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November 4, 2020

**Case M.9660 – GOOGLE / FITBIT
COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Google LLC hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering its proposed acquisition of Fitbit, Inc. (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

Section A. Commitments

A.1 Ads Commitments

1. Google commits not to use any Measured Body Data or Health and Fitness Activity Location Data in or for Google Ads.
2. Google commits to maintain Data Separation.
3. Compliance with the commitments set out in paragraphs 1 and 2 above is to be achieved through a technical structure for data storage consisting of auditable technical and process controls, reflected in the following approach:
 - a. **Fitbit Account data.** To the extent either Measured Body Data or Health and Fitness Activity Location Data is written to a Fitbit Account, and this data is not subsequently transferred to a Google Account following the close of the Concentration, this data will not be available to Google Ads. Google commits to maintain existing separations that are in place as of the Effective Date between (i) any data that is not transferred to a Google Account and (ii) any dataset or data storage within Google. For clarity, the foregoing does not prohibit Fitbit’s use of

Google solely as a data processor following the closing of the Concentration, pursuant to a customary data controller to processor agreement, as permitted pursuant to the General Data Protection Regulation.

- b. **Maintenance of an Access Restricted Data Store.** Google will maintain a strictly permissioned virtual storage environment within Google. Measured Body Data and Health and Fitness Activity Location Data sent to Google (i) as part of any migration from a Fitbit Account to a Google Account, or (ii) having been collected using a Google Account from future First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales or Fitbit Other Devices, will be stored in such an Access Restricted Data Store. Access to the compartment of Google's backend storage layer housing such an Access Restricted Data Store will be controlled through Access Permissioning.
- c. **Implementation of Access Permissioning to the Access Restricted Data Store.** Google will restrict access to such an Access Restricted Data Store through Access Permissioning. Access Permissioning will apply to both individuals and Google Services and Fitbit Services that seek to access Measured Body Data or Health and Fitness Activity Location Data stored in the Access Restricted Data Store:
 - i. **Individual level access:** Google will limit individual-level Access Permissioning to an authorized, restricted group of personnel for engineering, product, and other related business activities, such as product development or improvement, research, and other service provision, maintenance, or enhancement work, excluding any uses in or for Google Ads. Google will require a fully documented compliance review and approval process for the grant of Access Permissioning. Google will log each access session in Individual Level Access Documentation, which will include at least the criteria set out in **Annex 1**.
 - ii. **Service level access:** Google will limit Access Permissioning to Google Services or Fitbit Services that comply with the Data Protection System, thus excluding any uses in or for Google Ads. Any such access will be documented in Service Level Access Documentation, which will include, at least, the criteria set out in **Annex 2**. Google will log each Service that is granted access in Auditable Service Logs.
- d. **Implementation of a Data Protection System.** To the extent that a Google Service accesses Measured Body Data or Health and Fitness Activity Location Data, Google will apply a Data Protection System to ensure Data Separation of the accessed data, reflected in the following approach:
 - i. Measured Body Data and Health and Fitness Activity Location Data will either be stored in an Access Restricted Data Store or, if it is stored outside an Access Restricted Data Store, in Temporary Logs and subject to a

retention and deletion plan supervised by the Monitoring Trustee. Measured Body Data or Health and Fitness Activity Location Data that a Google Service accesses as a result of an integration between a Google Service and the Fitbit Web API following the Effective Date is subject to the requirements of Data Separation.

- ii. Google will strictly permission these Temporary Logs to enable only access pursuant to paragraph 3(c) above. For the avoidance of doubt, the Temporary Logs will not be accessible to Google Ads.
 - iii. Google will maintain a Service Level Access Map.
4. The technical means by which Google achieves Data Separation may change over time to reflect evolving technologies and standards. Any changes will be subject to supervision by the Monitoring Trustee.
 5. Google commits to present each EEA User the choice to grant or deny use by Other Google Services of any Measured Body Data stored in their Google Account or Fitbit Account.
 6. The commitment set out in paragraph 5 above is without prejudice to, and should not be interpreted based on, any privacy or data protection laws or regulations, and does not come under the jurisdiction or purview of any privacy or data protection regulators.

A.2 Web API Access Commitment

7. Google commits to maintaining access, subject to user consent consistent with applicable laws and without charge for access, to Supported Measured Body Data for API Users subject to the following conditions:
 - a. API Users' continued compliance with the Fitbit Platform Terms of Service (where access is made available via the Fitbit Web API) or the Terms of Service and the Services User Data Policy (where access is made available via the Relevant Google API).
 - b. API Users' continued compliance with the Privacy and Security Requirements.
 - c. Google can terminate access for violation of these requirements where Google has established such a violation or temporarily suspend access where Google has a reasonable belief of violation of such requirements. Google will notify the termination or suspension to the Monitoring Trustee within 14 days and indicate the reason for the termination or suspension.
8. Access may be provided through: (i) the existing Fitbit Web API (conditioned on the user whose Supported Measured Body Data are being accessed using a Fitbit Account); or (ii) the Relevant Google API (conditioned on the user whose Supported Measured Body Data are being accessed using a Google Account).

9. Following the Effective Date and during the term of the Commitments, Measured Body Data types may be added into the scope of Supported Measured Body Data, as set forth in the Update Mechanism.

