

## BURNALONG® CONTENT PROVIDER AGREEMENT

**THIS CONTENT PROVIDER AGREEMENT** (this “**Agreement**”) contains the terms and condition that govern your access to and use of the Burnalong Platform (as defined below) and is an agreement by and between Burnalong, Inc., a Delaware corporation (“**Burnalong**”), and you or the entity that has completed the registration on Burnalong.com or in a Burnalong owned mobile application (the “**Content Provider**”). This Agreement takes effect when you click the “I Accept” button or check box presented with these terms or, if earlier, when you access or use the Burnalong Platform (the “**Effective Date**”). Burnalong and the Content Provider are hereinafter referred to together as the “**Parties**” and, individually, as a “**Party**”.

BY CLICKING THE “I ACCEPT” BUTTON CONTENT PROVIDER ACKNOWLEDGES, AGREES AND REPRESENTS: (1) THAT CONTENT PROVIDER HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT; (2) THAT THE PARTY ENTERING INTO THIS AGREEMENT HAS LEGAL AUTHORITY TO BIND CONTENT PROVIDER; (3) BURNALONG MAY PROVIDE TO CONTENT PROVIDER ELECTRONICALLY COMMUNICATIONS AND INFORMATION RELATING TO THIS AGREEMENT AND CONTENT PROVIDER’S USE OF THE BURNALONG PLATFORM, INCLUDING BUT NOT LIMITED TO THE TERMS & CONDITIONS, THE PRIVACY POLICY AND ANY OTHER POLICY, AGREEMENT OR DOCUMENT (“**DISCLOSURES**”) REQUIRED BY LAW AND OTHER INFORMATION ABOUT CONTENT PROVIDER’S LEGAL RIGHTS AND OBLIGATIONS; (4) CONTENT PROVIDER’S ELECTRONIC ACCEPTANCE OF THIS AGREEMENT, ANY SUCH OTHER AGREEMENTS AND DOCUMENTS, AND ANY AMENDMENTS THERETO, HAS THE SAME EFFECT AS IF CONTENT PROVIDER SIGNED THEM IN INK AND DELIVERED BY HAND; (5) BURNALONG MAY SEND ALL DISCLOSURES TO CONTENT PROVIDER ELECTRONICALLY VIA THE BURNALONG PLATFORM, TO THE EMAIL ADDRESS THAT THE CONTENT PROVIDER MAINTAINS ON THE BURNALONG PLATFORM, OR OTHER REASONABLE ELECTRONIC METHOD (EACH, AN “**ELECTRONIC COMMUNICATION**”), RATHER THAN IN PAPER FORM; (6) BURNALONG MAY ALERT CONTENT PROVIDER WHEN THE DISCLOSURES ARE AVAILABLE BY SENDING CONTENT PROVIDER AN ELECTRONIC COMMUNICATION; AND (7) THE CONSENT IN THIS SECTION APPLIES TO THIS AGREEMENT AND ALL PAST AND FUTURE DISCLOSURES.

### RECITALS

**WHEREAS**, Burnalong owns and/or operates an online fitness, health and wellness platform (together with any other platforms, websites or other electronic means of conveying information maintained by Burnalong, the “**Burnalong Platform**”) that provides streaming and other services to its subscribers (the “**Burnalong Subscribers**”);

**WHEREAS**, the Content Provider owns and/or operates a facility, and/or leads, and/or engages employees, and/or consultants (each an “**Instructor**”) to lead a digital online fitness, health, and/or wellness session (each a “**Session**”); and

**WHEREAS**, Burnalong desires and Content Provider has agreed to enter into this Agreement to allow Burnalong’s streaming of such Sessions on the Burnalong Platform, and other related matters, as further set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, Burnalong and Content Provider agree as follows:

### ARTICLE I TERM AND TERMINATION

1.1 **Term.** Subject to Section 1.2 below, the term of this Agreement begins on the Effective Date and shall continue for an initial term of one (1) year (“**Initial Term**”). Thereafter, this Agreement shall

automatically renew for additional one (1) year terms (each, a “**Renewal Term**”), unless a Party gives the other Party written notice of non-renewal at least sixty (60) days prior to expiration of the then current term. The Initial Term and any Renewal Term shall collectively be referred to as the “**Term**”.

## 1.2 Termination.

(a) This Agreement shall terminate upon the mutual written agreement of the Parties.

