

**Updated: 10/27/16**

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA BUSINESS ASSOCIATE AGREEMENT ("**Agreement**") is made and entered into by and between **zYouSoft**, absolute owner and operator of PTeliteFit App (hereinafter referred to as "**BUSINESS ASSOCIATE**" or "**BA**") and health care providers or other entities who are deemed to be covered entity(ies) under HIPAA (hereinafter referred to as "**Covered Entity**"), effective as of the date electronically accepted by Covered Entity for the purpose of implementing the requirements of HIPAA to support the parties' compliance requirements thereunder.

Covered Entity represent and warrant that: (i) you/they have full legal authority to bind Covered Entity to this Agreement, (ii) you/they have read and understand this Agreement, and (iii) you/they agree, on behalf of Covered Entity, to the terms and conditions of this Agreement. If you/they do not have legal authority to bind Covered Entity, or do not agree to these terms, do not sign or accept the terms of this Agreement.

**BA** and **Covered Entity** are individually referred to as "**Party**" and jointly referred to as "**Parties.**"

### **RECITALS**

**WHEREAS**, BA is the absolute owner of its mobile application named PTeliteFit (hereinafter referred to as "**PTeliteFit**") that provides a platform for individual patients to find special offers from Covered Entity. **PTeliteFit is an informational and payment service, which allows for these special offers to be displayed by Covered Entity, found by patients, and paid for through our app. At no time do we participate in or engage in fee splitting with Health&Fitness providers, and we will not agree to enter into such an arrangement;**

**WHEREAS**, Covered Entity desires to participate in our service, and the Parties desire to ensure that their respective rights and responsibilities under the service reflect applicable federal statutory and regulatory requirements relating to the access, use and disclosure of health information, including without limitation, the Standards for Privacy of Individually Identifiable Health Information, and the Security Standards, collectively codified at 45 C.F.R. Parts 160, 162 and 164 (respectively the "Privacy Standards" and "Security Standards") under HIPAA;

**WHEREAS**, BA and Covered Entity are both committed to complying with HIPAA, and acknowledge that each has certain obligations to maintain the privacy and security of Protected Health Information ("**PHI**") and Personally Identifiable Information ("**PII**");

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree to the following terms and conditions covering how each party's obligations to maintain the privacy and security of PHI will be satisfied.

## **1. DEFINITIONS**

- 1.1. **"Protected Health Information"** or **"PHI"** has the same meaning as the term "protected health information" as defined in 45 CFR 164.103 and any amendments thereto, limited to the information Business Associate has access to, receives from, and maintains for or on behalf of Covered Entity. PHI includes Electronic Protected Health Information;
- 1.2. **"Personally Identifiable Information"** or **"PII"** is information that can be used to identify, contact, or locate an individual, either alone or combined with other easily accessible sources;
- 1.3. **"Electronic Protected Health Information"** or **"ePHI"** means the subset of PHI that is transmitted by electronic media or maintained in electronic media.

## **2. PERMITTED USE AND DISCLOSURE**

### **2.1. BA and Covered Entity agrees:**

- 2.1.1. To use or disclose PHI and PII solely for meeting its permissible obligations, or as required by law.
- 2.1.2. To ensure that its agents (including subcontractors) to whom it provides PHI, ePHI and PII agree to the same restrictions and conditions that apply with respect to such information as it applies to the BA and Covered Entity. In addition, parties agree to take reasonable steps to ensure that its employees' and agents actions or omissions do not cause either party to breach the terms of this Agreement.
- 2.1.3. Notwithstanding the prohibitions set forth in this Agreement, parties may use and disclose PHI and PII if necessary for the proper management and administration of either party to carry out their responsibilities, provided that as to any such disclosure, the following requirements are met:
  - 2.1.3.1. The disclosure is required by law; or
  - 2.1.3.2. Each party obtains reasonable assurances from the person to whom the information 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 BA of any instances of which it is aware in which the confidentiality of the PHI and/or PII has been breached.

2.1.4. Each party will implement appropriate safeguards to prevent use or disclosure of PHI and PII.

2.1.5. The Secretary of Health and Human Services will have the right to audit each party's records and providers related to use and disclosure of PHI to ensure each party's compliance with the terms of the HIPAA Rules. Each party will report to the other party any use or disclosure of PHI which is not in compliance with the terms of this Agreement or which it becomes aware.

2.2. Covered Entity will not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by a Covered Entity itself (unless otherwise expressly permitted under HIPAA for a Business Associate).

2.3. In connection with Covered Entity's management and administration of its health care services to patients, Covered Entity is responsible for using the available controls within the PTeliteFit to support its HIPAA compliance requirements, including reviewing the HIPAA implementation guide and enforcing appropriate controls to support Covered Entity's HIPAA compliance.

2.4. Covered Entity will not use PTeliteFit to create, receive, maintain or transmit PHI or ePHI to other third-parties, except where BA has expressly entered into a separate HIPAA business associate agreement for use of PHI or ePHI to fulfil PTeliteFit service.