A.3 Android APIs Commitments

10. Google commits to making the Core Interoperability APIs available, without charge for access, under the same license terms and conditions that apply to all other Android APIs that Google makes available as part of AOSP and on a non-discriminatory basis, meaning without differentiating their availability or functionality depending on whether they are accessed by a First-Party Wrist-Worn Wearable Device or Companion App or a Third-Party Wrist-Worn Wearable Device or Companion App.
11. Google commits not to degrade the Core Interoperability APIs by reducing their functionality to Third-Party Wrist-Worn Wearable Devices relative to First-Party Wrist-Worn Wearable Devices.
12. Google further commits:
 - a. Not to discriminate against Wrist-Worn Wearable Device OEMs by withholding, denying, or delaying Wrist-Worn Wearable Device OEMs' access to functionalities of Android APIs that Google makes generally available to other Android Smartphone App Developers for use with an Android App.
 - b. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in relation to changing, replacing, or retiring Android APIs.
 - c. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of the access it provides to Developer Previews.
 - d. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of the access it provides to Developer Documentation.
13. Google will not circumvent these requirements:
 - a. By discriminating between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of warnings, error messages, or permission requests displayed in Android Apps.
 - b. Through conditions imposed on access to the Google Play Store by Wrist-Worn Wearable Device OEMs' Companion Apps (*e.g.*, regarding the use of data gathered by the Wrist-Worn Wearable Device OEM or the use of Android APIs by the Third-Party Wrist-Worn Wearable Device).
14. For the avoidance of doubt, Google shall be permitted under these Commitments to:

- a. Make available, exclusively for API Development and Testing purposes, in-development Android APIs internally within Google, or to certain third parties.
 - b. Develop features associated with first-party Google products, apps, or services, for use solely with a First-Party Wrist-Worn Wearable Device, or as part of a partnership with a third party, provided that the implementation of such features shall not impede in any way the functioning of Android APIs for Third-Party Wrist-Worn Wearable Devices. For the further avoidance of doubt, any third party shall remain free similarly to develop and make available features associated with their own first-party products, apps, or services, including for use solely on their own first-party Wrist-Worn Wearable Devices in a proprietary software layer. Nothing in these Commitments shall require Google to license versions of its first-party applications or services for preinstallation or download onto a Third-Party Wrist-Worn Wearable Device.
15. Google shall not be in breach of these Commitments in the event of any degradation of interoperability between an Android Smartphone and a Third-Party Wrist-Worn Wearable Device that is solely or primarily attributable to any acts or omissions of an Android OEM, Android Smartphone App Developer, or Wrist-Worn Wearable Device OEM.

Section B. Monitoring Trustee

B. 1 Appointment procedure

16. No later than the date of closing of the Concentration, Google shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.
17. The Monitoring Trustee shall:
- a. At the time of appointment, be independent of the Parties and each of their Affiliated Undertakings;
 - b. Possess the necessary experience, competence, and qualifications to carry out its mandate. In particular, the Monitoring Trustee shall possess experience, competence, and qualifications in relation to cybersecurity, data governance, information technology systems (including algorithms), data protection, APIs, and privacy, as applicable, including via the technical expert appointed pursuant to paragraph 28 below; and
 - c. Neither have nor become exposed to a Conflict of Interest.
18. The Monitoring Trustee shall be remunerated by Google in a way that does not impede the independent and effective fulfillment of its mandate.
19. *Proposal by Google.* No later than four weeks after the Effective Date, Google shall submit the name or names of one or more natural or legal persons whom Google proposes

to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 17 and shall include:

- a. The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
- b. The outline of a work plan that describes how the Monitoring Trustee would carry out its duties under these Commitments.

20. *Approval or rejection by the Commission.* The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Google shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Google shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

21. *New proposal by Google.* If all the proposed Monitoring Trustees are rejected, Google shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 19 of these Commitments.

22. *Monitoring Trustee nominated by the Commission.* If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Google shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission.

B. 2 Functions of the Monitoring Trustee

23. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Google, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

24. The Monitoring Trustee shall:

- a. Monitor the performance of the Commitments by Google, including by auditing on a semiannual basis the Audit Points detailed in **Annex 3**;

- b. Assess the technical means through which Google generates access logs and synthesizes such logs and access information into Auditable Service Logs and Auditable Individual Logs that are provided to the Monitoring Trustee for review;
- c. Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- d. Provide to the Commission a written report, sending Google a non-confidential copy at the same time, within fifteen working days after the end of each six-month period so that the Commission can assess whether the Commitments are being complied with;
- e. Propose, as applicable, to Google such measures as the Monitoring Trustee considers necessary to ensure Google's compliance with the Commitments;
- f. Promptly report in writing to the Commission, sending Google a non-confidential copy at the same time, if it concludes on reasonable grounds that Google has failed to comply with the Commitments;
- g. Act as a contact point for questions from third parties about the nature and scope of the Commitments; and
- h. Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

B. 3 Duties and obligations of the Parties

- 25. Google shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of Google's books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for fulfilling its duties under the Commitments and Google shall provide the Monitoring Trustee upon request with copies of any documents except where such disclosure would give rise to a loss of any applicable legal privilege. At any time it plans to start processing data that it reasonably considers qualifies as Measured Body Data or Health and Fitness Activity Location Data, Google shall provide the Monitoring Trustee with a proposed updated **Annex 4**.
- 26. The Monitoring Trustee shall be entitled to share reports prepared for and provided to the Commission with the DPC. Before sharing any such reports with the DPC, the DPC shall confirm in writing that it will protect any Confidential Information according to law.
- 27. Google shall indemnify the Monitoring Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Google for, any liabilities

arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

28. At the expense of Google, the Monitoring Trustee shall appoint a technical expert and may appoint other advisors, subject to Google's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Google refuse to approve the technical expert and/or advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such technical expert and/or advisors instead, after having heard Google. Only the Monitoring Trustee shall be entitled to issue instructions to the technical expert and/or advisors. Paragraph 27 of these Commitments shall apply *mutatis mutandis*.
29. Google agrees that the Commission may share Confidential Information proprietary to Google with the Monitoring Trustee. The Monitoring Trustee shall not disclose Confidential Information received from the Commission, Google, or Fitbit to any third party other than the Commission, a technical expert appointed pursuant to paragraph 28, and the DPC pursuant to paragraph 26. The principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.
30. Google agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