(b) This Agreement shall terminate if a Party breaches any provision of this Agreement and fails to cure such breach within ten (10) days after receipt of written notification of said breach by the non-breaching Party, subject to the Parties’ obligations under the provisions of this Agreement that survive its termination; provided, however, that if such breach is incapable of being cured, such cure period shall not apply and this Agreement shall be terminated immediately upon written notice by the non-breaching Party. Without limiting the foregoing, Content Provider’s failure to provide Sessions that comply with Sections 1.2 (d) and 2.1 below shall be deemed a material breach of this Agreement that is not capable of being cured unless Burnalong in its sole discretion agrees in writing to permit a cure.

(c) Burnalong reserves the right to remove any Sessions from the Burnalong Platform in its sole discretion (i) if such Session is within the least popular ten percent (10%) on Burnalong’s Platform (determined by number of views, Burnalong Subscriber ratings or other criteria set by Burnalong from time to time), (ii) if the content includes offensive material, (iii) if Burnalong determines Content Provider has violated terms of this Agreement, or (iv) if Burnalong determines that the quality of the Session is inadequate.

(d) Violations listed below are deemed a material breach of this Agreement and shall be excluded from revenue share payments and/or removal from the Burnalong Platform, in Burnalong’s sole discretion:

(i) Any attempt to influence rankings through inflating clicks, minutes, ratings, or artificial reviews for classes or to negatively impact the reviews of other Instructors’ Session(s).

(ii) If Content Provider has a separate contract with Burnalong, approving the use of the Burnalong Platform in a professional or other setting, that contract must be paid in full within the terms of that contract or all revenue share payments from Burnalong will be forfeited. Forfeiting revenue share does not release Content Provider from the obligations of any separate agreement with Burnalong.

(iii) Sessions with confirmed copyright infringement.

(e) Burnalong may, in its sole discretion, decide if a warning should be issued to the offending party prior to the forfeiting of revenue share and/or the removal of any or all Sessions from the Burnalong Platform entirely.

(f) Section 2.1(c) (Burnalong Policies), Article IV (Intellectual Property and Confidentiality), Article V (Representations, Warranties and Covenants), Article VI (Indemnification; Limitation of Liability) and Article VII (Miscellaneous) shall survive the termination of this Agreement.

(g) Burnalong may terminate this Agreement without cause upon ten (10) days prior notice to Content Provider.

**ARTICLE II**  
**PARTIES' PRIMARY OBLIGATIONS**

**2.1 Obligations of Content Provider.**

(a) Provision of Session Content to Burnalong:

(i) All Sessions must be led by an Instructor currently certified or licensed in the content/subject matter of the Session.

(ii) All Sessions for which Content Provider will receive revenue share payments under Article III must not include any sales offer or product endorsement, unless mutually agreed with Burnalong in writing.

(b) It is the responsibility of Content Provider to correctly enroll in the Burnalong payment processing system after receiving an invitation from Burnalong. Burnalong will send to Content Provider up to three (3) invitations within nine (9) months of Content Provider earning its first qualifying revenue share payment as described in Article III; after which time, failure to properly enroll in the Burnalong payment processing system within two (2) weeks of the last invitation will be a forfeiture of Content Provider Revenue Share on a rolling six (6) month basis.

(i) For example and for the avoidance of doubt, if enough Qualifying General Subscription Revenue (as defined in Article III below) was earned in the first quarter for a new Content Provider and three (3) invitations were sent over the following nine (9) months to Content Provider and Content Provider failed to properly enroll in the Burnalong payment processing system, Content Provider forfeits revenue share payments for the first two quarters (6 months) of the year. This process continues on a rolling basis.

(c) Burnalong Policies.

(i) All use of the Burnalong technology by Content Provider, Instructors and participants in Sessions shall be subject to Burnalong's Terms of Service, Privacy Policy, Mobile Policy, and other policies and procedures in effect from time to time, to be posted on Burnalong's website and modified in Burnalong's sole discretion.

(ii) Without limiting the foregoing, Burnalong has sole discretion regarding whether a particular Session will be made available to the Burnalong Subscribers on the Burnalong Platform.

(iii) Burnalong employees may not earn revenue share.

**2.2 Obligations of Burnalong.**

(a) Payments. Burnalong will remit to Content Provider the payments set forth in Article III ("Revenue Share Payment(s)") pursuant to the terms and conditions thereof.

(b) Promotion. Provided that Content Provider provides the necessary information

(as determined by Burnalong in its sole discretion), Burnalong will provide “**About Us**” page information / pictures for Content Provider.

