

BSDI V10 Suite Software License and Support Agreement

Brittingham Software Design, Inc. ("BSDI"), 6 Kellie Court, Califon, N.J. 07830, agrees to provide the Customer, a non-transferable and non-exclusive license to use the Software, as defined below, at its facility(ies). The following states the license agreement that governs use of the Software.

Definitions:

“Customer” refers to the organization purchasing the Software and accepting this agreement. In various places in this Agreement, the Customer may be referred to as “you” or “your” with no loss of generality with respect to the original definition of “Customer.”

“Clients” are the people whose data you or your staff enter into any BSDI software system and those who enter their own data whether or not they do so with your explicit knowledge or permission. “Clients” shall also include any other individual to whom you provide “Services” as defined below but who are not explicitly entered into a BSDI software system. “Clients” and “Participants” are used interchangeably and should be interpreted as the same entity as defined here.

“Services” includes but is not limited to medical, lifestyle, nutritional, health and/or fitness advice, treatment or recommendations, exercises and exercise programs, incentive programs, fitness assessments, invoices and/or sales receipts, automatic charges or account histories; all of which are included whether they be printed, written, displayed electronically or spoken. “Services” explicitly includes the recommendation of and the recording of client activities and activity levels, durations, and intensities either by you, your staff or the clients themselves.

“BSDI” is the long-established trade name for “Brittingham Software Design, Inc.” and shall be used in its place throughout this document. In various places in this Agreement, BSDI may be referred to as “we” or “our” with no loss of generality with respect to the original definition of “BSDI.”

“Software” includes the Fitness Analyst™, Retention Manager® and Check-In® Windows application programs and the Motivation® web application software, supporting documents, configuration files, utilities, help systems and all other electronically delivered content whether provided on physical media such as a Compact Disk or via the Internet. In various places in this Agreement, the Software may be referred to as the “V10 Suite” with no loss of generality with respect to the original definition of the “Software.” Should Customer be purchasing a subset of the products, Software shall apply only to the products they are purchasing.

“Windows Software” includes just the windows application programs: Fitness Analyst™, Retention Manager® and Check-In® and their supporting documents, configuration files, utilities, help systems and all other electronically delivered content whether provided on physical media such as a Compact Disk or via the Internet.

“Recurring Service License” is a service offered by BSDI under which BSDI hosts the Customer’s database and, optionally, their Motivation web site on a server hosted on the Internet. Customers using the Windows software can access the database via the Internet. “Recurring Service License” pertains strictly to the provision of the service on a remote server and does not include either explicitly or by default or assumption the provision of the Internet connectivity needed to access this server, the provision of which is strictly the responsibility of the user.

“Support” is a service offered by BSDI under which BSDI provides advice regarding the proper installation and use of the software as described below in Section 9.

“Full Release” is a release of the Software, designated by a new main Version number (X.n.n where X is the Version number), which BSDI determines at its sold discretion, not to make available without additional charge to its existing customers.

“Point Release” is a release of Software, designated by a new point Version number (n.X.X where X are the point release numbers) that alters, improves or fixes errors in an existing Full Release and which is available at no charge to Customers on BSDI’s Support plan.

1 Software License

1.1 Permitted Uses of the Software

- (a) You may use the Windows Software at the facilities (physical locations) for which you have purchased facility licenses. Note that the initial purchase comes with a single facility license if you are hosting your own database. Customers on the Recurring Service License do not pay a facility license charge.
- (b) You may use the Windows Software on the seats (computers) for which you have purchased licenses. Installing the Windows Software on additional computers over and above the number of purchased seats is theft and will be treated as such. Note that the initial purchase entitles you to one seat for each product purchased.
- (c) If you have purchased a Recurring Services License, you may connect Windows Software to the database server up to the number of seat licenses purchased.
- (d) If you have purchased a license to host Motivation on your server(s), you may make Motivation available to Clients via an Internet browser.
- (e) You may modify the documents, reports and queries provided with the Windows Software to make them reflect your specific needs. BSDI takes no responsibility for maintaining, fixing or debugging problems with any reports or queries that you have altered; such changes are made at your sole risk. BSDI may offer recommendations regarding such changes as part of its normal technical support service without thereby incurring a further responsibility to maintain, fix or debug

such changes or in any other way reducing the rights granted BSDI under this paragraph.

