

FITNESSGRAM® 10 Web Hosting Agreement

This agreement is entered into by and between The Cooper Institute ("CI"), a Texas based 501(C)(3) organization at 12330 Preston Rd., Dallas, Texas 75230 and a Texas public school district – the "Parties". The legal agreement set out below governs your use of the webhosting services provided by The Cooper Institute ("services"). To agree to these terms, check the first box on the online web form and continue with the registration process. If you do not agree to the terms, then you will not be allowed to complete the online registration.

The purpose of this Agreement is to describe the web-based hosting of the FITNESSGRAM application and data that CI will provide for the Customer.

Responsibilities of the Parties

CI

CI will provide the following services to Customer:

1. Installation, configuration, maintenance and upgrades of the FG application and database servers to host FITNESSGRAM for the Customer.
 - a. Server operating system configuration, maintenance and upgrades;
 - b. SQL server configuration, maintenance and upgrades;
 - c. Performance monitoring and tuning;
 - d. Nightly backups
 - e. Redundant power supplies
 - f. Raid Levels 1, 5, and 10 to ensure performance and data integrity;
 - g. 15,000 RPM SAS drives.
2. Provision of Data center
 - a. Backed up by enterprise UPS and generator.
 - b. Secure Internet connection with Intrusion Protection System (IPS) with monitoring;
 - c. Client to server encryption provided through using SSL Certificate(s) with 128 bit encryption.
3. Provision of technical support for issues regarding actual Internet connectivity to the software.
4. Provision of technical support by working cooperatively with Human Kinetics support department in resolving issues related to software function.
5. Provision of functioning FITNESSGRAM software website until June 2018.

Customer

Customer is responsible for the following:

1. Supply CI with appropriate FG license code to be used in establishing FG web hosting environment for Customer.
2. Input all data, either by electronic import or data entry, related to Customer's use of the FITNESSGRAM software application. Data could include information on teachers, classes, students, fitness test scores, activity assessment scores and activity data.

3. Report any issues related to FITNESSGRAM software function directly to FITNESSGRAM Technical Support at Human Kinetics. (800-747-4457 or support@hkusa.com).
4. Report any issues related to Internet connectivity for the FITNESSGRAM web application directly to CI (800-635-7050 or fgwebhosting@cooperinst.org).

Back-up and Disaster Recovery

1. CI shall back-up Customer's data daily and retain those back-up copies for use in disaster recovery.
2. CI shall not be responsible for files that cannot be recovered due to corrupt data, fires or any other disaster beyond CI control. CI will treat all nonrecoverable files as confidential and return them to the district or destroy them at the district's direction.

Confidential Information

1. CI employees, agents and subcontractors agree that in executing tasks required in this Agreement, will not use any student-identifying information in any way that violates the provisions of the Family Educational Rights and Privacy Act, [20 U.S.C. § 1232g](#) ("FERPA")
2. CI employees, agents and subcontractors may have access to confidential data maintained by the Local Education Agency (LEA) solely to the extent necessary to carry out CI's responsibilities under this Agreement. All student information received pursuant to the Agreement is confidential and shall remain the property of the LEA unless otherwise designated by the LEA.
 - a. CI shall provide to the LEA a written description of the Contractor's policies and procedures to safeguard confidential information upon request;
 - b. CI must designate one individual who shall remain the responsible authority in charge of all data collected, used or disseminated by CI in connection with the performance of the Agreement.
 - c. CI shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Agreement.
 - d. Any CI staff with access to confidential data are required to complete the NIH Human Protection Course.
3. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by this Agreement and with the written consent of the LEA, either during the period of the Agreement or thereafter. Any data supplied to or created by CI shall be considered the property of the LEA. CI must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, promptly at the request of the LEA.
4. In the event that a subpoena or other legal process is served upon CI seeking records containing confidential information, CI shall promptly notify the LEA, and cooperate with the LEA in any lawful effort to protect the confidential information.
5. CI shall immediately report to the LEA any unauthorized disclosure of confidential information.
6. CI's confidentiality obligation under the Agreement shall survive termination of the Agreement.

7. It is the responsibility of the LEA to ensure that LEA staff understand and adhere to the privacy requirements of F.E.R.P.A. regarding the use of online and mobile applications.

Termination

1. Either party may terminate this Agreement at any time with sixty (60) days written notice to the other.
2. Either party may terminate this Agreement in the event the other party is in material breach of any provision of this Agreement upon ten (10) business days prior written notice, unless the party receiving notice corrects the default within such ten business days.

Publicity

Customer agrees that the names and other information of and concerning the CI, the Cooper Aerobics Center and Dr. Kenneth H. Cooper, M.D., M.P.H. cannot be used by Customer without prior written approval from the CI.

Choice of Law/Entire Agreement

This Agreement shall be construed in accordance with the laws of the State of Texas and constitutes the entire agreement between the Parties with respect to the subject matter hereof.

Electronic Contracting

Your use of the Services includes the ability to enter into agreements and/or to make transactions electronically. BY SIGNING THIS AGREEMENT, YOU REPRESENT THAT THE DISTRICT AGREES TO BE BOUND BY ITS TERMS AND THAT YOU HAVE BEEN DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT BY THE DISTRICT. You have the right to access and retain your electronic records, through this electronic form, which are your sole responsibility.