

Business Associate Agreement

1. **Term.** This Agreement shall remain in effect for the duration of any use of the Physiotrax software by any user and shall apply to all of the services and or supplies delivered by the Business Associate pursuant to this agreement.
2. **HIPAA Assurances.** In the event Business Associate creates, receives, maintains or otherwise is exposed to personally identifiable or aggregate patient or other medical information defined as Protected Health Information (“PHI”) in the Health Insurance Portability and Accountability Act of 1996 or its relevant delegations (“HIPAA”) and otherwise meets the definition of Business Associate as defined in the HIPAA Privacy Standards (45 C.F.R. Parts 160 and 164), Business Associate Shall:
 - a. Recognize that HITECH (the Health Information Technology for Economic and Clinical Health Act of 2009) and the regulations thereunder (including 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316), apply to a business associate of a covered entity the same manner that such sections apply to the covered entity;
 - b. Not use or further disclose the PHI, except as permitted by law;
 - c. Not use or Further Disclose the PHI in a manner that would violate the requirement of HIPAA;
 - d. Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for electronic PHI) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;
 - e. Comply with each applicable requirements of 45 C.F.R. Part 162 if the Business Associate conducts Standard Transactions for or on behalf of the Covered Entity.
 - f. Promptly report to Physiotrax any security incident or other use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware;
 - g. Ensure that any subcontractors or agents who receive or are exposed to PHI (Whether electronic or other format) are explained the Business Associate obligations under this paragraph and agree to the same restrictions and conditions;
 - h. Make available PHI in accordance with the individual’s rights as required under the HIPAA regulations;
 - i. Account for PHI disclosures for up to the past six (6) years as requested by Covered Entity, which shall include: (1) Dates of disclosure, (names of the entities or persons who received the PHI, (3) a brief description of the PHI disclosed, and (4) a brief statement of the purpose and basis of such disclosure;
 - j. Make its internal practices, books, and records that relate to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for purposes of determining Customer’s compliance with HIPAA; and
 - k. Incorporate any amendments or corrections to PHI when notified by Customer or enter into a Business Associate Agreement or other necessary Agreements to comply with HIPAA.
3. **Termination upon Breach of Provisions.** Notwithstanding any other provision of this Agreement, Physiotrax or Covered Entity may immediately terminate this Agreement if it determines that Business Associate breaches any term in this Agreement. Alternatively, Physiotrax or Covered Entity may give written notice to Business Associate in the even of a breach and give Business Associate five (5) business days to cure such breach. Physiotrax or

Covered Entity shall also have the option to immediately stop all further disclosures of PHI to Business Associate if Physiotrax or Covered Entity reasonably determines that Business Associate has breached its obligations under this Agreement. In the event that termination of this Agreement and the Agreement is not feasible, Business Associate hereby Acknowledges that Physiotrax or the Covered Entity shall be required to report the breach to the Secretary of the U.S. Department of Health and Human Services, notwithstanding any other provision of this Agreement or Agreement of the contrary.

4. **Return or Destruction of Protected Health Information upon Termination.** Upon the termination of this Agreement, unless otherwise directed by Physiotrax or Covered Entity, Business Associate shall either return or destroy all PHI received from Physiotrax or Covered Entity or created or received by Business Associate on behalf of Physiotrax or Covered Entity in which Business Associate maintains in any form. Business Associate shall not retain any copies of such PHI. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible upon termination of this Agreement, Business Associate shall provide to Physiotrax or Covered Entity notification of the condition that makes return or destruction infeasible. To the extent that it is not feasible for Business Associate to return or destroy such PHI, the terms and provisions of this Agreement shall survive such termination or expiration and such PHI shall be used or disclosed solely as permitted by law for so long as Business Associate maintains such Protected Health Information.
5. **No Third Party Beneficiaries.** The parties agree that the terms of this Agreement shall apply only to themselves and are not for the benefit of any third party beneficiaries.
6. **De-Identified Data.** Notwithstanding the provisions of this Agreement, Business Associate and its subcontractors may disclose non-personally identifiable information provided that the disclosed information does not include a key or other mechanism that would enable the information to be identified.
7. **Amendment.** Business Associate and Physiotrax or Covered Entity agree to amend this Agreement to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions, The Security Standards, or other relevant state or federal laws or regulations created or amended to protect the privacy of patient information. All such amendments shall be made in writing and signed by both parties.
8. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Physiotrax or Covered Entity to comply with the then most current version of HIPAA and the HIPAA privacy regulations.
9. **Definitions.** Capitalized terms used in this Agreement shall have the meanings assigned to them as outlined in HIPAA and its related regulations.
10. **Survival.** The obligations imposed by this Agreement shall survive any expiration or termination of this Agreement.