- (f) You may enter new clients into the system manually, automatically via data import, or via the Motivation self-enrollment feature. You may not, however, permit more Clients to be entered than are allowed by the “Client Limit” set at the time of purchase or subsequent upgrade. This Client Limit is shown in Exhibit A of this agreement and/or on your sales receipt or invoice.
- (g) If purchased, you may modify the “.aspx” and “.config” files included as part of Motivation, as applicable, so that it better fits with your desired graphical layout or operation. However, please be aware that modifications to the “.aspx” files will be overwritten if and when BSDI supplies an updated copy of the software. BSDI takes no responsibility for maintaining, fixing or debugging problems with any .config or .aspx file that you have altered; such changes are made at your sole risk. BSDI may offer recommendations regarding such changes as part of its normal technical support service without thereby incurring a further responsibility to maintain, fix or debug such changes or in any other way reducing the rights granted BSDI under this paragraph.

1.2 Prohibited Uses of the Software

Without the express written permission of BSDI:

- (a) You may not install the Windows Software at any more than the licensed number of facilities (physical locations) as described in Exhibit A or on your sales receipt or invoice.
- (b) You may not install the Windows Software on more seats (computers) than have been licensed as described in Exhibit A or on your sales receipt or invoice.
- (c) If applicable, you may not simultaneously connect more instances of the Windows Software to BSDI’s database server than you have licensed (seat licenses) as described in Exhibit A or on your sales receipt or invoice.
- (d) You may not sell, sub-license, rent, lease, give or lend copies of this Software or its component parts (e.g. exercise pictures) to others.
- (e) You may not disassemble, decompile, reverse engineer, or make any attempt to discover the source code of this Software.
- (f) You may not translate or create derivative works based on the Software.
- (g) You may not enter more than the permitted number of Clients as described in Exhibit A or on your sales receipt or invoice.
- (h) You may not share your Staff login account name(s) and/or password(s) with any other organization, entity, or person except for those individuals working directly or as paid consultants for your organization and who are cleared to view Personal Health Information as defined under the HIPAA regulations.

2 License Term and Payment

The Software may be purchased under a permanent license (where you host the database) or under a Recurring Service License (where we host the database). Both licenses are subject to the restrictions, warranties and conditions imposed by the remainder of this Agreement. After your purchase, you have the right to return the Software and/or cancel your service and receive a refund of the full purchase price if said return occurs within the first thirty (30) days after receipt of the Software. “Full purchase price” shall not include shipping costs or any custom work already completed by BSDI at Customer’s request; refunds on these two items are not available.

2.1 Initial Payment (permanent license, recurring service & support)

Upon purchase of Software and/or Support, Customer agrees to remit payment so that BSDI receives said payment within thirty (30) days of the initial invoice date for the Software.

2.2 Recurring Fees (recurring service & support)

If the Software is purchased under a Recurring Service License and/or the Customer purchases the Support plan, Customer agrees to pay a renewal fee each period (month or year as specified in Appendix A and/or on sales receipt or license). The Initial Term for these licenses is one period. Service for each period is pre-paid: payment covers the coming month or year period. This license shall renew automatically every period unless Customer requests termination. Any increase in the renewal fees shall not exceed 15% per year regardless of the period (month or year) and will be communicated by an invoice or other notice sent from BSDI at least 30 days before payment is due.

2.2.1 Annual Recurring Fees

Annual renewal payments are due within 30 days of Customer’s renewal date or 30 days of receipt of BSDI’s invoice, whichever is later. If Customer fails to pay within this 30 day period, BSDI may, at this time or at any later time and at its sole discretion, cancel the Support plan and/or Recurring Service License. BSDI’s failure to enforce this provision within 30 days does not constitute or imply that licenses are automatically extended for any time period; BSDI reserves the right to cancel these licenses at any point after payment has fallen into arrears.

