

# Business Associate Agreement

This Business Associate Agreement ("Agreement") is made by and between Wellvibe, LLC, an Ohio Corporation ("Wellvibe") and \_\_\_\_\_ ("Vendor"), effective as of \_\_\_\_/\_\_\_\_/\_\_\_\_ (the "Effective Date") (hereinafter, each individually is referred to as "Party" or collectively as the "Parties").

## RECITALS:

WHEREAS, Wellvibe has entered into a contract with various entities ("Clients") under which Wellvibe will provide data aggregation and tracking services ("Services") for the Clients and that may involve protected health information ("PHI") as that term is defined under the Privacy Regulations; and WHEREAS, this Agreement is intended to: (i) protect the privacy of Individually Identifiable Health Information; (ii) protect the security of Electronic Protected Health Information; (iii) comply with the business associate contract requirements and regulations of the Privacy Rule issued by the Department of Health and Human Services, and the business associate contract requirements and regulations of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and

WHEREAS, the Parties acknowledge that the Vendor in the course of providing services to Wellvibe pursuant to any Master Subscription Agreement for Services by and between Wellvibe and its Client's, may cause the Parties to create, store, distribute, or receive Protected Health Information on behalf of Clients, and as such shall require each Party to agree to and comply with the same restrictions and conditions that apply to Business Associate's with respect to the use and disclosure of such Protected Health Information.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements the Parties agree as follows:

### 1. Authorized Uses or Disclosures of PHI

Wellvibe will use or disclose PHI only for the following purposes, or as required by law: Data aggregation and PHI data analysis for various wellness events and any other lawfully permitted use or disclosure including, but not limited to, providing summary health information and de-identified health information to the Clients in accordance with the privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended.

### 2. Definitions

As used in this Agreement the term "Breach", per Section 13400 of the Health Information Technology for Economic and Clinical Health provisions of the American Recovery and Reinvestment Act of 2009, (the "HITECH Act"), and as further defined in the Privacy Regulations at 45 CFR 164.400 et seq, means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Regulations, which compromises the security or privacy of such information, posing a significant risk of financial, reputational, or other harm to the individual. The term "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, and any amendments thereto.

## Definitions (continued)

The terms “Privacy Regulations” and “Security Regulations” refer to all of the regulations in effect from time to time issued pursuant to HIPAA and applicable to the privacy or the security of Individually Identifiable Health Information (found at Title 45, Code of Federal Regulations (CFR) Parts 160, 162, and 164). All other capitalized terms used but not otherwise defined in this Agreement will have the same meaning as those terms defined in the HIPAA regulations or any successor law.

### 3. HIPAA Compliance

As per the requirements of the HITECH Act, Wellvibe agrees to comply with Section 164.504(e) of the Privacy Regulations, and the Administrative, Physical and Technical Safeguards, as well as Policies and Procedures and Documentation Requirements set forth at 45 CFR 164.308, 164.310, 164.312 and 164.316 of the Security Regulations of HIPAA, as they may be amended from time to time, in its role as a Business Associate of Vendor.

### 4. Duties related to PHI

a. Disclosure. In accordance with the purposes of this Agreement, Vendor will disclose to Wellvibe, or Wellvibe will receive on behalf of Vendor, and Wellvibe will use, disclose, store, and/or create Protected Health Information (hereinafter called “PHI”) only on behalf of Vendor for Treatment, Payment, or Health Care Operations purposes of Vendor for the specific purposes set forth in this Agreement. Wellvibe will implement appropriate safeguards to prevent the use or disclosure of an Individual’s PHI other than as provided for by this Agreement.

b. Use. Wellvibe agrees not to: (i) use or further disclose any PHI or Individually Identifiable Health Information received from Vendor, or created by Wellvibe, other than as permitted by this Agreement or as required by applicable law or regulations; (ii) Wellvibe will only use or disclose the Minimum Necessary PHI to accomplish the intended purpose of its uses or disclosures.

c. Access. Wellvibe agrees to: (i) provide access by an Individual to the Individual’s PHI upon the request of that Individual; (ii) make any amendments to an Individual’s PHI as directed by that Individual; (iii) maintain a record of accountable disclosures of PHI as required for Vendor to make an accounting to the Individual as required by the Privacy Regulations; (iv) make its internal practices, books, and records relating to the use and disclosure of an Individual’s PHI available to the Secretary of Health and Human Services and to Vendor to the extent required for determining compliance with this Agreement, the Privacy Regulations, and the Security Regulations.

d. Reporting. Wellvibe will promptly report to Vendor any use or disclosure of an Individual’s PHI not provided for by this Agreement or any Security Incident (as that term is defined in the Security Regulations) of which Wellvibe becomes aware.

e. Sub-agents or Sub-vendors. In the event Wellvibe contracts with any sub-agents or sub-vendors and provides them with any PHI or Individually Identifiable Health Information, Wellvibe will include provisions in its agreements whereby the sub-agent or sub-vendor agrees to the same restrictions and conditions that apply to Wellvibe with respect to PHI and Individually Identifiable Health Information.

f. Security. Wellvibe will implement and maintain throughout the term of this Agreement security policies, procedures, and practices, as well as administrative, physical and technical safeguards that reasonably and adequately protect the confidentiality, integrity, and availability of the PHI that it receives and maintains on behalf of Vendor (“Wellvibe Safeguards”), and Wellvibe will require its sub-agents or sub-vendors (if any) to adopt Wellvibe Safeguards that are equally appropriate. Vendor is relying on the adequacy of the Wellvibe Safeguards, and the failure of such Wellvibe Safeguards will constitute a material breach of this Agreement.

g. Mitigation. Wellvibe will attempt to mitigate any harm caused by its breach of the Agreement that is directly attributable to the acts or omissions of Wellvibe for uses or disclosures in violation of the Agreement.