2.5. Covered Entity takes appropriate measures to limit its use of PHI and PII to carry out its authorized use of said information.

2.6. Covered Entity agrees that BA has no obligation to protect PHI or PII under this Agreement to the extent Covered Entity creates, receives, maintains, or transmits such PHI outside of the authorized use of such PHI and PII.

### **3. APPROPRIATE SAFEGUARDS**

3.1. BA and Covered Entity will use appropriate safeguards designed to prevent against unauthorized use or disclosure of PHI and ePHI consistent with HIPAA Rules, and as otherwise required under the Security Rule, with respect to such PHI and ePHI.

### **4. REPORTING**

4.1. BA will promptly notify Covered Entity following the discovery of a breach resulting in the unauthorized use or disclosure of PHI, ePHI or PII in violation of this Agreement in the most expedient time possible under the circumstances, consistent with the legitimate needs of applicable law enforcement and applicable laws, and after taking any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the services

system by using commercially reasonable efforts to mitigate any further harmful effects to the extent practicable.

4.2. BA will send any applicable breach notifications to the Notification Email Address (as such contact is designated in the services by Covered Entity) or via direct communication with the Covered Entity. For clarity, **COVERED ENTITY AND NOT BA IS RESPONSIBLE FOR DETERMINING AND MANAGING WHETHER ITS PATIENTS ARE AUTHORIZED TO CREATE, RECEIVE, MAINTAIN OR TRANSMIT PHI AND EPHI WITHIN THE SERVICES AND BA WILL HAVE NO OBLIGATIONS RELATING THERETO.**

4.3. Both parties agree that this Agreement will be deemed as notice to Covered Entity that BA periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of BA's PTeliteFit App and other related services and even if such events are defined as a Security Incident under HIPAA, BA will not provide any further notice regarding such unsuccessful attempts.

## **5. AGENTS AND SUBCONTRACTORS**

5.1. BA will take appropriate measures to ensure that any agents and subcontractors used by BA to perform its obligations under the Agreement that require access to PHI, ePHI and PII on behalf of BA are bound by written obligations that provide the same material level of protection for PHI, ePHI and PII as this Agreement. To the extent BA uses agents and subcontractors in its performance of obligations hereunder, BA will remain responsible for their performance as if performed by BA itself under the Agreement.

## **6. ACCOUNTING RIGHTS**

6.1. Via the PTeliteFit App, BA will make available to Covered Entity the PHI and PII necessary so that Covered Entity may fulfil its obligation to give health care requests information to users of the PTeliteFit App as they request it, including, but not limited to, appointment times and dates, diagnosis, medications, test results, etc. This information will be provided in compliance with the requirements of HIPAA. Covered Entity is responsible for managing its use of PTeliteFit App to appropriately respond to individual health care requests and information.

## **7. ACCESS TO RECORDS**

7.1. To the extent required by law, and subject to applicable attorney-client privileges, BA will make its internal providers, books, and records concerning the use and disclosure of PHI and ePHI received from Covered Entity, or created or received by BA on behalf of Covered

Entity, available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for the purpose of the Secretary determining compliance with this Agreement.

## **8. RETURN/DESTRUCTION OF INFORMATION**

8.1. BA agrees that upon termination of this Agreement, BA will return or destroy all PHI and ePHI received from Covered Entity, or created or received by BA on behalf of Covered Entity, which BA still maintains under the Agreement provided, however, that if such return or destruction is not feasible, BA will extend the protections of this Agreement to the PHI and ePHI not returned or destroyed and limit further uses and disclosures to those purposes that make the return or destruction of the PHI or ePHI infeasible. In the event this Agreement is terminated earlier than the underlying Agreement, Covered Entity may continue to use the PTeliteFit App in accordance with the Agreement, but must delete or otherwise destroy any PHI it maintains in the PTeliteFit and cease to create, receive, maintain or transmit such PHI or ePHI to BA or within the PTeliteFit.

## **9. BREACH/CURE**

9.1. Either party may immediately terminate this Agreement upon ten (10) calendar days written notice to the other party if other party has materially breached this Agreement and such breach is not reasonably capable of being cured.

## **10. TERM AND TERMINATION**

10.1. This Agreement will expire upon the earlier of:

- 10.1.1. a permitted termination in accordance with this Agreement;
- 10.1.2. the natural expiration or termination of the existing Agreement; or
- 10.1.3. the execution of an updated Agreement that supersedes this Agreement.

10.2. Upon termination of this Agreement, each party must destroy all PHI and PII that is in position in any form and retain no copies of such information, or if such return or destruction is not feasible, to extend the protection of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information complete.

## **11. GENERAL PROVISIONS**

### **11.1. AMENDMENT**

11.1.1. No alteration, amendment, or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by both the parties.

### **11.2. GOVERNING LAW AND JURISDICTION**

11.2.1. This Agreement is governed by and construed in accordance with the Laws of USA.

Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts in USA, with the jurisdiction being the home jurisdiction of BA.

11.3. **SEVERABILITY**

11.3.1. In case any one or more of the provisions contained in this Agreement may for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.