(c) Reporting: Burnalong shall provide Content Provider reports for each Quarter (as defined in Section 3.1(a) below) detailing the Burnalong Subscribers’ frequency of using Sessions (on a class and instructor basis) in a format determined by Burnalong in its sole discretion.

**ARTICLE III**  
**REVENUE SHARE PAYMENTS**

3.1 Payments.

(a) General Subscription Revenue Payments.

(i) General Subscription Revenue Pool. Burnalong shall establish and maintain a general subscription revenue share pool (the “**Quarterly General Subscription Revenue Pool**”) consisting of twenty percent (20%) of the Qualifying General Subscription Revenue (as defined below) over a particular calendar quarter (a “**Quarter**”). Each Content Provider working with Burnalong shall be allocated a portion of the Quarterly General Subscription Revenue Pool (such portion allocable to Content Provider, the “**Quarterly General Subscription Revenue Payment**”) determined by the following calculation and definitions:

Calculation:

**Quarterly General Subscription Revenue Payment = A\*B/C**

Definitions:

A = 20% of the Qualifying General Subscription Revenue Pool

B = Number of Qualifying Minutes allocated to Content Provider

C = Number of Qualifying Minutes allocated to all Content Providers

**Qualifying General Subscription Revenue** = revenue actually received by Burnalong from the Burnalong Subscribers for access to the streaming of Sessions from Content Provider and Sessions from all other clients of Burnalong less transaction fees, charge backs, bad debt, taxes, commissions, referral fees, technology fees (for example, a fee imposed by Apple for purchases within an iOS app) and licensing fees applicable to the generation of such revenue (in each case as allocated to the general subscription services by the method(s) chosen by Burnalong in its sole discretion). Revenue resulting from ancillary fees, such as fitness tracking fees, fitness/health/wellness advice fees, private experiences, and premium content, are excluded from the definition of Qualifying General Subscription Revenue.

**Qualifying Minutes** = the aggregate qualifying recorded Session minutes and qualifying Live Session minutes not to exceed ninety (90) minutes in any single Session viewed by a Burnalong Subscriber on the Burnalong Platform (not on Content Provider’s website or apps) or in any single Session viewed by a person on a third-

party platform other than the Burnalong Platform and allocated to a Content Provider over the Quarter. For a Session to earn Qualifying Minutes the Session must: (i) be made available to the general Burnalong population without restriction by Content Provider, (ii) be exclusive to Burnalong, (iii) not be viewed by Content Provider, owner of Content Provider or Instructors employed by Content Provider, (iv) not use a Burnalong Subscriber account to stream classes into a facility or professional setting, (v) not be associated with any Burnalong Subscriber account that attempts to inflate Session minutes, or (vi) not contain confirmed copyright infringement.

(b) Other Content Revenue Payments. Burnalong may establish additional classifications of content to be made available on the Burnalong Platform, together with protocols for Content Providers to provide content therefor and quarterly revenue sharing payments associated therewith (collectively, a “**Quarterly Other Content Revenue Payment**”).

(c) Burnalong Subscriber Pricing. The Content Provider acknowledges that Burnalong will determine its pricing policies with the Burnalong Subscribers in its sole and absolute discretion (for example, Burnalong may offer free trial periods to the Burnalong Subscribers or offer wholesale pricing to corporations).

3.2 Timing of Payments. Burnalong shall pay Content Provider its Quarterly General Subscription Revenue Payment and any Quarterly Other Content Revenue Payment related to a particular Quarter in arrears within forty-five (45) days after the last day of such Quarter; provided, however, that Content Provider has completed enrollment in the Burnalong payment processing system and if the aggregate payments to Content Provider for a particular Quarter is less than Twenty-Five Dollars (\$25.00) (the “**Minimum Payment Threshold**”), then such payment shall be made after the end of the first subsequent Quarter after which the Minimum Payment Threshold is exceeded for all amounts owing to Content Provider hereunder and Content Provider has completed enrollment in the Burnalong payment processing system. Burnalong may, in its sole discretion, reduce the frequency of calculating and paying any amounts under this Article III by providing at least fourteen (14) days’ prior written notice thereof to Content Provider.

3.3 Certain conditions. Burnalong shall not be required to make any revenue share payment if Content Provider has an outstanding amount owed to Burnalong, whether under this Agreement or otherwise, and shall apply any revenue share payment to other amounts owed to Burnalong.

