

## BUSINESS ASSOCIATE AGREEMENT

This business associate agreement is effective as of the date of acceptance set forth on the final page of this agreement and is made between Zoom Video Communications, Inc., located at 55 Almaden Blvd, Suite 600, San Jose, CA 95113 ("**Zoom**" herein) and the organization identified and entered into Zoom's systems by its representative and set forth on the final page of this agreement ("**Company**" herein).

### RECITALS

Company is a HIPAA Covered Entity or Business Associate. Company and Zoom will engage in a business relationship in which Zoom provides certain Services to Company. In this relationship, Zoom may receive, use, maintain, disclose, or otherwise process PHI as a Business Associate for or on behalf of Company in the course of performing such Services.

The parties to this agreement hereby agree as follows:

- 1. Definitions.** All capitalized terms used but not otherwise defined in this agreement will have the meaning ascribed to them by the HIPAA Laws.

"**Affiliate**" means, with respect to a party, any entity that directly or indirectly controls, is controlled by or is under common control with that party. For purposes of this agreement, "control" means an economic or voting interest of at least fifty percent (50%) or, in the absence of such economic or voting interest, the power to direct or cause the direction of the management and set the policies of such entity.

"**HIPAA Laws**" collectively mean the Health Insurance Portability and Accountability Act, and the Health Information Technology for Economic and Clinical Health ("**HITECH**") Act, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164 (the "**Privacy Rule**"), and the Standards for the Security of Electronic PHI, C.F.R. at Title 45, Parts 160 and 164 (the "**Security Rule**") as modified, supplemented, and amended from time to time.

"**PHI**" has the meaning specified in 45 C.F.R. § 160.103 of HIPAA, limited to such protected health information that is received by Zoom from, or created, received, maintained, or transmitted by Zoom on behalf of, Company through Company's use of the Services pursuant to this agreement. All references to PHI in this agreement will include Electronic PHI, as applicable under the HIPAA Laws.

"**Security**" or "**Security Measures**" mean the administrative, physical, and technical safeguards and documentation requirements specified in the Security Rule.

"**Services**" mean the unified communications services or other services provided by Zoom to Company by contract whereby Zoom is creating, receiving, maintaining, or transmitting PHI.

- 2. Permitted Uses and Disclosures of PHI**

- 2.1. Performance of the Agreement for Zoom Services** Zoom shall not Use or Disclose PHI other than as permitted or required by this agreement or as Required by Law. Zoom may Use or Disclose PHI to perform functions, activities, or services for or on behalf of the Company in connection with the Services including, without limitation, the

provision of maintenance and support services, provided such Use or Disclosure would not violate HIPAA Laws if done by the Company, unless expressly permitted as set forth below in Section 2.2.

**2.2. Management, Administration, and Legal Responsibilities** Except as otherwise limited in this agreement, Zoom may Use and Disclose PHI for the proper management and administration of Zoom, or to carry out the legal responsibilities of Zoom, or both provided that any Disclosure may occur only if: (a) Required by Law; or (b) Zoom obtains 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 Zoom of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

### 3. Responsibilities with Respect to PHI

**3.1. Zoom's Responsibilities** Zoom agrees to the following:

**3.1.1. Limitations on Use, Disclosure, and Sale** Zoom will only use the minimum necessary PHI for the proper management and administration of Zoom's business specific purposes, or to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1). Zoom shall not engage in the sale of PHI.

**3.1.2. Safeguards** Zoom shall: (a) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of PHI other than as provided for in this agreement; and (b) comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C of the Security Rule.

**3.1.3. Subcontractors** Zoom may use Subcontractors to fulfill its obligations under this agreement. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Zoom shall require its Subcontractors who create, receive, maintain, or transmit PHI on behalf of Zoom to agree in writing to:

(a) substantively the same or more stringent restrictions and conditions that apply to Zoom with respect to such PHI;

(b) appropriately safeguard the PHI; and

(c) comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C of the Security Rule.

**3.1.4. Reporting to Company** Zoom shall report to Company:

(a) any Use or Disclosure of PHI that is not permitted or required by this agreement, of which Zoom becomes aware;

(b) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents (as defined below) and no further notice of such Unsuccessful Security Incidents will be given; or

(c) any Breach of Company's Unsecured PHI that Zoom may discover (in accordance with 45 C.F.R. § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than ten (10) business days after Zoom's discovery of a Breach. Notification of a successful Security Incident or other impermissible Use or Disclosure of PHI by Zoom or its Subcontractors will be made without unreasonable delay, but in no event more than fifteen (15) business days after Zoom's discovery thereof.

