

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is hereby entered into by the Licensor and Licensee as an Addendum to the License/Subscription Agreement (“Agreement”) with the same effective date.

WHEREAS, Licensee may be considered a Licensee or Business Associate when using the WorkerFIT or ExamFIT Platforms under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”),

WHEREAS, Licensor may be considered a Business Associate to the Licensee when Licensee performs HIPAA covered transactions through Licensee’s Platform(s), and

WHEREAS, Licensor and Licensee desire to comply with the Administrative Simplification subtitle of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and subtitle D of the American Recovery and Reinvestment Act of 2009, entitled the Health Information Technology for Clinical and Economic Health Act, Public Law 111-50 (“HITECH”) with respect to the services that each party provides that are subject to these laws,

NOW THEREFORE, in consideration of the mutual promises and other valuable consideration herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. Applicability. If Licensee is a Covered Entity or a Business Associate and the data Licensee enters into the WorkerFIT or ExamFIT Platform is considered Protected Health Information (“PHI”) as defined below, the execution of the Agreement incorporates the terms of this BAA into that Agreement. If there is any conflict between the terms of this BAA and the Agreement, the terms in the Agreement shall take precedence over the BAA, except if such application would violate applicable law.

II. Definitions.

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, Security Rule and the HITECH Act.

“Breach” means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information (as defined in 45 CFR Parts 160 and 164).

“Breach Notification Rule” means the Breach Notification for Unsecured Protected Health Information Final Rule.

“Business Associate” shall have the same meaning as the term “business associate” in 45 CFR § 160.103 of HIPAA.

“Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR § 160.103 of HIPAA.

“Licensee” means the party identified in the Agreement as the Licensee.

“Licensor” means WorkerFIT, LLC.

“Designated Record Set” means a group of records maintained by or for Licensee that is (i) the medical records and billing records about individuals maintained by or for a covered health care provider (as defined in 45 CFR §160.103); (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan (as defined in 45 CFR §160.103); or (iii) used, in whole or in part, by or for Licensee to make decisions about individuals, wherein “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Licensee.

“Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. (HITECH § 13400)

“Electronic Protected Health Information” (“EPHI”) shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103, limited however to the information created or received by Business Associate from or on behalf of Licensee.

“HIPAA” collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

“Individual” means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

“Protected Health Information” (“PHI”) shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited however to the information created or received by Business Associate from or on behalf of Licensee.

“Required By Law” shall mean a mandate contained in law that compels Licensee or Business Associate to make a use or disclosure of Protected Health Information and that is enforceable in a court of law, including court orders and court-ordered warrants, subpoenas, or summonses issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, a civil or an authorized investigative demand, Medicare conditions of participation with respect to health care providers (as defined in 45 CFR §160.103) participating in the program, and statutes or regulations that require the production of information, including statutes or

regulations that require such information if payment is sought under a government program providing public benefits.

“Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

“Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. (45 CFR §164.304)

“Security Rule” means the Security Standards in 45 CFR Part 160 and Part 164, subparts A and C, as set forth from and after the date on which compliance by Licensee with the Security Rule is required. References in this Agreement to implementation of or compliance with any requirements of the Security Rule by Licensee or Business Associate shall be construed as referring to such implementation and compliance from and after the compliance date for Licensee under the Security Rule, and not before such date.

“Unsecured Protected Health Information” means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in guidance (as defined in 45 CFR Parts 160 and 164). In the case that the Secretary does not issue timely guidance, “Unsecured Protected Health Information” shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

III. Permitted Uses and Disclosures by Licensor. Licensor may use or disclose PHI on behalf of, or to provide services to, Licensee for the limited purposes stated below, but only to the extent such use or disclosure of PHI would not violate: (1) the Privacy Rule or the Security Rule, (2) the HITECH Act, or (3) the minimum necessary policies and procedures of Licensee.

A. Except as otherwise limited in this BAA, Licensor may Use and Disclose PHI for, or on behalf of, Licensee as specified in the Agreement; provided that any such Use or Disclosure would not violate HIPAA if done by Licensee, unless expressly permitted under paragraph b of this Section.