## **ARTICLE IV** **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

4.1 Intellectual Property. “**Intellectual Property**” means any and all intellectual property and related legal rights including, but not limited to, all worldwide current and future registered or unregistered rights in and to all: (i) rights associated with works of authorship including but not limited to copyrights, copyrightable works of authorship, exploitation rights, moral rights, graphics, logos, designs, page headers, button icons, scripts, software, programming code, and any suggestions, ideas, enhancement requests, feedback, recommendations, know-how, or other information; (ii) trademark, service mark, trade dress, and trade name rights and similar rights; (iii) trade secret rights, including, without limitation, all rights in Confidential Information and proprietary rights whether arising by law or contract; (iv) patents, patentable inventions and processes, designs, algorithms, and other industrial property rights; (v) all other intellectual and industrial property rights of every kind and nature throughout the world however designated, whether arising by operation of law, contract, license, or otherwise, and all registrations, applications, renewals,

extensions, continuations, divisions, or reissues hereof now or hereafter in force (including any rights in any of the foregoing) and any tangible embodiments of any of the foregoing.

(a) License Grant to Burnalong. During the Term and for a period of twelve (12) months after the termination of this Agreement (the “**License Period**”), Content Provider hereby grants to Burnalong (i) an exclusive, irrevocable, fully-paid up, worldwide license, with right to sublicense, all Intellectual Property appearing in or in any way related to the Sessions, and whether or not such Intellectual Property is licensed to or owned by Content Provider (“**Content Provider Intellectual Property**”), and (ii) the right to use portions of Content Provider Intellectual Property in combination with Intellectual Property of Burnalong, other clients and third parties. For avoidance of doubt, (x) Burnalong shall exclusively own all Intellectual Property related to the Burnalong Platform and the Burnalong Subscribers, including all Burnalong Subscriber-related content and data associated with the Sessions streamed by the Burnalong Subscribers, and (y) during the License Period, Burnalong may use the Sessions for any commercial purpose, including, without limitation, in promotional videos and for other advertising and other marketing-related purposes.

(b) Consent and Waivers. Prior to making the Sessions available to Burnalong, Content Provider shall first obtain the consent and waiver from all parties possessing any rights in Content Provider Intellectual Property or any other Intellectual Property related to the Sessions, and consents and waivers from Instructors and Content Provider participants appearing in the Sessions, any individual appearing in a Session and any individual or entity possessing any rights in Intellectual Property featured in the Sessions. Without limiting the foregoing:

(i) Content Provider shall ensure that, prior to the participation in any Session by an Instructor, employee, agent or representative of Content Provider or other individual, each participant in such Session must have executed an irrevocable Release, Waiver of Liability and Indemnity Agreement substantially in the form attached hereto as Exhibit A (a “Release”) and such executed Releases shall be made available to Burnalong upon request, at any time during or after the Term.

(ii) Content Provider shall obtain and pay for all licenses, consents and approvals required by the providers, owners or licensors of music (including sound recording and musical composition synchronization and performance rights) and other audio and video content included in the Sessions to enable Burnalong to reproduce, broadcast and stream the Sessions with such music and other audio and video content on the Burnalong Platform without any violation of such parties’ Intellectual Property rights or payments required to be made by Burnalong to such parties.

(iii) Although it is Content Provider’s sole responsibility to obtain the Releases, and Burnalong assumes no responsibility whatsoever in connection therewith, Content Provider shall provide evidence of its compliance with this Section 4.1(b) at Burnalong’s request from time to time.

#### 4.2 Confidentiality.

(a) Confidential Information. “**Confidential Information**” means all information disclosed by a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including

but not limited to, ideas, concepts, designs, audit materials, reports, results, data, documentation, diagrams, research, development, processes, procedures, marketing techniques and materials, marketing and development plans, customer, subscriber, member, officer, director, or provider names, medical records, and other information related to such individuals or entities, price lists, reimbursement policies, and financial information. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third Party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

(b) Mutual Confidentiality Obligation. The Receiving Party agrees to accept the Disclosing Party's Confidential Information and to employ all reasonable efforts to maintain all such Confidential Information secret and confidential, such efforts to be with the same degree of care employed by the Receiving Party to preserve and safeguard its own Confidential Information (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its employees, officers, advisors, lawyers, accountants and affiliates (collectively, "**Representatives**") who need that access for purposes consistent with this Agreement and who understand the confidentiality requirements hereunder. The Receiving Party shall be liable for any breach of this Section 4.2 by its Representatives.

(c) The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted).