Customer recognizes that BSDI does not offer pro-rated refunds on the Recurring Service Licenses and/or Support licenses even if the site or service is abandoned before a given year’s license has expired. Notwithstanding the above, you may return the Software and receive a refund of the full purchase price if said return occurs within the first thirty (30) days after receipt of the Software.

2.2.2 Monthly Recurring Fees

Customers electing to pay on a monthly basis must provide a credit card to be used for recurring payments and agree to permit BSDI to automatically charge said card on a monthly basis. In the event that Customer terminates this agreement, BSDI shall terminate the automatic billing of Customer’s credit card commencing at the next billing

period providing that such termination notice arrives no later than 7 days before the next billing period. Should a notice of termination arrive in less than 7 days before the next billing period, payment termination shall occur at the following billing interval.

Notwithstanding the above, the Customer agrees that the initial purchase of the Recurring Service License is always and only offered for a full year and that the first twelve (12) monthly payments must be paid in full to satisfy the terms under which the monthly payment plan is offered. Should Customer terminate this agreement before the first twelve (12) payments are charged, the remaining payments will become immediately due and Customer agrees that BSDI may charge their card the remaining fees at termination. If BSDI terminates this agreement, no further charges shall be made. After the first twelve (12) monthly payments, the Agreement may be terminated at any time as described above.

2.2.3 Other Terms

If a dispute arises regarding whether the technical support fee has been paid, BSDI shall not be obligated to provide support or service until the customer can provide reasonable proof of payment. If a dispute arises regarding the terms of this Agreement, BSDI shall not refuse requests for support and/or service unless or until the dispute is settled and either Customer exits the Support plan / Service or the Agreement is terminated.

At the time of renewal for a Recurring Service License, BSDI will assess the count of Clients in Customer's database. If this number exceeds your then-current Client capacity, your recurring fee shall be increased to cover the then-current price per Client per period.

3 Termination

This Agreement shall terminate upon the occurrence of any of the following events:

- (i) Upon mutual agreement of parties;
- (ii) Either party may terminate this Agreement, at any time, for any reason or no reason, upon thirty (30) calendar days prior written notice to the other party;
- (iii) Immediately upon written notice by the non-breaching party, in the event of the breach by the other party of any provision of this Agreement including a breach to the HIPAA Business Associate Agreement attached hereto as Exhibit B, and the failure of such party to cure such breach to the reasonable satisfaction of the non-breaching party within thirty (30) days of the receipt of a notice from the non-breaching party that specifies the nature of the breach;
- (iv) In the event that either party terminates or suspends its business, is adjudicated bankrupt, files a voluntary petition in bankruptcy, has a receiver appointed for it, or makes an assignment of the benefit of creditors, the other party may, at its option, within thirty (30) days after the occurrence of any of the above events, terminate this Agreement.
- (v) In the event that a Customer is paying for the Recurring Service License on a monthly payment plan and the Customer terminates this agreement before the first twelve (12) payments have been charged, Customer agrees that BSDI shall have the right to charge the remaining payments for the first year upon notice of termination.

4 Warranty

BSDI warrants that the Software performs its intended tasks and that the Compact Disk on which it is distributed, where applicable, will be free from physical and/or material defects for a period of 90 days from the date of purchase. If the Software does not conform to the operational specifications found in BSDI's system documentation and BSDI has not provided alternative or superior means for achieving the same or similar functionality, then BSDI will design, code, test and deliver amendments or alterations to the Software in order to bring it into conformance with the above-described sources or will provide alternative or superior means for achieving the target functionality within 60 days of notification of such nonconformities.

5 No Other Warranties and Limit of Liability

BSDI makes no other warranty or representation, either expressed or implied, with respect to the Software, Services or documentation, its quality, performance, merchantability, or fitness for a particular purpose. BSDI does not warrant that the Software is free from all bugs, errors or defects but it does warrant that such bugs, errors, defects will be repaired within 60 days once they have been brought to BSDI's attention. The classification of an event reported by a Customer as a bug, error or defect shall be at BSDI's sole discretion: the above clause shall not be construed in such a way as to imply that BSDI is required to add new or enhanced functionality at the demand of the Customer, such services being offered separately and under a custom development agreement.