B. Management, Administration, and Legal Responsibilities. Except as otherwise limited in this BAA, Licensor may Use and Disclose Protected Health Information for the proper management and administration of Licensor and/or to carry out the legal responsibilities of Licensor, provided that any Disclosure may occur only if: (1) Required by Law; or (2) Licensor obtains written reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Licensee of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

IV. Obligations of Licensor. To the extent Licensor is acting as a Business Associate, Licensor agrees to the following:

A. Privacy and Security Safeguards. Licensor shall use appropriate safeguards to prevent access, use or disclosure of the PHI other than as provided for or permitted under this Agreement and comply with all state and federal laws governing the protection of the confidentiality of PHI, including without limitation the sections of the HIPAA Privacy and Security Rules and the HITECH Act that apply directly to Business Associates. Specifically, Licensor shall implement administrative, physical, and technical safeguards in accordance with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that Licensor accesses, maintains, or transmits on behalf of Licensee.

B. Non-disclosure. Licensor shall not further disclose PHI or de-identified PHI other than is permitted or required by the Agreement or as Required by Law.

C. Subcontractors. Licensor agrees to ensure that any agent, including a subcontractor, to whom Licensor assigns to perform HIPAA covered transactions on Licensor's behalf agrees in writing to the same restrictions and conditions that apply through this BAA to Licensor with respect to such information.

D. Security Incidents. Licensor shall notify Licensee in writing within thirty (30) calendar days after discovery of (1) any use or disclosure of PHI that is not permitted by the Agreement or this BAA, and (2) any Security Incident of which it becomes aware that involve secured or unsecured PHI, including any Security Incident that results in the modification, compromise of integrity or destruction of PHI. A Security Incident will be treated as "discovered" by Licensor as of the first day on which such security incident or breach is known to the Licensor, or, by exercising reasonable diligence would have been known to the Licensor, or any of its employees, subcontractors, officers or agents.

1. In the event that a Security Incident is a Breach that involves unauthorized access, use or disclosure of Unsecured PHI, Licensor shall provide to written notification to the Licensee of: (1) the identity of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during such breach, (2) a brief description of what happened, including the date of the Breach, (3) the date of discovery of the Breach, (4) the steps the individual should take to protect themselves from potential harm resulting from the breach, and (5) a brief description of what Licensor is doing to investigate the breach, mitigate losses, and protect against further breaches.

E. Breach Mitigation. Licensor agrees to mitigate, to the extent practicable, any harmful effect that is known to Licensor of a use or disclosure of PHI by Licensor or its agents, subcontractors and assigns in violation of the requirements of this Agreement.

F. **LIMITATION OF LIABILITY. EXCEPT FOR FRAUD AND INTENTIONAL MISREPRESENTATIONS, AND SUBJECT TO THE LIMITS OF LIABILITY IN SECTION 11 OF THE AGREEMENT, NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES, COSTS, EXPENSES, CHARGES OR CLAIMS.**

G. Access. If Licensor maintains PHI in a Designated Record Set for Licensee, then Licensor, at the request of Licensee, shall within fifteen (15) days make access to such PHI available to Licensee in accordance with 45 CFR § 164.524 of the Privacy Rule.

H. Amendment. If Licensor maintains PHI in a Designated Record Set for Licensor, then Licensor, at the request of Customer, shall make available such PHI to Licensee for amendment and incorporate any reasonably requested amendment in the PHI in accordance with 45 CFR § 164.526 of the Privacy Rule.

I. Accounting of Disclosure. Licensor, at the request of Licensee, shall within fifteen (15) days make available to Licensee such information relating to Disclosures made by Licensor as required for Licensee to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.

J. Access to Licensor's Books and Records. Licensor agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI available at the request of Licensee or the Secretary for purposes of the Secretary determining Licensee's compliance with the Privacy Rule. Licensor agrees to notify Licensee promptly of: (1) any request by the Secretary to examine such internal practices, books, records, policies, procedures, and PHI, and (2) the results and disposition of any such request.

V. Obligations of Licensee.

A. Licensee shall notify Licensor of any limitations in Licensee's Notice of Privacy Practices in accordance with 45 CFR §164.520, to the extent that any such limitation may affect Licensor's use or disclosure of PHI.

B. Licensee shall notify Licensor of any changes in, or revocation of, permission by any applicable Individual to use or disclose PHI, to the extent that any such change may affect Licensor's use or disclosure of PHI.

C. Licensee shall notify Licensor of any restriction to the use or disclosure of PHI that Licensee has agreed to in accordance with 45 CFR §164.522, or otherwise, to the extent that any such restriction may affect Licensor's use or disclosure of PHI.

