

**HIPAA
BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“HIPAA Agreement”) is made effective the _____ of _____, 200__, by and between Therapeutic Touch and all affiliated entities which participate in an organized health care arrangement for purposes of HIPAA (“Covered Entity”), and _____ (“Business Associate”), (individually, a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, pursuant to any underlying agreement or other business arrangements, Business Associate will create or receive from or on behalf of Covered Entity, or have access to, Protected Health Information (“PHI”) in the course of providing the following services (“Services”):

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing administrative simplification regulations (45 CFR § 160-164) (“HIPAA”), Covered Entity is required to enter into this HIPAA Agreement with Business Associate;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

I. DEFINITIONS

Terms used but not otherwise defined in this HIPAA Agreement shall have the same meaning as those terms in 45 C.F.R. § 160.103 and 164.501.

II. EFFECT OF HIPAA AGREEMENT

To the extent the Parties have entered into an underlying agreement, this HIPAA Agreement is incorporated into and made part of any underlying agreement. To the extent that any provisions of this HIPAA Agreement conflict with provisions contained in any underlying agreement, the provisions of this HIPAA Agreement shall control, unless the underlying agreement is more protective of PHI in which case the relevant provision of the underlying agreement shall control. The Parties agree that any ambiguity in the HIPAA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA.

I. BUSINESS ASSOCIATE OBLICATIONS

- (A) Permitted Uses and Disclosures: Except as otherwise limited in this HIPAA Agreement, Business Associate may use or disclose PHI (1) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in any underlying agreement or in this HIPAA Agreement, provided that such use or disclosure would not violate HIPAA if made by Covered Entity or (2) as required or permitted by applicable law, rule, regulation, or regulatory agency or by any accrediting or credentialing organization to whom Covered Entity or Business Associate is required to disclose such PHI. In addition,
- (i) Business Associate may use PHI, if necessary, for the proper management and Administration of Business Associate or to carry out the legal responsibilities of Business Associate.

- (i) Business Associate may disclose PHI, if necessary, if the following Requirements are met:
 - (a) the disclosure is required by law; or
 - (a) Business Associate obtains reasonable assurance from the person to whom the information 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 Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

- (i) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by HIPAA.

- (A) Restrictions: Business Associate shall not use or disclose PHI for any other purpose not Described above.

- (A) Business Associate Agents: Business Associate shall ensure that its agents, including Subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Business Associate pursuant to this HIPAA Agreement with respect to such information.

- (D) Appropriate Safeguards: Business Associate shall implement appropriate and Commercially reasonable safeguards to prevent use or disclosure of PHI other than as permitted in this HIPAA Agreement.

- (E) Government Access to Records: Business Associate shall make its 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, Covered Entity available to the Secretary of Health and Human Services for purpose of determining Covered Entity's Compliance with HIPAA. Business Associate shall provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary concurrently with Providing such PHI to the Secretary.

- (F) Reporting of Improper Use or Disclosure: Business Associate shall report to Covered Entity in writing any use or disclosure of PHI of which it becomes aware that is not in compliance with the terms of this HIPAA Agreement.

- (G) Mitigation: Business Associate shall mitigate, to the extent practicable. Any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this HIPAA Agreement.

- (H) Availability of PHI: If the PHI received or created by Business Associate under this Agreement is part of a Designated Record Set, such Designated Record Set (or a Portion thereof) is to be maintained by Business Associate in the following manner: Business Associate shall within ten (10) days after a written request from Covered Entity:
 - (i) provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to such PHI to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524; and
 - (ii) make amendments to such PHI as directed or agreed to by Covered Entity in

accordance with the requirements of 45 CFR § 164.526.

If the PHI received or created by Business Associate is not part of a Designated Record Set, Business Associate shall not create or maintain a Designated Record Set with respect to such PHI.

- (I) Accounting Rights: Business Associate shall document such disclosures of PHI and information related to such disclosures and, within ten (10) days after Covered Entity's written request, shall provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity information collected in accordance with this Section, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

I. COVERED ENTITY'S OBLIGATIONS

- (A) Notice: Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any subsequent changes to the notice of privacy practices.
- (B) Changes in Access by Individual: Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (C) Restrictions on Use and Disclosure of PHI: Covered Entity shall notify Business Associate of any restriction to the use of disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

I. TERMINATION

- (A) Term: The Term of this HIPAA Agreement shall be effective as of the date set forth above and shall terminate when Business Associate ceases to perform the Services as set forth above; provided, however, that certain obligations shall survive termination of this HIPAA Agreement as set forth in Section V(C).
- (B) Termination for Cause: Covered Entity may immediately terminate this HIPAA Agreement in the event that Business Associate materially breaches any provision of this HIPAA Agreement. In its sole discretion, Covered Entity may permit Business Associate the ability to cure or take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity.
- (C) Return or Destruction of PHI: Upon termination, if feasible, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associate still maintains in any form and shall retain no copies of such information. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of PHI infeasible. Business Associate shall continue to extend the protections of this HIPAA Agreement to such PHI, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

I. MISCELLANEOUS

- (A) Amendment to Comply with Law: The Parties acknowledge that it may be necessary to amend this HIPAA Agreement to comply with modifications to HIPAA, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. No later than sixty (60) days after the effective date of any such modifications, the Parties agree to use good faith efforts to develop and execute any amendments to this HIPAA Agreement as may be required for compliance with HIPAA.
- (A) Amendment: This HIPAA Agreement may be amended or modified only in writing signed by the Parties.
- (A) No Third Party Beneficiaries: Nothing expressed or implied in this HIPAA Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- (A) Governing Law: This HIPAA Agreement shall be governed by and construed in accordance with the substantive law of the State of Ohio without regard to conflicts of laws principles.
- (A) Paragraph Headings: The paragraph headings in this HIPAA Agreement are for convenience only. They form no part of this HIPAA Agreement and shall not affect its interpretations.

I. INDEMNIFICATION

The Parties agree to indemnify, defend and hold harmless each other and each other’s respective employees, directors, officers, subcontractors, agents or other members of each other’s workforce (collectively referred to as the “Indemnified Party”), against all costs suffered by the Indemnified Party, including but not limited to nay and all actual and direct losses, liabilities, penalties, costs or expenses (including reasonable attorneys’ fees), arising from or in connection with a material breach of this HIPAA Agreement by the Indemnifying Party. This provision shall survive the expiration or termination of this HIPAA Agreement.

IN WITNESS WHEREOF, the Parties have executed this HIPAA Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Title: _____

Title: _____