Any and all implied warranties are excluded. BSDI shall not be liable with respect to the Software or otherwise for special, incidental, consequential, punitive, or exemplary damages even if advised of the possibility that such damages may arise from the operation of the Software. In no event shall liability for any reason and upon any cause of action whatsoever exceed the initial purchase price of the Software minus any payments for custom development. It is the Customer's sole responsibility to verify that BSDI's software fully meets their requirements.

BSDI's Software permits you to create, deliver and store Services for your Clients and it enables your clients to create and store Services and records for themselves. By installing the Software you agree to bear sole responsibility for the Services that you create and/or deliver to your Clients and for all Services that Clients may create for themselves and you agree that BSDI shall be held harmless in any litigation initiated by your Clients based on any Service created and/or delivered using the Software and/or its associated materials. By installing the Software, you knowingly accept sole and explicit responsibility for the outcomes that your Services produce including any adverse effects, injuries or deaths to you or your Clients even if the adverse affects from such Services could reasonably have been foreseen by BSDI.

By installing the Software, you acknowledge that you are aware that it does not and can not provide any insight into any Client's actual readiness for exercise or other care. While we provide feedback based on principles established by credible organizations and/or research, we have no means, mechanism or method for verifying the accuracy of your entries or those of your clients nor the suitability or applicability of any classifications or recommendations for any actual client. The suitability or applicability

of any classification or recommendation generated by the Software for an individual under your care must be independently evaluated by suitable personnel in your organization before such classification or recommendation is considered accurate and/or appropriate.

You acknowledge that BSDI does not provide mechanisms or means to warn you, your staff and/or your clients of all possible conditions, states, or injuries that may affect a Client's readiness for exercise or the possibility of adverse outcomes. BSDI provides no controls or limitations on the Services that you and/or your Clients create with the Software and we provide no means, methods or algorithms for detecting inappropriate Services nor do we provide a means, method or algorithm for detecting that your Clients are logging or otherwise recording an inappropriate exercise or level of activity. You are solely responsible for judging the appropriateness of the materials provided in the Software for any given client. You acknowledge that we do not recommend or encourage any Service for any given Client or for your Clients in general. There are mechanisms for bulk distribution of Services within the Software and, should you choose to make use of these mechanisms, you bear complete responsibility for assuring that each and every Client to whom such Services are delivered is an appropriate recipient.

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN BSDI AND YOU. BSDI WOULD NOT BE ABLE TO HAVE PROVIDED THIS SOFTWARE OR SERVICES WITHOUT SUCH LIMITATIONS.

6 Customer Remedies

If the Software fails to comply with the Limited Warranty set forth herein, BSDI's entire liability and your exclusive remedy will be, at BSDI's option, either (a) replacement or repair of the Software or (b) the refund of the initial purchase price or initial term payment for the Software minus any payments for custom development.

7 Links to Third-Party Sites or Content from Motivation

If Customer elects to customize Motivation by adding new pages and/or by altering the HTML making up its pages, you may choose to link to third-party sites and/or content using standard HTML tags. Because we have no control over such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that BSDI shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such site or resource.

8 Database Archiving

If you are hosting your own database, we strongly suggest that you periodically archive your database to protect yourself against data loss. BSDI assumes no responsibility for the data that you create and store with the Software nor for its persistence on a permanent medium (hard disk). Loss of data is a common occurrence when using computer

Software and it is solely the customer's responsibility to make archive or "backup" copies of his or her data at regular intervals. If data is lost, BSDI can assume no responsibility nor obligation to assist in the recovery of said data nor for any incidental damages that may arise from said loss. Your use of this Software implies your acknowledgment of the possibility of such loss and the acknowledgment that BSDI has no responsibility or obligation with respect to such loss or for any related damages.

