

# Business Associate Agreement

This Business Associates Agreement (“Agreement”) is entered into between

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with a business address at

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(hereinafter “Customer”) and MedActionPlan.com, LLC with a business address at 87 Main Street, 3rd Floor, Peapack, New Jersey 07977 (hereinafter “Business Associate”).

## RECITALS

Customer is “covered entity” required to meet the requirements of Title II of the Health Insurance Portability and Accountability Act of 1996 (PL 104–91) and regulations enacted by the Department of Health and Human Services at 45 CFR Parts 142 and 160–164 (the law and regulations are collectively referred to as “HIPAA”), and the Health Information Technology Act of 2009, as codified at 42 U.S.C.A prec. 17901 (“HITECH Act”), and any current regulations promulgated under HIPAA or the HITECH Act (HIPAA, HITECH Act and any current regulations promulgated under either are referred to as the “Regulations”).

Business Associate is an application services provider who permits Customer, clinical professionals associated with Customer, and Customer’s patients to use a certain computer application known as MedActionPlan™. In the course of providing this service, it may be necessary for Business Associate to have access to, use, or disclose “protected health information” received from Customer or on behalf of Customer.

As required by HIPAA, the parties are entering this agreement related to the use and disclosure of protected health information.

## 1. Use and Disclosure of Protected Health Information

1.1 *Access to protected health information.* Business Associate shall have the right to access protected health information under the following circumstances:

1. As necessary to enable Business Associate to perform services to or on behalf of Customer;
2. As needed for the proper management and administration of the business of Business Associate;
3. As required to carry out the legal responsibilities of Business Associate. Business Associate will not seek access to protected health information except when it believes that the information is needed to enable it to perform the services described above.

Business Associate will limit access to protected health information by its employees or agents to that which is necessary to enable them to perform services on behalf of Customer.

1.2. *Use of protected health information.* Business Associate will only use the protected health information for the following purposes:

- Performance of the services to Customer described in 1.1;
- As needed for the proper management and administration of the business of Business Associate;
- As required to carry out the legal responsibilities of Business Associate.

1.3. *Disclosure of protected health information to third parties.* Business Associate will not disclose protected health information to third parties, except as follows:

- As necessary to perform the services described in this Agreement;
- As required by law;
- As permitted by the individual who is the subject of the protected health information or the personal representative of that individual;
- To subcontractors who provide services to Business Associate in connection with its work on behalf of Customer and require access to protected health information to perform those services, provided that Business Associate enters a written agreement with the subcontractor in which the subcontractor agrees to abide by the terms of this Agreement.
- When required for the proper management and administration of Business Associate, to persons or organizations that must have access to protected health information to provide service to Business Associate, if those persons or organizations agree in writing to maintain the confidentiality of the protected health information as required by law, not to re-disclose the protected health information except as required by law, and to inform Business Associate of any unauthorized use or disclosure of the information.

1.4 *Individual permission to disclose protected health information.* As required by HIPAA, other provisions of law, or its own policies, Customer will obtain written permission from individuals or their personal representatives for specific uses or disclosures of individual protected health information. Customer will provide Business Associate with a copy of any written permission from an individual and inform Business Associate of any changes in, or revocations of, permission by an individual if such changes affect Business Associate's use and disclosures of protected health information.

1.5 *Restrictions on use or disclosure of protected health information.* Customer will notify Business Associate of any restriction to the use or disclosure of protected health information to which Customer has agreed in accordance with 45 CFR 164.522. Business Associate will follow any such restrictions.

1.6 *Report of unauthorized use and disclosure of protected health information.* In the event that Business Associate becomes aware of any use or disclosure of protected health information that is not authorized by this Agreement, it will immediately report that event to Customer.

1.7 *De-identified Health Information:* De-identify any and all Protected Health Information in accordance with 45 C.F.R. § 164.514(b). Customer acknowledges and agrees that de-identified information is not Protected Health Information and that Business Associate may use such de-identified information for any lawful purpose.