B. 4 Replacement, discharge and reappointment of the Monitoring Trustee

31. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
 - a. The Commission may, after hearing the Monitoring Trustee and Google, require Google to replace the Monitoring Trustee; or
 - b. Google may, with the prior approval of the Commission, replace the Monitoring Trustee.
32. If the Monitoring Trustee is removed according to paragraph 31 of these Commitments, the Monitoring Trustee may be required to continue its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all the relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16–22 of these Commitments.
33. Unless removed according to paragraph 31 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has

discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented.

Section C. Dispute Resolution

34. In the event an API User or Wrist-Worn Wearable Device OEM informs Google and the Monitoring Trustee in writing that Google has either denied or revoked its access in violation of Google's obligations arising from the Web API Access Commitment or failed to comply with its obligations arising from the Android APIs Commitments, the Fast-Track Dispute Resolution Procedure described in **Annex 5** shall apply.

Section D. General Provisions

35. Google shall be permitted under these Commitments to take steps to: (a) meet any applicable law, regulation, legal process, or enforceable governmental request; (b) detect, prevent, or otherwise address fraud, security, or technical issues; (c) improve user privacy or security; or (d) protect against harm to the rights, property, or safety of Google, Google users, or the public as required or permitted by law.

36. The Commitments shall take effect upon the Effective Date.

37. The Commitments shall remain in effect for ten years from the Effective Date.

38. The Commission may, during the final year of the initial ten year period, decide to extend the duration of paragraphs 1 to 4 of the Ads Commitments and any associated clauses or definitions that relate to these paragraphs of the Commitments, by up to an additional ten years having justified the necessity for such an extension.

Section E. Review

39. The Commission may in response to a reasoned request from Google showing good cause, waive, modify, or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Google. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section F. Definitions

40. For the purpose of the Commitments, the following terms shall have the following meaning:

Access Permissioning: the auditable control of access rights to an Access Restricted Data Store.

Access Restricted Data Store: a strictly permissioned virtual data storage environment within Google that holds Measured Body Data and Health and Fitness Activity Location

Data, separate from any dataset within Google accessible for use in or for Google Ads. If Google creates any dataset that stores Measured Body Data and/or Health and Fitness Activity Location Data together with another Google dataset, that dataset shall be treated either as an Access Restricted Data Store or as Temporary Logs.

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Android APIs: the APIs, including any improvements or bug fixes, that Google licenses to Android OEMs without charge for access, either as part of AOSP or GMS, for use by Android Smartphone App Developers with an Android App.

Android App: a mobile application designed to run on a compatible Android Smartphone.

Android Compatibility Definition Document: the document published at <https://source.android.com/compatibility/cdd> (or any successor site).

Android OEM: any actual or potential supplier of Android Smartphones, excluding the Parties.

Android Smartphone: a handheld device (as defined in the Android Compatibility Definition Document) running AOSP.

Android Smartphone App Developer: a third-party developer of an Android App.

AOSP: the open-source Android binary code available at <https://source.android.com> (or any successor site) or any successor open-source smartphone operating system.

API Development and Testing: the process by which Google develops and tests new versions of Android APIs, prior to their simultaneous release to Android Smartphone App Developers. For the avoidance of doubt, this may include Google's use of a lead device to develop and test new software.

API User: any third party with a software application distributed or made available to EEA Users that requests access to the Fitbit Web API or the Relevant Google API, meets the Privacy and Security Requirements, and agrees to the Fitbit Platform Terms of Service (where access is made available via the Fitbit Web API) or the Terms of Service and the Services User Data Policy (where access is made available via the Relevant Google API).

Audit Points: the minimum data and information points that the Monitoring Trustee will audit on a regular basis.

Auditable Individual Logs: a list of all individuals that have accessed an Access Restricted Data Store or Temporary Logs and the date of that access.

Auditable Service Logs: a list of all Google Services that have access to an Access Restricted Data Store or Temporary Logs.

Benchmark OEMs: the 5 largest suppliers of consumer wrist-worn wearable devices that process the data types that qualify as Measured Body Data and/or Health and Fitness Activity Location Data if processed by Google or Fitbit as measured in the Industry Report, excluding Fitbit, Google, and any Wrist-Worn Wearable Device OEMs using Wear OS and that provide developers with access to their health and wellness data solely through the Fitbit Web API or the Relevant Google API.