9 Terms of Support

BSDI warrants that the Customer shall be provided with Support for the Software in accordance with these Clauses:

- (a) BSDI shall provide Support at no charge for the first 30 days after you have taken possession of the media on which the software is delivered.
- (b) After thirty (30) days, BSDI shall provide Support only if Customer has purchased a monthly or annual Support plan. Support shall be initiated upon the customer's purchase of the Plan or their receipt of the software, whichever comes later.
- (c) Support will include basic instructions as to the use of the Software and the diagnosis and rectification of faults in the Software, but not in respect of use or malfunction in computer hardware, operating systems, other software packages, or printers.
- (d) Support is meant to supplement, but not replace, the manual and help system provided with each product or the WebEx or on-site training.
- (e) Technical support will be provided by email in response to your email request for such support at Support@BSDI.cc. At BSDI's discretion, support may also be provided via telephone, fax or live Internet "chat". "Live" services shall be provided, when appropriate, between the hours of 9:30 AM and 4:30 PM Monday to Friday EST (excluding company and public holidays). BSDI does not warrant that a support engineer will be available during these hours but rather that it shall use reasonable endeavors to respond within 24 hours of your request. All support calls to BSDI must be made at (908) 832-2949. Please do not call our sales line for technical support!
- (f) BSDI will endeavor to ensure the Customers on the Support plan are provided a complete resolution of any technical support issue and are provided with full use of the software within its normal operating parameters as described in BSDI's written documentation or help system.
- (g) Technical support is meant to answer questions about the functionality in the Software as already provided. Thus, technical support does not include the creation of additional software or the addition of new features.
- (h) BSDI may, at its sole discretion, create and dispatch to you from time to time modifications to the Software (including utilities, queries, data tables or reports) at no charge in order to address technical support issues. BSDI may also post free software patches and point releases for its software on its web site with access to such point releases being free to all users currently on the Support plan.

- (i) BSDI is not obligated to provide Support as described above in circumstances where a fault arises out of the improper use, operation or neglect of the Software, any modification or merger of the Software that you have performed, your failure to implement recommendations or solutions to faults already provided by BSDI, any repair adjustment or alteration made by any person other than BSDI without its previous consent, any failure to install promptly and use any new release of the software, or any hardware or equipment deficiencies or problems.
- (j) Technical support is meant to answer specific questions about the use and installation of the Software. It is not a framework under which BSDI will provide extended training sessions in the use or organization of the software. Extended training options are available separately.

10 Customer Obligations

The Customer shall:

- (a) Ensure the Software is used only for the number of Clients for which the software has been licensed, only at the facilities that have been licensed and only on the number of computers (seats) that have been licensed.
- (b) Maintain and operate the software in a proper and prudent manner in accordance with such advice and instructions as BSDI may issue from time to time, and allow its use only by competent and authorized personnel.
- (c) If not using BSDI's data management service: maintain a minimum of 3 (three) separate backups of your current data (for use in rotation) of a standard and frequency to allow you to recover information without undue loss of staff time.
- (d) Not permit any alterations in any operating instructions provided by BSDI save by written consent from BSDI.
- (e) If you request changes or assistance, you shall make available to BSDI, without charge, any information or facilities to enable BSDI to discharge its obligation under this Agreement including, but not limited to, computer print-outs, database and configuration information, photocopies of documents, provided always that BSDI shall hold as confidential any such information provided by you.
- (f) Notify BSDI of any defect or alleged defect within a period not exceeding 15 (fifteen) days from the date the said defect becomes apparent.
- (g) Be responsible for ensuring that the software is suitable for the purpose intended.
- (h) Operate the software in such a manner as to be compliant with the provisions of the Health Insurance Portability and Accountability Act and the regulations promulgated thereunder (collectively "HIPAA").
- (i) Customer's liability to BSDI for all causes under this agreement, except for any violation that results in the distribution of the Software to unlicensed parties, the expansion of the database beyond its designated limit or a violation of HIPAA resulting in a liability for BSDI, shall be limited to the total amount paid for the licensed Software.