#### 4. Notification in Case of Breach

In the case of the unauthorized acquisition, access, use or disclosure of PHI constituting a Breach, following the discovery of any such Breach Wellvibe will promptly (no later than 10 days after determining that a breach has occurred): (i) notify Vendor’s Privacy Officer via email that a Breach has occurred; and (ii) send a notice of the Breach in writing. The initial notification will identify the nature of the breach, as required by the Privacy Regulations, including without limitation: a description of what happened; the date of the breach; and specific elements of PHI that were subject to the breach.

a. Wellvibe agrees to work promptly and perform as reasonably required to: (i) identify all individuals whose PHI has been breached; (ii) ensure that the cause giving rise to the breach has been remediated; and (iii) gather any other information reasonably required to comply with the Privacy Regulations and to address the breach.

b. Vendor agrees to notify Wellvibe of: (i) any limitations in its Notice of Privacy Practices (ii) any changes in, or revocation of permission by Individuals to use PHI, and (iii) any restriction to the use or disclosure of PHI that have been agreed to, to the extent such actions may affect Wellvibe’s obligations hereunder.

c. Notices will be sent by e-mail and in writing to the following addresses:

Notice to Wellvibe  
Contact: Ed Johnes  
E-mail: legal@wellvibe.com  
Title: Chief Executive Officer  
Mailing Address: 3931 South Dixie Drive  
Dayton, OH 45439  
Phone: 800.499.1286

E-mail: Notice to Vendor  
Contact:  
Title:  
Mailing Address:  
Phone:

#### 7. Indemnification.

The Parties mutually agreed to indemnify, defend, and hold each other harmless, including their respective subsidiaries and affiliates, and their respective officers, directors, agents and employees from and against any and all losses, costs, claims, suits, fines, penalties, damages, liabilities and expenses (including reasonable attorneys' fees and costs) based upon, arising out of or attributable to any violation of any provision of HIPAA caused by the other's acts or omissions, including without limitation, any unauthorized acquisition, access, use or disclosure of any individual's PHI.

#### 8. Term and Termination

a. This Agreement will become effective as of the Effective Date.

b. This Agreement will terminate immediately upon the termination of the agreement by and between Wellvibe and Wellvibe's Client or if Vendor determines that Wellvibe has violated a material term of this Agreement, or applicable law, that is not cured within thirty (30) calendar days after delivery of notice of the specific violation(s) to Wellvibe. In the event of such a violation, Vendor, in its sole discretion, may report the breach to the Secretary.

c. Upon termination of this Agreement for any reason, Wellvibe and its sub-agents or sub-vendors agree to return or to destroy all PHI and retain no copies (and to certify to such actions) unless otherwise agreed to by Vendor due to the infeasibility of returning or destroying such PHI. If Wellvibe retains PHI due to infeasibility, Wellvibe will extend the protections of this Agreement to the PHI that Wellvibe maintains at no additional cost to Vendor.

#### 9. Benefit

This Agreement is not intended to create any right in, or obligations to, any person or entity that is not a party to this Agreement, including Individuals.

#### 10. Amendment

This Agreement may only be amended in a writing signed by Vendor and Wellvibe; however this Agreement will be automatically amended to conform to any applicable regulatory changes or amendments to HIPAA. Wellvibe and Vendor agree to amend this Agreement in such manner as Vendor deems necessary to comply with any amendment of: (i) HIPAA or other applicable law, (ii) the Privacy Regulations, the Security Regulations, or other applicable regulations, or (iii) any applicable court decision, or binding governmental policy or opinion. If the parties are unable to agree on an amendment within 30 days of notice from Vendor to Wellvibe of the requirement to amend the Agreement, Vendor may, at its option, terminate this Agreement.

#### 11. Governing Law

This Agreement will be governed by the laws of the State of Ohio without giving effect to the conflict of law principles thereof. In the event of any litigation arising out of this Agreement each Party unconditionally and irrevocably waives the right to a jury trial and disputes will be resolved in Dayton, Ohio.

#### 12. No Waiver

No waiver of any term of this Agreement will be construed as a waiver of any other term. In addition, no failure to exercise any right or demand performance of any obligation under this Agreement will be deemed a waiver of such right or obligation.

#### 13. Survival

Those sections, which by the nature of their terms are intended to survive termination, or that contemplate performance or observance after termination of this Agreement, will survive the termination or expiration of this Agreement, including without limitation, this Section and Sections 3, 4, 5, 6, 7 and 11.

#### 14. Integration and Interpretation

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Vendor to comply with the Privacy Regulations and the Security Regulations.



**Agreement Authorization Wellvibe, LLC**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Agreement Authorization Vendor**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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