## **2. Security of Electronic Protected Health Information**

2.1 *Security.* Business Associate will establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protected the confidentiality, integrity and availability of electronic protected health information. Business Associate will follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information ("the Security Rule", published at 45 CFR Parts 160-164).

2.2 *Agents and Subcontractors.* Business Associate will ensure that any agent, including a subcontractor, to whom it provides electronic protected health information agrees to implement reasonable and appropriate safeguards to protect that information.

2.3 *Security Incidents.* Business Associate will report any security incident of which it becomes aware to Customer. For purposes of this agreement, a “security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. Business Associate will log all incidents, including “trivial incidents” that occur on a daily basis and do not represent a material threat to the confidentiality, integrity, or availability of protected health information (such as scans or “pings” of computers or computer networks). Log records of trivial incidents will be retained by Business Associate for a period of 3 months. Those logs will be made available to Customer upon request. At the request of Customer, Business Associate will provide summary reports of security incidents.

### **3. Rights of Individuals**

Business Associate recognizes that HIPAA and state law grant individuals rights related to protected health information about them. Business Associate agrees to the following provisions for the protection of those individual rights.

1. *Procedure.* Business Associate will cooperate with Customer in responding to requests by individuals who wish to exercise their rights under HIPAA. Any requests made directly to Business Associate will be referred to the Customer. Customer will be solely responsible for responding to the individual as required by HIPAA or other applicable law. Customer will inform Business Associate in writing of any actions Business Associate is required to take with regard to records of individuals who exercise their rights under HIPAA. Business Associate will follow the direction of the Customer regarding these records, and use commercially reasonable efforts to respond in a timely manner to enable Customer to comply with deadlines established by HIPAA.
2. *Confidential communications.* Business Associate will provide confidential communications to individuals consistent with the requirements of 45 CFR 164.522.
3. *Access to records.* As directed by Customer, Business Associate will provide Customer with an electronic copy (or if an electronic copy is not available, a paper copy) of the “designated record set” of an individual to enable the Customer to grant the individual access to the “designated record set” in accordance with 45 CFR 164.524. Business Associate can

charge a reasonable fee for preparing a summary of the designated record set.

4. *“Amendment” of record.* As directed by Customer, Business Associate will add information to the designated record set of an individual, and forward the additional information to third parties when that information could have a material impact on a decision about the individual, all as required by 45 CFR 164.526.
5. *Accounting of certain disclosures.* Business Associate will make available to Customer the information required to provide individuals an accounting of disclosures in accordance with 45 CFR 164.528.

#### **4. General Requirements**

4.1 *DHHS access to records.* Business Associate will make its internal practices, books, and records relating to the use and disclosure of protected health information available to the United States Department of Health and Human Services (DHHS) for purposes of enabling DHHS to determine Customer’s compliance with HIPAA.

4.2 *Return or destruction of protected health information.* At termination of the Agreement, Business Associate will, destroy any protected health information that it maintains in any form. Any electronic media used to store protected health information shall be destroyed, or rendered unreadable. If destruction is not feasible, Business Associate will continue to follow the terms of this Agreement with regard to access, use and disclosure of the protected health information.

4.3 *Termination for cause.* Business Associate agrees that if Customer determines that the Business Associate has violated a material term of this Addendum, Customer may, at its option, either: (a) notify Business Associate and allow Business Associate thirty (30) days to cure the breach, or (b) immediately terminate its Agreement with Business Associate and discontinue their business relationship.

4.4 *Effective Date.* This Agreement is effective immediately.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed effective as of the Effective Date.

**Customer**

**Business Associate**

MedActionPlan.com

By: \_\_\_\_\_

By: Tim Peters \_\_\_\_\_

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

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

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

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

**Please have this BAA signed by the appropriate authority. Keep one copy on file and fax a copy to MedActionPlan.com, LLC at fax # 908-234-1961. Thank you.**