Companion App: a mobile app available for an Android Smartphone whose functionality includes but is not limited to pairing, notification bridging, and device management and settings for a Wrist-Worn Wearable Device.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

Core Interoperability APIs: Android APIs licensed as part of AOSP offering at least the functionality of Android APIs that currently exist in AOSP, including any improvements of those functionalities as a result of updates or bug fixes, that, when properly implemented by an Android OEM on an Android Smartphone, and with appropriate user consent, provide the means for a Third-Party Wrist-Worn Wearable Device (or, as appropriate, associated Companion App) to:

- a. Connect to the Android Smartphone via Bluetooth (or any successor technology), maintain such a connection, and transfer data between the Wrist-Worn Wearable Device and the Android Smartphone;
- b. Scan for any nearby Wrist-Worn Wearable Devices and/or make the Android Smartphone visible to those devices;
- c. Display and act upon notifications (including phone calls, text messages, and calendar events) from the Android Smartphone on the connected Wrist-Worn Wearable Device;
- d. Read, initiate, and reply to a text message sent to the paired Android Smartphone;
- e. Display controls for initiating, answering or declining phone calls on the paired Android Smartphone;
- f. Display, initiate, and edit calendar events on the paired Android Smartphone;

- g. Access and control the camera on the paired Android Smartphone;
- h. Access a geolocation sensor (*e.g.*, GPS) on the paired Android Smartphone that is capable of providing geolocation coordinates;
- i. Control media playback on the paired Android Smartphone; and
- j. View and sync contacts stored on the paired Android Smartphone.

Data Protection System: the auditable set of requirements supervised by the Monitoring Trustee to ensure that Measured Body Data and Health and Fitness Activity Location Data to which a Google Service gains access is permissioned in a manner that prevents its use in or for Google Ads.

Data Separation: the auditable holding separate of Measured Body Data and Health and Fitness Activity Location Data from any dataset within Google accessible for use in or for Google Ads.

Developer Documentation: information that Google makes generally available to facilitate the use of Android APIs, of the kind that is currently provided for existing APIs on developer.android.com (or any successor site) and <https://developers.google.com/android/> (or any successor site).

Developer Previews: a process by which Google makes forthcoming Android software available to Android Smartphone App Developers to facilitate their development of apps for an upcoming Android release.

DPC: Irish Data Protection Commission, the Irish supervisory authority for the General Data Protection Regulation (GDPR).

EEA: the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden), Iceland, Liechtenstein and Norway as well as the United Kingdom.

EEA User: a user that has during the period of the Commitments been (i) located in the EEA as determined by Google Account information or Fitbit Account information, as applicable, or (ii) located outside of the EEA according to Google Account information or Fitbit Account information, as applicable, but whose IP address associated with use of Google or Fitbit Health and Fitness Apps, as applicable, has been located in the EEA for more than 30 consecutive days.

Effective Date: the date of adoption of the Decision.

Equivalent Data Type: a commonly defined and standardized consumer health and fitness data type sent to a supplier of consumer wrist-worn wearable devices from sensors

on such supplier's wrist-worn wearable devices or that is manually inputted into such supplier's apps usable with such devices.

First-Party Connected Scale: any consumer connected scale for measuring a user's weight developed or manufactured by Fitbit or Google, regardless of its branding, that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data. For the avoidance of doubt, this definition does not capture devices that are not sold or otherwise provided to customers for everyday use.

First-Party Wrist-Worn Wearable Device: any consumer wrist-worn wearable device developed or manufactured by Fitbit or Google, regardless of its branding, that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data. For the avoidance of doubt, this definition does not capture devices that are not sold or otherwise provided to customers for everyday use.

Fitbit: Fitbit, Inc. or any Affiliated Undertakings of Fitbit, Inc, or any successor entities.

Fitbit Account: a user account subject to the Fitbit Terms of Service and Fitbit Privacy Policy during the term of the Commitments.

Fitbit Other Device: any device developed or in development or manufactured by Fitbit at the Effective Date that is not a First-Party Wrist-Worn Wearable Device or a First-Party Connected Scale and that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data, such as Fitbit Clips.

Fitbit Platform Terms of Service: the terms of service applicable to the Fitbit Platform available at: <https://dev.fitbit.com/legal/platform-terms-of-service/>, or any successor site, as may be updated from time-to-time, for instance to comply with changes to applicable privacy laws or regulations. Any updates to the Fitbit Platform Terms of Service following the Effective Date specific to access to the Fitbit Web API will be consistent with the spirit of the Web API Access Commitment. Google will notify the Monitoring Trustee of changes to these Fitbit Platform Terms of Service ten days prior to their becoming effective, unless the change is urgent in which case Google will notify the Monitoring Trustee as soon as reasonably practicable and no later than five days after such terms become effective.

Fitbit Service: any product or service (including algorithms) operated by Fitbit at any time during the term of the Commitments.

Fitbit Web API: Fitbit's web-based API as described at <https://dev.fitbit.com/build/reference/web-api/> or any successor site that enables third-party applications and services to access and modify Fitbit users' Supported Measured Body Data on their behalf subject to the Fitbit Platform Terms of Service.

GMS: Google's proprietary software layer as licensed to OEMs for preinstallation on a compatible Android Smartphone.

Google: Google LLC or any Affiliated Undertakings of Google LLC.

Google Account: a user account (as described in account.google.com or any successor site) created subject to the Google Terms of Service and Google Privacy Policy and used during the term of the Commitments.

Google Ads: any current or future Google Service providing search advertising, display advertising, and advertising intermediation, including advertising measurement, regardless of the property on which ads are displayed, including any Google owned and operated properties. For the avoidance of any doubt, any Fitbit Services providing search advertising, display advertising, and advertising intermediation developed, offered, or sold following closing of the Concentration would constitute Google Ads for the purposes of these Commitments. Google Ads currently includes the following services: Google Ads (includes Google Display Network, Google Search Network, YouTube Ads, Gmail Ads), Google Marketing Platform (includes Display & Video 360, Search Ads 360, Campaign Manager, Google Analytics, Google Tag Manager, Optimize, Data Studio, Google Surveys), AdSense (includes AdSense for Search, AdSense for Shopping, AdSense for Content, AdSense for Games, AdSense for Video, AdSense for Domains), AdMob (includes Open Bidding), Google Ad Manager (includes Open Bidding, Network Bidding, Dynamic Ad Insertion), Authorized Buyers, Ad Connector, Ads Data Hub, Google Hotel Ads, Google Shopping Ads, Local Inventory Ads, Manufacturer Center, Merchant Center, and Waze Local Ads.