**3.1.5. Unsuccessful Security Incidents** For purposes of this Section, “**Unsuccessful Security Incidents**” mean, without limitation, pings and other broadcast attacks on Zoom’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of PHI.

**3.1.6. Disclosures to the Secretary** Zoom shall make internal practices, books, and records relating to the Use and Disclosure of PHI available to the Company or the Secretary in a time and manner designated by the Company or the Secretary, for the purposes of the Secretary determining Company’s or Zoom’s compliance with the HIPAA Laws. Nothing in this Section 3.1.6 waives any applicable attorney client privilege, work product, confidentiality, or other proprietary right or legal protection.

**3.1.7. Access and Amendment** The Services do not include the ability to create or maintain a Designated Record Set. If the Company requires access to or amendment of a Designated Record Set, Company shall directly perform such actions, without the assistance of Zoom.

**3.1.8. Accounting of Disclosures** Zoom, at the request of Company, shall make available to Company, and in the time and manner designated as reasonably requested by Company, such information relating to Disclosures made by Zoom as required for Company to make any requested accounting of Disclosures in accordance with 45 C.F.R. § 164.528.

**3.1.9. Privacy Rule and Security Rule Compliance** Zoom shall comply with the Privacy Rule in the performance of its obligations under this agreement with respect to the Services, to the extent the Privacy Rule expressly applies to Zoom under this agreement or as Required by Law. Zoom shall comply with the Security Rule with respect to PHI.

### **3.2. Company’s Responsibilities**

**3.2.1. No Impermissible Requests** Company shall not request Zoom to Use or Disclose PHI in any manner that would not be permissible under HIPAA Laws if done by a Covered Entity (unless permitted by HIPAA Laws for a Business Associate).

**3.2.2. Contact Information for Notices** Company hereby agrees that any reports, notification, or other notice by Zoom pursuant to this agreement may be made electronically to the Company contact specified on record in Company’s account information. Company shall ensure that such contact information remains up to date during the term of this agreement. Failure to submit and maintain current contact information may delay Zoom’s ability to provide Breach notification under this agreement.

**3.2.3. Safeguards and Appropriate Use of PHI** Company shall take reasonable steps to limit the PHI made available through the use of the Services to the minimum necessary. Company is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with the HIPAA Laws. Without limitation, it is Company’s obligation to exclude PHI from information Company submits to technical support personnel through a technical support request. Company is solely responsible for ensuring the PHI it transmits via Zoom may be legally disclosed to the communications recipient(s).

**3.2.4. Communicating Changes to Zoom** Company shall notify Zoom of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Zoom’s use or disclosure of PHI.

**3.2.5. Communicating Restrictions to Zoom** Company shall notify Zoom of any restriction to the use or disclosure of PHI that Company has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Zoom's use or disclosure of PHI.

**3.2.6. Communicating Restrictions in Notices of Privacy Practices to Zoom** Company shall notify Zoom of any limitation(s) in any applicable notice of privacy practices in accordance with 45 C.F.R. Section § 164.520, to the extent that such limitation may affect Zoom's use or disclosure of PHI.

#### **4. Term and Termination.**

**4.1. Term** The term of this agreement begins as of the date of acceptance set forth below and terminates automatically upon termination of all Services that require a business associate agreement under the HIPAA Laws, unless terminated sooner by Company or Zoom in accordance with Section 4.2.

#### **4.2. Termination for Breach**

**4.2.1. Termination for Breach by Company** Upon Company's knowledge of a material breach of this agreement by Zoom, Company shall either:

- (a) Provide an opportunity for Zoom to cure the breach or end the violation within a reasonable time specified by Company and, if Zoom does not cure the breach or end the violation timely, terminate this agreement and the associated Services;
- (b) Immediately terminate this agreement and the associated Services if Zoom has breached a material term of this agreement and cure is not possible; or
- (c) If neither terminating this agreement nor curing the breach is feasible, Company shall report the violation to the Secretary.

**4.2.2. Termination for Breach by Zoom** If Zoom knows of a pattern of activity or practice of the Company that constitutes a material breach or violation of the Company's obligations under this agreement, Zoom must take reasonable steps to notify Company to cure the material breach or end the violation. If the steps are unsuccessful, Zoom may either:

- (a) Terminate this agreement; or
- (b) If termination of this agreement is not feasible, report the problem to the Secretary of the Department of Health and Human Services.

