be in violation of their wireless data service agreement when using the Licensed Application, and (iii) Licensor and Licensee acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement, and that, upon Licensee's acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against Licensee as a third-party beneficiary thereof.

#### **ACKNOWLEDGEMENT**

LICENSEE ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF LICENSOR AGREEING TO PROVIDE ACCESS TO THE CONTENT, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. LICENSEE FURTHER AGREES THAT THIS AGREEMENT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN. LICENSOR AND LICENSEE ACKNOLEDGE: (i) THAT THIS AGREEMENT IS CONCLUDED BETWEEN LICENSEE AND LICENSOR ONLY, AND NOT WITH APPLE, INC.; (ii) LICENSOR, NOT APPLE, IS SOLELY RESPONSIBLE FOR THE LICENSED APPLICATION AND THE CONTENT THEREOF; AND (3) THIS AGREEMENT MAY NOT PROVIDE FOR USAGE RULES FOR LICENSED APPLICATIONS THAT ARE IN CONFLICT WITH APPLE, INC.'S "APP STORE TERMS OF SERVICE" AS OF THE EFFECTIVE DATE (WHICH LICENSEE ACKNOWLEDGES HE/SHE/IT HAS HAD THE OPPORTUNITY TO REVIEW).