11 Copyright

BSDI's software is Copyright © Brittingham Software Design Inc., 1991-2006. All rights are reserved. United States Copyright Law protects the Software and documentation. No part of BSDI's Software or its associated materials may be copied or reproduced without the express written permission of BSDI.

Should BSDI design and deliver replacement, upgraded or custom software for the Customer or on the Customer's request for new features or functionality, the Copyright and any other intellectual property rights in the source and object codes of the replacement, upgrade or custom software shall vest exclusively in BSDI.

Should BSDI design and deliver replacement, upgraded or custom software for the Customer or on the Customer's request for new features or functionality, the Customer shall receive a license to use said changes and customizations under the same terms and conditions as the licensed software.

12 Trademarks

BSDI[®], True Age[®], Motivation[®], Fitness Publisher[®], and Retention Manager[®] are registered trademarks of BSDI. Fitness Analyst is a trademark of BSDI.

13 Complete Agreement

This agreement contains the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of BSDI by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein. In the event of a conflict in the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of this Agreement shall govern.

14 Applicable Law

This Agreement shall be governed and construed in accordance with the laws of New Jersey and any dispute under this Agreement or the Program shall be submitted to the exclusive jurisdiction of the New Jersey Courts, save where BSDI otherwise agrees. No other variation, amendment of or addition to this Agreement shall have been obtained should such agreement be granted.

15 Scope of Agreement

If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

Failure by BSDI to enforce any of the terms and conditions of this Agreement shall not be construed as a waiver of its rights. BSDI shall not be under liability to you in respect of any circumstance beyond its reasonable control.

16 Dispute/Resolution.

At the option of either party, any disputes as to the performance of a party's obligation under this Agreement, or any related matter, shall first be referred to non-binding mediation by a neutral third party in Morristown, New Jersey, the costs of whom shall be paid equally and jointly by BSDI and customer. Each party shall cooperate in mediation, but may terminate mediation at any time after expiration of thirty- (30) days from commencement thereof. Nothing herein shall preclude either party from exercising any and all legal rights available to it in a court of competent jurisdiction in Morristown, New Jersey, and nothing contained in this paragraph shall prevent or preclude resort to mediation or other dispute resolution while litigation is pending. No finding, action, inaction or recommendation made or taken in or as a result of mediation shall be considered for any purpose an admission of a party.

17 Confidentiality

Both parties agree that the substance of negotiations between BSDI, Customer, and Affiliates are confidential and will not be disclosed to person outside the contract discussions, except to the extent that disclosure may be required by law or by order of a court or other government agency having authority to require such disclosure. Customer agrees to notify BSDI concerning any such law or order requiring disclosure prior to complying, so that BSDI can take appropriate action to protect such confidential information from improper disclosure.

BSDI shall keep in confidence all statistical, Protected/Patient Health Information, financial, and personnel data relating to the business of Customer to which BSDI may have access as a result of performing its obligations under this agreement. Upon termination of this agreement for any reason, BSDI shall either return all documents that contain any such confidential information or certify to Customer in writing that all such documents and all copies thereof have been destroyed. Notwithstanding the aforementioned, the provisions of this section shall survive beyond the termination of this Agreement.

18 Availability of Records

Upon written request of the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, BSDI will make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing its services. Such inspection shall be available up to seven (7) years or otherwise required by law, after the rendering of such services. If BSDI carries out any of the duties of this agreement through a subcontract with a value of ten thousand dollars (\$10,000) or more over a twelve (12) month with a related individual or organization, BSDI agrees to include this requirement in any such subcontract. This section is included pursuant to and governed by the requirements of Public Law 96-499, (s 1861) (v) (1) of the Social Security Act and the regulations promulgated thereunder. No attorney-client,

account-client, or other privilege will be deemed to have been waived by Customer or BSDI by virtue of this Agreement.

19 FDA and Other Governmental/Regulatory Bodies

Customer and BSDI agree to cooperate fully with each other in meeting any obligation imposed upon BSDI by the FDA and other governmental laws, rules, and/or healthcare regulatory bodies with respect to the Licensed Software.