Google or Fitbit Health and Fitness App: a Google or Fitbit web, mobile or wearable application used with either a Google Account or a Fitbit Account and designed to enable a registered user to measure, track, and manage their health and fitness using Measured Body Data and/or Health and Fitness Activity Location Data. As of the Effective Date these consist of the iOS, Android, and WearOS versions of the Google Fit app and the iOS, Android, Amazon, and Windows versions of the Fitbit apps, including the Fitbit Coach and Fitbit Premium services.

Google Play Store: Google's app store for Android Smartphones, available at: <https://play.google.com/store>, or any successor Google app store for Android Smartphones.

Google Service: any product or service (including algorithms) operated by Google at any time during the term of the Commitments. For the avoidance of any doubt, Google Services include any product or service Google may develop in the future, including via acquisitions, regardless of its branding.

Google Smartphone: an Android Smartphone that is developed or manufactured by Google.

Health and Fitness Activity Location Data: any data (including processed data and derived data) relating to identified or identifiable (as defined under applicable data protection laws) EEA Users' geolocation collected by a health and fitness activity

tracking feature on Google or Fitbit Health and Fitness Apps (or any replacement or successor Google or Fitbit Health and Fitness Apps), where such geolocation data is collected and sent to Google or Fitbit from the First-Party Wrist-Worn Wearable Device, First-Party Connected Scale or Fitbit Other Devices. **Annex 4** lists the data types that can qualify as Health and Fitness Activity Location Data at the Effective Date. **Annex 4** will be updated on a semiannual basis, with the supervision of the Monitoring Trustee, and at such other times as the Monitoring Trustee may reasonably request, to include other data types meeting the definition of Health and Fitness Activity Location Data introduced during the term of the Commitments. Health and Fitness Activity Location Data does not include (i) any data (including derived data) relating to identified or identifiable EEA Users' geolocation collected by any apps or services other than Google or Fitbit Health and Fitness Apps (or any replacement or successor Google or Fitbit Health and Fitness Apps), including background geolocation data; or (ii) data collected from participating Google Accounts or Fitbit Accounts, as the case may be, operated by Google employees or Fitbit employees as part of internal Google Services or Fitbit Services testing or development, including to test compliance with these Commitments.

Individual Level Access Documentation: a record of Google's approval process for applying Access Permissioning to individuals.

Industry Report: Global share of sales (excluding sales in the People's Republic of China) of wrist-worn wearable devices by volume over the most recent four quarters as measured by the most current IDC Worldwide Quarterly Wearable Device Tracker or, were IDC to suspend publication of this tracker, an equivalent industry report.

Measured Body Data: any data (including processed data and derived data) relating to identified or identifiable (as defined under applicable data protection laws) EEA Users that measures and tracks the user's body functions, physical condition, fitness activities, nutrition or wellness, and similar functions, and that is sent to:

- a. Google or Fitbit, from sensors on First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales, or Fitbit Other Devices; or
- b. Fitbit, having been manually inputted into a Fitbit Account through a Fitbit Health and Fitness App; or
- c. Google, having been manually inputted into a Google Account through a Google Health and Fitness App where such app is usable with First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales, or Fitbit Other Devices.

Annex 4 lists the data types that qualify as Measured Body Data as of November 2, 2020. **Annex 4** will be updated on a semiannual basis, with the supervision of the Monitoring Trustee, and at such other times as the Monitoring Trustee may reasonably request, to include other data types meeting the definition of Measured Body Data introduced during the term of the Commitments. Measured Body Data does not include data collected from participating Google Accounts or Fitbit Accounts, as the case may be, operated by

Google employees or Fitbit employees as part of internal Google Services or Fitbit Services testing or development, including to test compliance with these Commitments. For the avoidance of doubt, and to avoid circumvention of the Ads Commitments, if Google or Fitbit knowingly and intentionally transmits Measured Body Data to a third party for the purpose of receiving such data back to use in or for Google Ads, such received data shall also constitute Measured Body Data.

Monitoring Trustee: one or more natural or legal persons who are approved by the Commission and appointed by Google, and who have the duty to carry out the functions specified in the Commitments for a Monitoring Trustee.

Other Google Services: any Google Service (such as Google Search, Google Maps, Google Assistant, and YouTube) other than:

- a. Any Google Service or Fitbit Service whose primary purpose is related to users' health and fitness or healthcare;
- b. Common or shared Google infrastructure and internal systems, tools, processes, programs, and services (e.g., hosting, network infrastructure, security or any other internal tools (including Google Takeout), platforms and operating systems, backup storage, personnel, or support services (including customer support), payment processing, and fraud prevention, technical engineering support, security, and troubleshooting services);
- c. Sharing with or use by Google of Measured Body Data where reasonably necessary for Google to: (a) meet any applicable law, regulation, legal process, or enforceable governmental request; (b) enforce applicable terms of service, including investigation of potential violations; (c) detect, prevent, or otherwise address fraud, security, or technical issues; or (d) protect against harm to the rights, property or safety of Google, Google users, or the public as required or permitted by law.