## **ARTICLE V** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1 Representations, Warranties and Covenants of Content Provider. Content Provider hereby represents, warrants and covenants to Burnalong that as of the Effective Date and at all times during the Term of this Agreement:

(a) Content Provider has the power and authority to enter into this Agreement and any agreements contemplated hereby and if Content Provider is an entity, the undersigned representative of Content Provider has the requisite power and authority to enter into this Agreement and any agreements contemplated hereby on behalf of such entity.

(b) The Agreement has been duly executed and delivered by Content Provider and constitutes valid and binding obligations of the Content Provider, enforceable against Content Provider in accordance with its terms.

(c) Content Provider's performance under the Agreement will not violate any corporate, limited liability or partnership documentation of Content Provider, any agreement to which Content Provider is a party or by which the Sessions are bound, any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment or decree of any governmental, arbitral or quasi-governmental authority ("**Law**"), or any rights of a third party.

(d) Content Provider has the legal right to convey the Intellectual Property rights to

Burnalong as set forth herein, and all individuals or entities having any right in such Intellectual Property have granted their full consent to the use thereof by Burnalong as contemplated in this Agreement.

(e) All Sessions and body movements and suggestions therein (i) are and shall be safe for all individuals involved in such Sessions (including the participants in Content Provider's Sessions, Instructors and Burnalong Subscribers), (ii) utilize proper techniques, and (iii) shall not be illegal; abusive; threatening; obscene; profane; offensive; sexually oriented; offensive on a racial, sexual orientation, religious, political, or gender basis; defamatory or libelous.

(f) The Instructors shall be properly trained and skilled at the choreography and/or instructions they are performing and instructing and possess current statuses of all required certifications and/or licenses related thereto.

(g) The Instructors are residents of the United States of America.

## 5.2 Representations, Warranties and Covenants of Burnalong.

(a) Burnalong hereby represents, warrants and covenants to Content Provider as follows:

(i) Burnalong has all corporate power and authority to enter into this Agreement and any agreements contemplated hereby.

(ii) The Agreement has been duly executed and delivered by Burnalong and constitutes valid and binding obligations of Burnalong, enforceable against Burnalong in accordance with its terms.

(iii) Burnalong's performance under the Agreement will not violate any corporate documentation of Burnalong, any agreement to which Burnalong is a party or any Law.

(b) BURNALONG DOES NOT WARRANT THAT THE BURNALONG PLATFORM, WILL MEET CONTENT PROVIDER'S REQUIREMENTS, THAT THE BURNALONG PLATFORM WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. BURNALONG DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, HEALTH, OR WELLNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. CONTENT PROVIDER AGREES AND ACKNOWLEDGES THAT THE BURNALONG PLATFORM IS PROVIDED BY BURNALONG "AS IS" AND WITHOUT ANY FURTHER WARRANTY OF ANY KIND.

## **ARTICLE VI** **INDEMNIFICATION; LIMITATION OF LIABILITY**

6.1 Content Provider shall indemnify, defend and hold harmless Burnalong and its parent, subsidiaries, affiliates, and their respective officers, directors, employees and agents (each an "Indemnitee") from and against any and all claims, demands, loss, costs, damage, expense or liability (including reasonable attorneys' fees and costs) asserted by third parties against an Indemnitee arising out of or related to: (a) bodily injury or death of any person or damage to property resulting from the negligent or willful acts or omissions of Content Provider, (b) any breach by Content Provider of this Agreement, (c) any claim that the



content delivered by Content Provider under this Agreement infringes any third party Intellectual Property rights, (d) any claims by film production companies, facilities, Instructors, participants or other third parties related to the Sessions (including any claims of personal injury, rights of privacy or publicity, defamation by Instructors or Content Provider participants), (e) any claim by Instructors that such Instructor is entitled to a portion of the payments made from Burnalong to Content Provider hereunder or that such Instructor did not provide informed consent regarding Burnalong's use of the Sessions, (f) any claim by Burnalong Subscribers for injuries suffered in connection with their use of the Sessions, and (g) Content Provider's selection of the recording equipment and other assets utilized by Content Provider in connection with this Agreement or the filming of the Sessions, whether at Burnalong's recommendation or otherwise.

6.2 If any claim is brought or asserted against an Indemnitee, Content Provider shall retain counsel to represent such Indemnitee and Content Provider shall control the proceeding but shall regularly consult with Indemnitee and its counsel regarding such defense. Indemnitee shall have the right to participate in such defense through counsel of its own choosing at Indemnitee's sole expense. In no event shall Content Provider consent to entry of judgment or enter into any settlement agreement that does not include a full release of Indemnitee. If Content Provider refuses or otherwise fails to defend such claim as provided herein, Indemnitee shall have the right to defend such claim in any manner it deems appropriate at the sole cost of Content Provider; provided, however, that Indemnitee will not settle such a claim without the prior written consent of Content Provider, which consent shall not be unreasonably withheld or delayed.

