



1800 Dual Highway, Suite 306, Hagerstown, MD 21740

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made as of _____ ("Effective Date") by and between TheraManager, LLC. ("Business Associate"), a Delaware LLC, with an office located at 1800 Dual Hwy, Suite 306, Hagerstown, MD 21740; and _____ ("Covered Entity"), located at _____ for purposes of complying with the Privacy and Security Rules promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), regulations promulgated under HIPAA and the HITECH Act by the U.S. Department of Health and Human Services, and other applicable laws.

Whereas, TheraManager is in the business of producing, selling, installing, and supporting clinical software, and in the normal course of installation and support of said software will, from time to time, have access to PHI, and

Whereas, the Covered Entity is in the business of providing clinical services, has purchased software and support services from TheraManager, and acknowledges TheraManager's need for occasional access to PHI in the furtherance of its support activities.

Now, therefore, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

Business Associate: "Business Associate" shall mean TheraManager LLC.

Covered Entity: "Covered Entity" shall mean the party designated above, named in the preface to this Agreement.

Individual: "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

Privacy Rule: "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

Protected Health Information: "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 164.501. [45 CFR § 160.103; 45 CFR § 501]

Required By Law: "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

Secretary: "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

2.1. Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.

2.2. Business Associate agrees to use appropriate safeguards, to prevent use or disclosure of the PHI other than as provided for by this Agreement.

2.3. Notification of Breach: During the term of this Agreement, Associate shall notify COVERED ENTITY within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

2.4. Business Associate agrees to report to the Covered Entity any use or disclosure of the PHI not provided for by this Agreement.

2.5. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from the Covered Entity, or created by Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.6. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.

2.7. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

2.8. Business Associate agrees to provide to the Covered Entity or an Individual, in time and manner designated by the Covered Entity, information collected in accordance with Section 2.7 of this Agreement, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, the Covered Entity to facilitate in the installation, implementation, upgrading, troubleshooting, claims processing, and any other ongoing technical support issues arising out of the purchase or subscription to use computer software provide by the Business Associate.

3.2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI, provided that such disclosures are required by law, to any government affiliated Law Enforcement Entity having jurisdiction over Business Associate or Covered Entity. After advising the Covered Entity in writing, Business Associate may disclose PHI to necessary third parties, e.g. clearinghouses, only after obtaining reasonable assurances from the person that disclosures will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed, and the person notifies Business Associate of any instances when confidentiality is breached.

3.3 Covered Entity shall disclose the following information to Business Associate in accordance with the terms of the Agreement: Patient Demographics, Billing, and Medical Information.

3.4 The viewing and transfer of data containing PHI belonging to the Covered Entity shall occur over a secure connection agreed upon by mutual consent of the Covered entity and the Business Associate prior to the viewing or the transfer.

4. Obligations of Covered Entity

4.1. The Covered Entity shall provide Business Associate with the Notice of Privacy Practices that it produces in accordance with 45 CFR § 164.520, as well as any changes to such Notice.

4.2. The Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

4.3. The Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § 164.522.

5. Permissible Requests by Covered Entity

The Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

6. Term and Termination

6.1. **Term:** The Term of this Agreement shall be effective as of the Effective Date, and shall terminate when the Covered Entity's Software Maintenance expires and is no longer in effect.

6.2. a. **Termination for Cause:** Upon the discovery of a material breach by Business Associate, the Covered Entity shall provide an opportunity for Business Associate to cure the breach, or end the violation and terminate this Agreement and any related Agreement, if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or immediately terminate this Agreement and any related Agreement if a cure is not possible.

6.2. b. **Judicial or Administrative Proceedings:** Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

6.3. **Effect of Termination:** Except as provided for elsewhere in this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from the Covered Entity, or created or received by Business Associate on behalf of the Covered Entity. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate 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 Business Associate maintains such PHI.

7. Indemnification

Each party will indemnify, hold harmless and defend the other party to this Agreement from and against any and all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.

8. Other Terms

8.1. **Amendment:** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

8.2. **Amendment:** The Parties hereby agree that this agreement is subject to an amendment dated 9/23/2013 that specifies responsibilities and obligations that are laid out in the HIPAA Omnibus Final Rule that was adopted on January 25, 2013 with a compliance date of September 23, 2013 (78 Fed. Reg. 5,566 Final Rule).

8.3. **Survival:** The respective rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

8.4. **Interpretation:** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

9. Correspondence

Pursuant to the requirements of this agreement, all requests for information and notifications shall be made in writing to each party's designated representative, at the address noted below.

For Business Associate:

Director of Quality Control & Compliance
TheraManager, LLC
1800 Dual Hwy, Suite 306
Hagerstown, MD 21740

For the Covered Entity:

10. Entire Agreement

This agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding, in any way modifying the terms hereof will be binding, unless made in writing as a modification or amendment to this Agreement and executed by both parties.

In Witness Whereof, Covered Entity and Business Associate agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date above written.

Email signed and completed agreement to sales@tmdtigroup.com or fax to 888-415-7939

For Business Associate:

Signature

Arnold L. Schuster
Printed Name

Chairman
Title

For the Covered Entity:

Signature

Printed Name

Title