Parties: Google and Fitbit.

Privacy and Security Requirements:

- a. **Primary Purpose:** The primary purpose for requesting access and use of data must be related to users' health and fitness or healthcare;
- b. **Minimum and Proportionate Access:** The application or service must request only the minimum access to user data necessary to perform the functionality;
- c. **User Notice:** The application or service must provide adequate notice to the user about their data being accessed and used, prior to such access and use;
- d. **Express and Informed User Consent:** The application or service must obtain the user's express and informed consent under applicable data protection laws;

- e. **Purpose Limitations:** The application or service may only use and transfer data for the permitted purposes for which the API User obtained access to the data and only to the extent necessary, for security purposes, to comply with applicable laws, or with express and informed user consent. The application or service may not use or transfer the data for prohibited purposes, such as personalized advertising purposes, to determine credit-worthiness, or provide the data to data brokers, advertising platforms, or other information resellers;
- f. **Security Requirements:** API Users are required to handle data securely in accordance with industry standard security requirements and practices. To ensure compliance with security requirements, Google may require third parties seeking to access Supported Measured Body Data to undergo standardized security assessments, for which API Users may incur a charge to be paid to the third parties conducting the security assessment.

Relevant Google API: the existing Google Fit APIs, described at: <https://developers.google.com/fit>, or any successor site, or a successor Google API that enables third-party applications and services to access and modify Measured Body Data subject to Google's Terms of Service and offering substantially similar or increased functionality as the Fitbit Web API.

Service Level Access Documentation: a record of Google's approval process for applying Access Permissioning to Google Services.

Service Level Access Map: a record of all of the Google Services with service-level access pursuant to paragraph 3.c.ii and the storage locations in Google (*e.g.*, a Temporary Log) in which those services store Measured Body Data or Health and Fitness Activity Location Data they may have accessed.

Services User Data Policy: the user data policies applicable to the use of the Relevant Google API (*e.g.*, the Google API User Data Policy available at <https://developers.google.com/terms/api-services-user-data-policy> and the Fit Developer Guidelines available at <https://developers.google.com/fit/overview>) as may be updated from time-to-time, for instance to comply with changes to applicable privacy laws or regulations. Any updates to the Services User Data Policy following the Effective Date specific to access to the Relevant Google API must be consistent with the spirit of the Web API Access Commitment. Google will provide the Monitoring Trustee on a semiannual basis a list of the changes, if any, that have been made to the Services User Data Policy in the preceding six months.

Supported Measured Body Data: as of the Effective Date, Supported Measured Body Data consists of Measured Body Data collected from any global Google or Fitbit user (and not just from EEA Users) and made available to third parties through the Fitbit Web API under the Fitbit Platform Terms of Service. Such data types are listed in **Annex 6**.

The types of Measured Body Data that can constitute Supported Measured Body Data shall be updated pursuant to the Update Mechanism.

Supported Measured Body Data excludes:

- a. Data collected solely for the purpose of product testing or development for Google Services or Fitbit Services (including as part of healthcare partner collaborations or early access end user testing), health-related research efforts (such as clinical research studies), or to test compliance with this Commitment;
- b. Data subject to applicable health or privacy laws and regulations that Google or Fitbit may not lawfully make available to third parties under such applicable laws;
- c. Data exclusively made available to users as part of a paid service (such as Fitbit Premium);
- d. Data collected separately by Verily, Calico or other separately operated Alphabet companies as part of their separate business and product activities;
- e. Data collected from Google Services or Fitbit Services offered solely outside of the EEA.

Temporary Logs: a strictly permissioned, time-limited virtual dataset that contains Measured Body Data and/or Health and Fitness Activity Location Data that have been accessed by Google Services.

Terms of Service: the terms of service applicable to the use of the Relevant Google API available at: <https://developers.google.com/fit>, or any successor site, as may be updated from time to time, for instance to comply with changes to applicable privacy laws or regulations. Any updates to the Terms of Service following the Effective Date specific to access to the Relevant Google API must be consistent with the spirit of the Web API Access Commitment. Google will notify the Monitoring Trustee of changes to these Terms of Service ten days prior to their becoming effective, unless the change is urgent in which case Google will notify the Monitoring Trustee as soon as reasonably practicable and no later than five days after such terms become effective.

Third-Party Wrist-Worn Wearable Device: a Wrist-Worn Wearable Device that is designed by the third party to pair with an Android Smartphone and/or Google Smartphone and that is developed or manufactured by a Wrist-Worn Wearable Device OEM.

Update Mechanism: following the Effective Date, Measured Body Data either (i) of a type listed in **Annex 4** as of the Effective Date; or (ii) of a type newly made available after the Effective Date to users in a Google or Fitbit Health and Fitness App, will come to constitute Supported Measured Body Data if: (i) such data meets the conditions of Supported Measured Body Data set forth above; and (ii) an Equivalent Data Type is made

available to developers without charge through publicly documented APIs by at least 3 of the 5 Benchmark OEMs.

On a quarterly basis following the Effective Date, Google will report to the Monitoring Trustee if a new data type meets the requirements in the preceding sentence. Such a data type will qualify as Supported Measured Body Data no later than one calendar year from the date of such reporting to the Monitoring Trustee, unless the data type met the requirements of the Update Mechanism within the first calendar year following the Effective Date, in which case that data type will qualify as Supported Measured Body Data no later than two calendar years from the Effective Date. **Annex 6** will be updated on a semi-annual basis or at the request of the Monitoring Trustee to include any additional types of Supported Measured Body Data that arose during that period.