6.3 TO THE FULLEST EXTENT PERMITTED BY LAW, BURNALONG SHALL NOT BE LIABLE TO CONTENT PROVIDER FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS OR OPPORTUNITIES (IRRESPECTIVE OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT OR ANY SOWS ISSUED PURSUANT THERETO), REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CONTENT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE TOTAL LIABILITY OF BURNALONG UNDER THIS AGREEMENT SHALL NOT IN THE AGGREGATE EXCEED THE AMOUNT OF FEES PAID BY BURNALONG TO CONTENT PROVIDER FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

## **ARTICLE VII** **MISCELLANEOUS**

7.1 Insurance. Content Provider shall at its sole cost and expense at all times during the Term maintain commercially reasonable levels of insurance related to its activities under this Agreement (including covering the Sessions streamed on the Burnalong Platform and any injuries to the Burnalong Subscribers that may result therefrom), but in no event less than the following coverages and limits: (a) Commercial General Liability coverage (including, but not limited to contractual and product liability, and completed operations coverage) with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (b) Workers Compensation coverage, including occupational disease and employers' liability insurance, as well as such other similar insurance as may be required by the state in which Content Provider operates, at the statutory limits for workers compensation, and employers' liability with a minimum limit of One Million Dollars (\$1,000,000); (c) Professional Liability/Errors & Omissions coverage insuring Company for negligent acts and errors or omissions arising out of the performance of Company's Services under this Agreement (including network security and privacy liability) with a minimum limit of Three Million Dollars (\$3,000,000) per claim and in the aggregate and contain an extended reporting provision. The policies of insurance will be maintained in full force and effect during the course of the Services and (i) be written by an insurance carrier rated "A-" or better by A.M. Best in Class VII

or larger; and (ii) state that the policy may not be cancelled, altered or permitted to lapse or expire without at least thirty (30) days' advance written notice to Burnalong. Furthermore, Content Provider will name Burnalong, and its parent, subsidiaries, affiliates and their respective officers, directors, employees and agents as additional insureds. Before the commencement of this Agreement, and thereafter upon Burnalong's request, Content Provider shall provide Burnalong, within five (5) business days, a certificate of insurance evidencing that the above insurance coverage is in effect.

7.2 Entire Agreement. This Agreement (including the documents delivered in connection herewith, the exhibits and schedules referred to herein, and any Disclosures which are incorporated into and constitute a part of this Agreement) contains the entire and final agreement between the Parties with regard to the subject matter hereof, and supersedes any and all agreements, either oral or written, between the Parties hereto. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless agreed upon in writing and signed by both Parties, and then such waiver, consent, modification or change will be effective only in the specific instance and for the specific purpose given. This Agreement, and the provisions, rights and obligations thereof, may be amended, waived or modified (i) upon the written consent of both Parties or (ii) by Burnalong unilaterally with notice given to the Content Provider if such amendment, waiver or modification is made with respect the standard Content Provider Agreement offered to all Content Providers on its Burnalong Platform.

7.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, except for the conflict of laws provision. In connection with this Agreement, Content Provider consents to the personal jurisdiction of, and venue in, the courts located in Williamson County, Tennessee, or the U.S. District Court, Middle District of Tennessee for any and all actions brought by Content Provider arising out of or related to this Agreement.

7.4 Assignment. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective assigns and successors in interest, and no other individual or entity shall be entitled to any of the benefits conferred by this Agreement. Without the prior written consent of Burnalong, Content Provider shall not assign any of its rights under this Agreement or delegate any of its duties under this Agreement, including by operation of law by merger, stock sale, reorganization or otherwise.

7.5 Right to Specific Performance. The Parties acknowledge that the unique nature of certain covenants contained in this Agreement may render money damages an inadequate remedy for the breach by a Party of its obligations under this Agreement, and the Parties agree that in the event of such breach, the Parties shall, upon proper action instituted by any of them, be entitled to seek a decree of specific performance of this Agreement.

7.6 Waiver; Severability. The waiver by either Party of a breach or a default of any provision of this Agreement by the other Party will not be construed as a waiver of any succeeding breach of the same or any other provision, nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party. If any term or provision of this Agreement shall be found by a mediator, arbitrator, or court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms or provisions hereof or the whole of this Agreement, but such provision will be deemed modified to the extent necessary in the mediator's, arbitrator's, or court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest extent possible the intent and agreements of the Parties set forth herein.