20 Amendment

This Agreement may not be amended, modified or changed orally. Any amendments, modifications and changes must be in writing and executed by an authorized representative of each of the parties hereto.

21 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22 Data Rights

All data contained in files of the BSDI Software applications shall be owned by Customer regardless of the location at which this data is stored.

23 Relationship of the Parties.

Customer and BSDI are independent contractors with respect to the Services provided pursuant to this Agreement, and nothing in this Agreement shall be construed or interpreted to create an employer/employee, partnership or joint venture relationship among them. Customer shall have no obligation to undertake any withholding or make any tax filings in connection with the compensation paid pursuant to this Agreement which shall be the sole responsibility of BSDI; provided, however, that Customer shall file such Forms 1099 as may be required by law.

24 Titles and Subtitles

The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

25 Successors and Assigns

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

26 Notification

Any notice to be given by either party to the other under the terms of this Agreement shall be given by mail or facsimile transmission. BSDI can be notified at the address given below or via fax at (908) 832-2670. The address for BSDI may change from time

to time and such address changes shall be posted on BSDI's web site. Said posting shall constitute reasonable notification of any address change. Customer shall be notified at the addresses shown below.

If to Customer: _____

If to BSDI: Dr. Mark Brittingham, President
Brittingham Software Design, Inc.
6 Kellie Court
Califon, N.J. 07830

Subject to the terms and conditions as described within this Agreement, Customer and BSDI have caused this Agreement to be executed by their duly authorized officers to be effect as of the date executed by BSDI (the "Effective Date").

Executed by Customer:

Signature: _____
Print Name: _____
Title: _____
Date: _____
Address: _____
Phone: _____
Email: _____
Fax: _____

Executed by BSDI:

Signature: _____
Print Name: _____
Title: _____
Date: _____
Address: _____
Phone: _____
Email: _____
Fax: _____

Exhibit A: Client Database Limits and Seats Purchased

Customer: _____

Date: _____

Products Purchased: _____

Services Purchased: _____

Client Limit: _____

Seats for Fitness Analyst: _____

Seats for Check-In: _____

Seats for Retention Manager: _____

Facility Licenses: _____

Support Plan Expiration: _____

Exhibit B: HIPAA Business Associate Agreement

This Business Associate Agreement, is effective _____ and is entered into by and between **BSDI** (“Business Associate”) and _____ (“Customer”).

WHEREAS, Customer has engaged Business Associate to carry out services which may include the use and disclosure of Protected Health Information (“PHI”), while performing and fulfilling their obligations of service and support for the above-defined Software products; and,

WHEREAS, the parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and all regulations promulgated thereunder, and other laws;

NOW THEREFORE, the parties agree as follows:

1. DUTIES OF BUSINESS ASSOCIATE.

- A. Business Associate shall only use or disclose PHI for purposes necessary to perform its obligations under the Agreement and to carry out any legal responsibilities. Business Associate may also disclose PHI to subcontractors, representatives or agents to carry out its responsibilities under the Agreement. However, Business Associate shall require these subcontractors, representatives, or agents to agree to the terms of this Addendum to the same extent they apply to Business Associate. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of 42 C.F.R. Parts 160 and 164.
- B. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement, including the maintenance of a written information privacy and security program that addresses the implementation of administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives maintains or transmits on behalf of the covered entity.
- C. Within ten (10) business days of a request by Customer to:
 - (i) Accommodate an individual’s access to his PHI, and/or;
 - (ii) Amend PHI.

In the event an individual contacts Business Associate directly about accommodation or amendment, Business Associate shall forward such requests to Customer within three (3) business days.

- D. Business Associate shall record all use and disclosures of PHI. At a minimum, such records shall contain the date of use or disclosure, names of individuals receiving PHI, their addresses, a brief description of the PHI implicated, and a statement regarding the basis of the use or disclosure. These records, along with internal practices, books, records, and all other documents related to the treatment of PHI shall be made available to Customer or the Secretary of the United States Department of Health and Human Services for the purposes of compliance with 45 C.F.R. Parts 160 and 164.
- E. Business Associate shall notify Customer within 24 hours of any suspected or actual breach of security intrusion, or unauthorized use or disclosure of PHI. Business Associate shall take prompt corrective action.