Wrist-Worn Wearable Device: any consumer wrist-worn wearable device that is compatible with an Android Smartphone and/or Google Smartphone and that processes data types that would qualify as Measured Body Data and/or Health and Fitness Activity Location Data if processed by Google or Fitbit. For the avoidance of doubt, this definition does not capture devices that are not sold or otherwise provided to customers for everyday use.

Wrist-Worn Wearable Device OEM: any actual or potential supplier of Wrist-Worn Wearable Devices other than the Parties.

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duly authorised for and on behalf of Alphabet Inc. and Google LLC

Annex 1 – Data Points Google Will Document With Respect To Individual Access

1. Individual's name
2. Individual's Google ID
3. Individual's role
4. Confirmation that individual is not in a reporting line related to Google Ads
5. Reason for Individual receiving access
6. Date of access

Annex 2 – Data Points Google Will Document With Respect to Service-Level Access

1. Name of Google Service receiving access (*e.g.*, Assistant)
2. List of data types from **Annex 4** the Google Service can access from the ARDS
3. Reasons for Google Service receiving access
4. Start date of access
5. The Google Service's compliance proposal for adhering to the Data Protection System. This proposal will include at a minimum:
 - a. An explanation of the process through which the Google Service will ensure that accessed Measured Body Data and Health and Fitness Activity Location Data will be stored in an Access Restricted Data Store or, if it is stored outside an Access Restricted Data Store, will be stored in Temporary Logs
 - b. Type of storage location of such relevant data accessed by such a Google Service (*e.g.*, in an ARDS, or Temporary Log(s))
 - c. An updated version of the Service Level Access Map that accounts for any new storages of Measured Body Data or Health and Fitness Activity Location Data as a result of the new service level access
 - d. The Google Service's retention and deletion plan with respect to the accessed Measured Body Data and Health and/or Fitness Activity Location Data
 - e. If such a service creates Temporary Logs, the documentation will include a link to the Google Service's individual access documentation for such relevant Temporary Logs

Annex 3 – List of Minimum Audit Points

1. All individuals appearing in Auditable Individual Logs appear in Individual Level Access Documentation
2. All Individual Level Access Documentation provides a reason for access unrelated to Google Ads
3. At the time of access, no individual with a reporting line running into Google Ads appears in Auditable Individual Logs. Google will provide the Monitoring Trustee with the reporting lines up to the Google CEO for all individuals appearing in Auditable Individual Logs drawn directly from Google’s Human Resource systems at the Monitoring Trustee’s request
4. All Google Services appearing in Auditable Service Logs appear in Service Level Access Documentation
5. All Service Level Access Documentation provides a reason for the service receiving access that is unrelated to Google Ads
6. All Service Level Access Documentation includes an adequate Google Services’ compliance proposal as described in **Annex 2**
7. No Google Ads service appears in Auditable Service Logs
8. Following the Effective Date, no Google Service has access to the Fitbit Web API or, if a service does, Google has provided to the Monitoring Trustee appropriate Service Level Access Documentation for that service prior to its gaining access. Google will provide the Monitoring Trustee with a list of all services having access to the Fitbit Web API drawn directly from Fitbit’s systems at the Monitoring Trustee’s request

Annex 4 – Indicative List of Current Data Types that Can Qualify as Measured Body Data and Health and Fitness Activity Location Data (as of November 2, 2020)

Data Type	Measured Body Data	Health and Fitness Activity Location Data
Heart Rate	✓	
Heart Rate Variability	✓	
Cardio Fitness Score	✓	
Time In Heart Rate Zones	✓	
Resting Heart Rate	✓	
VO2 Max Values	✓	
Electrocardiogram	✓	

Data Type	Measured Body Data	Health and Fitness Activity Location Data
Breathing Rate	✓	
Height	✓	
Stride Length	✓	✓ ¹
Weight ²	✓	
Body Mass Index	✓	
Body Fat Percentage	✓	
Steps	✓	
Distance	✓	✓ ³
Floors	✓	
Altitude	✓	
Calories	✓	
Basal Metabolic Rate (BMR) Calories	✓	
Activity Name	✓	
Activity Minutes (duration)	✓	
Activity Calories	✓	
Activity Distance	✓	
Activity Steps	✓	
Activity Floors	✓	
Activity Altitude	✓	
Activity Heart Rate	✓	
Activity Speed	✓	

¹ When a Fitbit user tracks a run using Activity GPS, Stride Length is updated automatically. Stride Length thus may be partially derived from Activity GPS, which qualifies as Health and Fitness Activity Location data.

² Includes “weight” that is part of the user’s profile information.

³ “Distance” is calculated by multiplying “steps” by “stride length”, and therefore may include input derived from “activity GPS”, which qualifies as Health and Fitness Activity Location Data.

Data Type	Measured Body Data	Health and Fitness Activity Location Data
Activity GPS		✓
Lightly Active Minutes	✓	
Moderately Active Minutes	✓	
Sedentary Minutes	✓	
Very Active Minutes	✓	
Active Zone Minutes	✓	
Swimming (length, stroke style)	✓	
Activity Pace	✓	
Menstrual Cycle Log	✓	
Menstrual Cycle Dates	✓	
Birth Control Log	✓	
Average Period Stats	✓	
Sleep Log (e.g., date, duration)	✓	
Sleep Efficiency ⁴	✓	
Sleep Stages (e.g., timestamp, length)	✓	
Sleep Score	✓	
Blood Glucose	✓	
Water Intake	✓	
Food Log Item	✓	
Favorite Foods	✓	
Food Log Item Nutritional Information (e.g., calories, macronutrients)	✓	
Estimated Oxygen Variation	✓	
Blood Oxygen Saturation (SpO2)	✓	
Electrodermal Activity Responses	✓	

⁴ Fitbit has not collected Sleep Efficiency since 2017. The Fitbit Web API nevertheless still calculates the data type (based on other sleep data) and it remains available to third parties.