7.7 Notices. All notices and other communications required or permitted under this Agreement by Burnalong may be conveyed to Content Provider within the Burnalong Platform. In addition, either Party may provide notices to the other Party in writing through either registered or certified mail, postage prepaid, or delivered by hand, messenger or nationally-recognized overnight courier service addressed as follows, and may be modified by a Party by providing notice to the other Party in accordance with this section:

if to Content Provider, to the contact address entered on the Burnalong Platform

if to Burnalong, to:                      Burnalong, Inc.  
3635 Old Court Rd., STE 501  
Pikesville, MD 21208  
Email: CustomerCare@Burnalong.com

with a copy to:                              Tivity Health Services, LLC  
4031 Aspen Grove Dr., Ste. 250  
Franklin, TN 37067  
Attn: Legal Department

Each notice or other communication provided under this Agreement shall be effective (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, three business days after deposit with the courier), or (ii) if sent via registered or certified mail, at the earlier of receipt or seven days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail(iii) if sent via message conveyed within the Burnalong Platform, at the time of transmission.

7.8 Force Majeure. Neither Party shall be liable for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by pandemic, earthquake, riot, civil commotion, war, terrorist acts, strike, pandemic, flood, or governmental acts or restriction, or other cause that is beyond the reasonable control of the respective Party, except with respect to indemnification obligations (each a “**Force Majeure Event**”). The Party affected by any such Force Majeure Event will provide the other Party with a full description thereof as soon as it becomes aware of such Force Majeure Event (including its good faith estimate of the likely extent and duration of the interference with its activities), and will use commercially reasonable efforts to overcome the difficulties created thereby and to resume performance of its obligations as soon as practicable. If the performance of any such obligation under this Agreement is delayed due to a Force Majeure Event for any continuous period of more than ninety (90) days, Burnalong may terminate this Agreement by providing notice to Content Provider.

7.9 Independent Contractor. Nothing contained herein shall be deemed or construed by the Parties or by any third person or entity to create a partnership, joint venture, employment, master–servant or agency relationship between the Parties. At all times, the Parties shall be deemed independent contractors of one another with respect to their respective rights and obligations under this Agreement, and neither Party’s employees will be considered an employee of the other Party within the meaning or application of any federal, state or local laws or regulations. Under no circumstances whatsoever shall a Party or its employees, officers, directors, managers or independent contractors hold itself be a director, officer, employee or agent of the other Party or bind or attempt to bind the other Party to any contract or incur any debt, obligation or liability on behalf of the other Party. In connection with the aforementioned, Content Provider and Burnalong acknowledge as follows:

- a. Content Provider is free from the control and direction of Burnalong in connection with the

performance and creation of Services that are the subject of this Agreement, both under the terms of this Agreement and in fact;

- b. Content Provider is providing services directly to Burnalong.
- c. Content Provider maintains all necessary business licenses or business tax registrations, which Content Provider may be required to maintain.
- d. Content Provider maintains a business location that is separate from the business or work location of Burnalong;
- e. Content Provider is customarily engaged in an independently established business of the same nature as that involved in the work performed under this Agreement;
- f. Subject to the exclusive license grant in Section 4.1(a) of this Agreement, Content Provider is free to contract with other businesses to provide the same or similar services and maintain a clientele without restrictions;
- g. Content Provider advertises and holds itself out to the public as available to provide the same or similar services;
- h. Consistent with the nature of the work, Content Provider provides its own tools, vehicles, and equipment to perform the Services, not including any proprietary materials that may be necessary to perform the Services under this Agreement;
- i. Content Provider has voluntarily agreed to and/or negotiated the payment schedule set forth in this Agreement for the Services being performed; and
- j. Consistent with the nature of the work, Content Provider can set its own hours and location of work.

7.10 Severability; Construction. If any provision in or obligation under this Agreement is found to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. As used herein, the words “including,” “include” and “includes” are not exclusive and shall be deemed to be followed by the words “without limitation”.