#### **5. Post-Termination Obligations**

**5.1. Return, Destruction, or Retention of PHI Upon Termination** Except as provided in Section 5.2 below, upon any termination or expiration of this agreement, Zoom shall return or destroy all PHI received from Company, or created or received by Zoom on behalf of Company. The parties intend for this provision to apply to PHI that is in the possession of Subcontractors or agents of Zoom. Zoom shall retain no copies of the PHI. Notwithstanding the foregoing, Zoom may retain a copy of PHI received from, or created or received by Zoom for or on behalf of Company as necessary for Zoom to continue its proper management and administration or to carry out its legal responsibilities, provided that Zoom extends the protections of this agreement to such PHI.

**5.2. Notice When Return or Destruction is Infeasible** In the event that Zoom determines that returning or destroying the PHI is infeasible, Zoom shall notify Company of the conditions that make return or destruction infeasible. Zoom shall extend the protections of this agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Zoom maintains such PHI.

**6. Limitation of Liability** ZOOM'S TOTAL AND AGGREGATE LIABILITY TO CUSTOMER FOR ALL DAMAGES ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT CAUSED BY ZOOM WILL NOT EXCEED TEN THOUSAND DOLLARS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY AND OTHER TORTS. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

**7. Notices** For legal notices under this agreement to be effective, including without limitation any Breach notification, the party providing notice must do so in writing and deliver the notice via electronic mail to the following addresses:

(a) If to Zoom, to [privacy@zoom.us](mailto:privacy@zoom.us); Attention: Privacy Officer. A copy of all notices must be sent to [legal@zoom.us](mailto:legal@zoom.us); and

(b) If to Company, to the contact information specified on record in Company's account information with a copy to the address in the introductory paragraph to this agreement.

## **8. Miscellaneous**

**8.1. No Agency Relationship** The parties do not intend for this agreement to create an express or implicit agency relationship in accordance with federal or state common law of agency. Each party is intended to be an independent contractor and no agency

**8.2. No Third-Rights or Remedies** This agreement does not and is not intended to confer any enforceable rights or remedies upon any person other than Zoom and Company.

**8.3. References** A reference in this agreement to a section in the Privacy Rule or Security Rule means the section that is currently in effect.

**8.4. Assignment** No party may assign its rights or delegate any of its obligations under this agreement without the prior written consent of the other party, except that all rights and obligations may be assigned and transferred without such consent to an Affiliate, to a successor by merger, or to the acquirer of all or substantially all of the assets of the assigning party. Any purported assignment or transfer in violation of this section is null and void. No party may unreasonably withhold, condition, or delay consent to an assignment. This agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

**8.5. Amendments; Waiver** Without undue delay, the parties shall take such action as is necessary to amend this agreement from time to time to allow for Company and Zoom to comply with the requirements of the HIPAA Laws. No amendment or modification of this agreement will be deemed binding unless set forth in a written instrument, duly executed by the parties. No provision in this agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

**8.6. Ambiguity** The parties intend that any ambiguity in this agreement will be resolved and interpreted as closely as possible to meet the intent of the parties and to permit Company and Zoom to comply with HIPAA Laws.

- 8.7. Merger; Conflicts** The parties intend for this agreement to constitute the final agreement between the parties, and that it is the complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior or contemporaneous writings, negotiations, and discussions between the parties with respect to its subject matter are expressly merged and superseded by this agreement. In entering into this agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this agreement. In the event of a conflict between any other agreement between the parties and this agreement with respect to the subject matter of this agreement the terms of this agreement will control.
- 8.8. Severability** If any provision of this agreement is determined to be invalid, illegal, or unenforceable, the parties to not intend for this determination to affect or impair the validity, legality, and enforceability of the remaining provisions of this agreement in any way.
- 8.9. Governing Law; Forum Selection** The laws of the State of California, without giving effect to its conflict of laws principles, govern all matters arising out of or relating to this agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this agreement must bring the legal action or proceeding under the exclusive and mandatory jurisdiction of the courts located in Santa Clara, California.
- 8.10. Electronic and Digital Signatures.** This agreement may be signed electronically, whether by digital signature, typed name, click acceptance of the agreement, or any other electronic means. Any signature made electronically is the legally binding equivalent of an original, handwritten signature.

**Accepted and agreed to by a duly authorized representative of Company as set forth below:**

Company: Impact: Medical Weight Loss Partners

Name: Jackie Paauw

Acceptance Date: Jul 15, 2024