Data Type	Measured Body Data	Health and Fitness Activity Location Data
Body Temperature	✓	
Sickness Symptoms Log	✓	
Skin Temperature Variation	✓	
Meditation Minutes	✓	
Mood Reflection	✓	
Stress Management Score	✓	
Fitbit Coach Workouts (e.g., Workout Duration, Calories Burned)	✓	
Fitbit Coach Achievements	✓	
Badges derived from Measured Body Data or Health and Fitness Activity Location Data	✓	
Trophies derived from Measured Body Data or Health and Fitness Activity Location Data	✓	

Annex 5 – Fast Track Dispute Resolution Procedure

1. An API User or Wrist-Worn Wearable Device OEM that wishes to avail itself of the fast track dispute resolution procedure (the “**Requesting Party**”) shall inform Google and the Monitoring Trustee in writing, setting out in detail the reasons leading the Requesting Party to believe that Google is failing to comply with the requirements in the Commitments. The Requesting Party and Google will use commercially reasonable efforts to settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding fifteen working days (such period being extendable by mutual consent of Google and the Requesting Party) (“**Consultation Period**”) after receipt of the request.
2. The Monitoring Trustee shall present its own proposal (the “**Trustee Proposal**”) for resolving the dispute within eight working days, specifying in writing the rationale for the Trustee Proposal, and the action, if any, to be taken by Google in order to ensure compliance with Commitments vis-à-vis the Requesting Party.
3. Should the Requesting Party and Google (together, the “**Parties to the Arbitration**”) fail to resolve their differences of opinion in the Consultation Period, then the Requesting Party may, within 20 working days after the Consultation Period has expired, serve a notice (the “**Notice**”), in the sense of a request for arbitration, to the International Chamber of Commerce (the “**Arbitral Institution**”), with a copy of such Notice and request for arbitration to Google.

4. The Notice shall set out in detail the dispute, difference or claim (the “**Dispute**”) and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, *e.g.*, documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by Google and the Trustee Proposal, including a comment as to its appropriateness.
5. Google shall, within ten working days from receipt of the Notice, submit its answer (the “**Answer**”), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, *e.g.*, documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Google proposes to undertake vis-à-vis the Requesting Party and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

6. The Arbitral Tribunal shall consist of three persons. The Requesting Party shall nominate its arbitrator in the Notice; Google shall nominate its arbitrator in the Answer. The arbitrator nominated by the Requesting Party and by Google shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.
7. Should the Requesting Party wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Requesting Party and Google shall agree on the nomination of a sole arbitrator within five working days from the communication of the Answer, communicating this to the Arbitral Institution.
8. Should Google fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.
9. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the “**Arbitral Tribunal**”.

Arbitration Procedure

10. The Dispute shall be finally resolved by arbitration under the International Chamber of Commerce Rules of Arbitration, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “**Rules**”). The arbitration shall be conducted in London, United Kingdom, in the English language. For good cause, any Party may apply to the Arbitral Institution (or Arbitral Tribunal as may be appropriate) for an extension of the timelines provided in this Annex.
11. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and

appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of email for the exchange of documents.

12. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organizational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitral Tribunal at the organizational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.
13. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the bearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.
14. The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.
15. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case; and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favor of the Requesting Party unless Google can produce evidence to the contrary.

Involvement of the Commission

16. The Commission shall be allowed and enabled to participate in all stages of the procedure by
 - a. Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
 - b. Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
 - c. Giving the Commission the opportunity to file amicus curiae briefs; and
 - d. Being present at the hearing(s) and with the permission of the Arbitral Tribunal, it may also make oral observations.
17. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.

18. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favor of any Party to the Arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

19. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
20. Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
21. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by Google in order to comply with the Commitments vis-à-vis the Requesting Party (*i.e.*, specify that the Requesting Party gain access to the relevant API). The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
22. The final award shall, as a rule, be rendered within six months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.
23. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award. The Parties to the Arbitration, the Arbitral Tribunal, all other persons participating in the proceedings and all further persons involved, *i.e.* in the administration of the arbitral proceedings, shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings. All proceedings will be held in private and remain confidential.
24. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

Annex 6 – Indicative List of Supported Measured Body Data (as of November 2, 2020)

Supported Measured Body Data
Heart Rate
Time In Heart Rate Zones
Resting Heart Rate
Weight
Height
Body Mass Index
Body Fat Percentage
Steps
Distance
Floors
Altitude
Basal Metabolic Rate (BMR) Calories
Calories
Activity Name
Activity Minutes (duration)
Activity Calories
Activity Speed
Activity Pace
Activity Steps
Activity Floors
Activity Altitude
Activity Heart Rate
Activity Distance
Lightly Active Minutes
Moderately Active Minutes
Sedentary Minutes
Very Active Minutes
Swimming (length, stroke style)
Sleep Log (e.g., date, duration)
Sleep Stages (e.g., timestamp, length)
Sleep Efficiency
Water Intake
Food Log Item
Favorite Foods
Food Log Item Nutritional Information (e.g., calories, macronutrients)