## Exhibit A

### RELEASE, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT

I, the undersigned, for and on behalf of myself and all of my heirs, executors, administrators and personal representatives acknowledge and agree that, in consideration for the right to participate in fitness, health and/or wellness classes (a “**Class**”) offered at a facility (“**Facility**”) that may be accessible on the Burnalong online digital platform (together with any other platforms, websites or other electronic means of conveying information maintained by Burnalong (as hereinafter defined), “**Burnalong Platform**”) maintained by Burnalong, Inc., a Delaware corporation (together with its affiliates, successors and assigns, “**Burnalong**”) and for other good and valuable consideration,, HEREBY RELEASE, FOREVER DISCHARGE, COVENANT NOT TO SUE, AND AGREE TO INDEMNIFY AND HOLD HARMLESS Burnalong, the Facility and their affiliates, their respective agents, employees, officers, directors, shareholders, representatives, successors in interest, assigns, as applicable (hereinafter, collectively referred to as “**Releasees**”), from any and all actions, suits, claims or demands resulting from death, injury, loss and/or damage, liability, indemnity, expenses, fees and costs, including legal fees and disbursements, whether at law or in equity or under any statute, however caused, whether anticipated or unanticipated, resulting from, arising out of or connected directly or indirectly with my attendance and/or participation in a Class, use of any exercise equipment (“**Equipment**”) of Facility or the Burnalong Platform or presence at Facility (collectively, such attendance, participation and use, my “**Participation**”), whether as a spectator, participant, invitee, contractor, instructor, trainer or otherwise, and notwithstanding that any such death, injury, loss and/or damage may have been caused by, contributed to or occasioned by the negligence of any of the Releasees.

I accept full responsibility for any and all accidents that may arise in connection with my Participation. I further acknowledge and agree that any of the methods or technologies used in connection with the Classes or the Burnalong Platform may not have been tested and approved for use, and that my Participation may involve the possible risk of serious injury, and/or death, or property damage whether or not due to alleged negligent acts or omissions of the Releasees. I assume this responsibility, being aware of the dangers of personal injury and property loss inherent in my Participation.

I understand that I will comply with all Facility and Burnalong rules and regulations related to my Participation.

As part of my Participation and in exchange for the consideration described above, I hereby grant the Facility and Burnalong the right and permission to record (including audio and video recordings) and photograph me and use such audio and video recordings and photographs and any other information that I am willing to provide the Facility and Burnalong (“**Personal Rights**”) in connection with my Participation in fitness, health or wellness recordings or live streams and any material based on or derived from the my Participation (collectively, “**Content**”), for any of Burnalong’s online content, advertising, promotion, publicity or other purposes in any and all media or formats now known or hereafter developed by Burnalong, including without limitation, in print publications, television or radio broadcast, online or other internet use, and wireless communications and posting and displaying the Content on the Burnalong Platform.

I hereby waive any right to inspect and approve the Content and any materials based on or derived from the Content or any use of the same. I understand that nothing contained herein shall obligate the Releasees to make any use of the Content or any materials produced hereunder or the Personal Rights granted herein. I agree and acknowledge that I have no right, title or interest in or claim to the Content and that all such right, title and interest shall be owned exclusively by the Releasees. I shall have no right of approval, no claim to compensation, and no claim (including, without limitation, claims based upon

invasion of privacy, defamation, or right of publicity) arising out of, and the Releasees shall have no liability for, any use, blurring, alteration, distortion, illusionary effect, faulty reproduction, fictionalization, or use in any composite form of the audio or video recording or photograph or Content in connection with the Submission or any materials based thereon.

I further agree that this Release, Waiver of Liability and Indemnity Agreement extends to cover all acts of negligence by the Releasees and is intended to be as broad and inclusive as is permitted by the laws of the State of Tennessee. If any portion or portions of this Release, Waiver of Liability and Indemnity Agreement may be held by a court of competent jurisdiction to conflict with any federal, provincial or local law, and as a result such portion or portions are declared to be invalid and of no force and effect in such jurisdiction, then all remaining provisions of this Release, Waiver of Liability and Indemnity Agreement shall otherwise remain in full force and effect and shall be construed as if such invalid portion or portions had not been included herein.

I warrant that I am physically fit and in the proper physical condition to participate in the Classes. Bernalong shall be entitled to rely on the agreements, representations and agreements made by me herein.

I HAVE CAREFULLY READ, FULLY UNDERSTOOD THE TERMS ABOVE WITHOUT RESERVATION, AND FREELY AND VOLUNTARILY SIGN THIS RELEASE, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further state that no oral representations, statements, inducements, assurances or guarantees, apart from this agreement have been made.

Full Name: \_\_\_\_\_ Date:     /     /

Email Address: \_\_\_\_\_ Phone: (     )     –

Signature: \_\_\_\_\_