D. Licensee shall not request that Licensor use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Licensee.

E. Safeguards and Appropriate Use of PHI. Licensee is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA.

VI. Term and Termination.

A. Term. This BAA shall be effective and enforceable by the parties to this Agreement as of the Effective Date first set forth in the Agreement and have a term that shall run concurrently with that Agreement. Unless terminated as provided in this Section below, this BAA will automatically terminate

without any further action of the Parties upon the termination or expiration of the Agreement; provided, however, certain provisions and requirements of this BAA and the Agreement shall survive such expiration or termination of the Agreement.

B. Termination for Cause.

1. By Licensee. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Licensee may immediately terminate this Agreement, the Services Agreement and any related agreements if the Licensee makes the determination that the Licensor has breached a material term of this Agreement. Alternatively, and in the sole discretion of Licensee, Licensee may choose to provide Licensor with written notice of the existence of the breach and provide Licensor with thirty (30) calendar days to cure said breach upon mutually agreeable terms. Failure by Licensor to cure said breach or violation in a manner that complies with the terms of this BAA shall be grounds for immediate termination of this BAA and the Agreement by the Licensee. If neither termination nor cure in accordance with this Section are feasible, Licensee shall report the violation of this Agreement to the Secretary of HHS. If such report is so to be given, Licensee shall simultaneously provide a copy of any such report to Licensor.

2. By Licensor. If Licensor determines that Licensee has breached a material term of this BAA, Licensor shall provide Licensee with written notice of the existence of the breach and shall provide Licensee with thirty (30) calendar days to cure said breach upon mutually agreeable terms. Failure by Licensee to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Agreement by the Licensor in accordance with Section 8 of the Agreement.

C. Effect of Termination.

1. Except as provided in paragraph 2 of this Section, upon termination of this BAA, for any reason or for no reason, Licensor shall return or destroy all PHI received from Licensee, or created or received by Licensor on behalf of Licensee. This provision shall apply to PHI that is in the possession of subcontractors or agents of Licensor. Licensor shall not retain any copies of such PHI, except that PHI that has been de-identified is no longer considered PHI.

2. If Licensor determines that returning or destroying the PHI is infeasible or in violation of law, Licensor shall provide to Licensee notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties to this BAA return or destruction of Protected Health Information is infeasible or in violation of law, Licensor and its subcontractors and agents shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible or in violation of law, for so long as Licensor, including its subcontractors and agents, maintains such PHI.

VII. Miscellaneous.

A. Regulatory References. A reference in this BAA to a section in the Privacy Rule or the Security Rule means the section as enforceable at the applicable time.

B. Amendment. The parties to this BAA agree to take such action as is reasonably necessary to amend this BAA from time to time as is necessary for Licensee to comply with the requirements of the Privacy Rule, the Security Rule, the HITECH Act and HIPAA by providing written notice to the other party with sufficient time for the other party to object to the amendment. If the other party does not object within the time frame indicated, the Amendment will go into effect as of the date provided in the amendment.

C. Interpretation. Any ambiguity in this BAA shall be resolved to permit the parties to comply with the HIPAA Rules and HITECH. If there are any inconsistent provisions between this BAA and the Agreement, the provisions of this BAA shall prevail with respect to PHI and to the extent required for HIPAA compliance. All other terms of such Agreement shall remain in force and effect. The word “including” as used in this BAA shall be construed to mean “including, but not limited to.”

D. Assignment. Licensor may transfer its interests, rights, or obligations under this BAA by written agreement, merger, consolidation, operation of law, or otherwise, by giving prior written notice of such Assignment to the Licensee.

E. Waiver. No failure or delay by either Licensee or Licensor in exercising any right, power, or privilege under this BAA shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

H. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything in this BAA confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

I. Notices. Any notice, request, instruction, or other document to be given under this BAA shall be given in accordance with the Notice section of the Agreement.

J. Governing Law. This Agreement and the legal relationship between the parties to this Agreement shall be governed and construed in accordance with applicable federal law and the substantive laws of Ohio without giving effect to the principles of conflict of laws thereof.

K. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced, and the remainder of this BAA shall continue in full force and effect and shall not be invalidated impaired or otherwise affected.

L. Headings and Section References. The headings of the sections and paragraphs of this BAA are included for convenience only and are not intended to be a part of, or to affect the meaning or interpretation of, this BAA. All section references in this BAA, unless otherwise clearly indicated, are to sections within this BAA.