2. TERMINATION.

A. **Criminal Proceeding**

Customer may terminate the Agreement immediately if Business Associate is named a defendant in a criminal proceeding for a potential violation of HIPAA.

B. **Material Breach**

A breach by Business Associate of any provision of this Addendum shall constitute a material breach of the Agreement and shall provide Customer grounds for immediate termination of the Agreement. If Customer knows of a pattern of activity or practice of Business Associate that constitutes a material breach of this Addendum or any other arrangement, and Customer does not terminate the Agreement, then Customer shall take reasonable steps to cure the breach or end the activity or practice. If Customer's efforts are unsuccessful, it shall terminate the Agreement if feasible. If termination is not feasible, Customer shall report the breach or violation to the Secretary of the United States Department of Health and Human Services.

C. Upon termination, Business Associate shall return or destroy all PHI and will retain no copies of such information. If return or destruction is not feasible, then Business Associate shall continue to extend the protections of this Addendum to PHI, and limit future use or disclosure to those purposes that make return or destruction infeasible.

5. AMENDMENT.

This Agreement may be amended by the written mutual agreement of the parties.

6. SURVIVAL.

The responsibilities of Business Associate under the Agreement shall survive termination or expiration of the Agreement.

Exhibit C: Training Options

BSDI offers a range of training tools and options to customers wishing to master its suite of software products. While the support contract described herein is appropriate for having questions answered about specific topics, it is not intended to substitute for either *Self-Paced User Training* using BSDI's documentation and tutorials or for BSDI's live *WebEx* or *On-Site Training* options. These options are described below.

The Fitness Analyst Software comes with extensive documentation, a help system with over 200 topics and several on-screen, multimedia tutorials. The Motivation software, being a web site, is built to be useable without the need for documentation. Users are provided a description of each area of functionality when they first access the software. These *Self-Paced* options are by far the most common means by which new users learn BSDI's products.

BSDI also offers live training via WebEx (which displays a common window on the tutor's screen and that of one or more students) and via a class delivered on site. Both feature about 2-3 hours of training on Fitness Analyst and 2 hours of training on Motivation. The primary difference between the two is the physical presence of the teacher and, of course, the cost.

In the live training, students are taken on a guided tour of each of the major areas of the Software. A focus is placed on mastering the dominant user interface metaphor in each product as well as learning specific tools such as the Query Wizard (Fitness Analyst), the Content Management System (Motivation) and the configuration options for both products.

WebEx training costs \$200 per hour for the first connection and \$50 per hour for each subsequent connection. Live training costs \$1200 per day plus all travel expenses and a per diem for meals.

Exhibit D: Credit Card Authorization for Monthly Recurring Licenses

Please see attached.

BSDI

Automatic Credit Card Billing Authorization Form

If you would like to enjoy the convenience of automatic billing, simply complete the Credit Card Information section below and sign the form. All requested information is required. Upon approval, we will automatically bill your credit card for the amount indicated and your total charges will appear on your monthly credit card statement. You may cancel this automatic billing authorization at any time by contacting us.

Customer Information (To be completed by merchant)

Customer name:

Customer account number:

Phone:

_____ - _____ - _____

Payment Information (To be completed by merchant)

I authorize BSDI to automatically bill the card listed below as specified:

Amount: \$ _____

Frequency: Weekly Bi-Weekly Semi-Monthly Monthly

Quarterly Semi-Annually Annually (Check only one)

Start billing on: ____ / ____ / ____

End billing when: Contract expires: ____ / ____ / ____

Customer provides written cancellation

Credit Card Information (To be completed by customer)

BSDI accepts the following credit cards: **Visa, MasterCard, Discover**, American Express

Credit card type:

Credit card number:

Expires:

_____ / _____

Cardholder's name:

Cardholder's Zip code (required):

(as shown on credit card)

(from credit card billing address)

Customer's signature:

Date:
