

THERAMANAGER LLC.
SOFTWARE LICENSE, AND SUPPORT AND MAINTENANCE AGREEMENTS

Notice to users: please read carefully the provisions of the following agreements: software license agreement and maintenance and support agreement. The software license agreement (the "license agreement") relates to the license of the software you are about to download in object code form (the "software"). The maintenance and support agreement (the "support agreement") relates to the services you may desire that TheraManager LLC. ("TheraManager") may perform on your behalf in connection with your license of the software. By clicking the "accept" button, you fully accept and agree to all of the terms and conditions of these agreements, thereby creating legally binding agreements between you and TheraManager. If you are not willing to be bound by the terms and conditions of these agreements, you should click on the "do not accept" button. Acceptance of all of the terms and conditions of these agreements is required as a condition to proceeding with the download of the software and receiving services from TheraManager.

SOFTWARE LICENSE AGREEMENT

License Grant

Subject to the terms and conditions of this Agreement, TheraManager hereby grants you a non-exclusive and non-transferable limited license to use the Software. You acknowledge that no right, title or interest to the Software is granted by this License Agreement and that TheraManager retains title to the Software, all copies thereof and all derivative works. In addition, TheraManager retains all other rights not expressly granted herein, including, without limitation, all copyrights, trademarks, patents, trade secrets and all rights granted by international treaties. Once the software has been registered, there can be no refund of any kind for monies paid for its use under this agreement or any other.

1. Restrictions

You shall not use or make copies of the Software for any purpose other than for your personal or business use and shall ensure that all proprietary rights notices contained in or set forth on the Software are applied to any such copy. You shall not modify, the Software or create derivative works based upon all or part of the Software. You shall not transfer, distribute, rent, lease, make available for time-sharing, make available through a local or wide area network, assign or sublicense all or any portion of the Software, and shall not place the Software on any Internet site for purposes of such distribution.

2. Confidentiality

You shall not reverse engineer, reverse compile or reverse assemble the Software or otherwise seek to discover any information with respect to the design or programming thereof, all of which is confidential and proprietary to TheraManager. You shall not (a) disclose the Software or the ideas, techniques and concepts contained therein to any third party without the prior written consent of TheraManager or (b) use the Software for any purpose or in any manner except as set forth in Sections 1 and 2 hereinabove. You agree to hold the Software in confidence, to maintain the Software in a secure environment and to take all reasonable precautions to maintain security to prevent unauthorized use or disclosure. Prior to disposing of any media, you shall ensure that any Software contained thereon has been erased or otherwise destroyed.

3. Exclusion of Warranties

You understand that the Software is a complex product that may contain defects or deficiencies. ACCORDINGLY, THE SOFTWARE IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, AND THERAMANAGER DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL REPRESENTATIONS, ENDORSEMENTS, GUARANTEES AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (i) ANY STATUTORY OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT; OR (ii) THAT THE SOFTWARE WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN THE DOCUMENTATION OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (iii) ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TheraManager does not undertake to provide, and shall not have any responsibility with respect to, any support services in connection with your use of the Software except as otherwise provided herein.

Additionally, TheraManager specifically disclaim that use of the Software will cause you to be compliant with the requirements of any applicable law, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and that it is your sole obligation to determine what action(s) you must take to comply with the requirements of applicable law, including, without limitation, HIPAA.

4. Limitation of Liability

YOU AND THERAMANAGER AGREE THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION 5. THERAMANAGER SHALL NOT BE SUBJECT TO ANY LIABILITY, IN CONTRACT, TORT, OR OTHERWISE RELATING TO THE SOFTWARE OR THIS AGREEMENT. IN PARTICULAR, WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT SHALL THERAMANAGER OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, EVEN IF THERAMANAGER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THERAMANAGER'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL LICENSE FEES ACTUALLY PAID BY YOU TO THERAMANAGER UNDER THIS AGREEMENT DURING THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE SUBJECT CLAIM FOR DAMAGES.

6. Indemnity

You agree to defend and indemnify TheraManager against all any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees, which TheraManager may incur as a result of or in connection with your breach of this Agreement.

7. Termination

This Agreement is effective upon the clicking of the "Accept" button and shall continue until terminated. You may terminate this Agreement at any time by destroying all copies of the Software. This Agreement shall automatically terminate, without prior notice from TheraManager and without prejudice to all other rights and remedies of TheraManager, if you fail to comply with any provision of this Agreement. Upon termination, you shall destroy all copies of the Software. The provisions of this Agreement, other than Section 1, shall survive termination.

8. Export Regulations.

The Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. You agree to comply with all such laws and regulations and agree not to export or re-export the Software in violation of any such rules and regulations or without all necessary approvals. Neither the Software nor any underlying information or technology may be downloaded or otherwise exported or re-exported (i) into any country subject to U.S. trade sanctions covering the Software, or to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Table of Denial Orders.

9. Severability.

If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, the legality, validity and enforceability of the remaining provisions hereof shall not be affected or impaired.

10. Governing Law; Venue.

This Agreement shall be governed by the laws of the State of New Jersey, excluding choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from this Agreement. Any action or other judicial proceeding arising out of or relating to this Agreement or the transactions or other activities contemplated by this Agreement shall be instituted only in the United States District Court for the State of New Jersey or Superior Court in the State of New Jersey, County of Bergen. The parties irrevocably and unconditionally submit to the jurisdiction of such courts in any such action and agree that all claims in respect of such action may be heard and determined in such courts. The parties irrevocably and unconditionally waive any objection it may now or later have as to the venue of any such action brought in such a court or that such a court is an inconvenient forum.

11. Miscellaneous.

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the address for each party listed in the latest order form. Unless agreed to in writing, either party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. All remedies under this Agreement, at law or in equity, are cumulative and nonexclusive. If you actually, threaten to, or would inevitably breach this Agreement, you acknowledge that the breach would cause TheraManager irreparable harm, a remedy at law alone would be inadequate, and TheraManager is entitled to apply for injunctive relief without any requirement to post a bond or other security. No third party is a beneficiary of this Agreement. This Agreement represents the entire agreement between TheraManager and you with respect to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software. This Agreement may not be modified except in writing signed by a duly authorized representative of each party. This Agreement is binding upon and inures to the benefit of you and TheraManager, and to the successors and assigns of TheraManager. You may not assign your rights, in whole or in part, under this Agreement to a person or legal entity separate from you without the prior written consent of TheraManager, and any attempted assignment not so consented to shall be null and void.

MAINTENANCE AND SUPPORT AGREEMENT

Together with the license to you of the Software as provided above, TheraManager is providing to you certain support services during a three month trial period at no cost to you and at TheraManager's discretion. The maintenance and support obligations set forth herein shall only commence after completion of said trial period and once TheraManager has received payment from you at TheraManager's then prevailing rates for performance of said maintenance and support services. Thereafter, the maintenance and support obligations set forth below shall take effect. In consideration of the covenants and representations contained herein and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS. Unless otherwise defined herein or in the Software License Agreement above, the following terms shall have the meanings set forth below:

- 1.1. "Designated Operating Environment" - means any Microsoft Windows XP operating system.
- 1.2. "Documentation" - means the electronic or recorded work made available to you in connection with the Software that describes the functions and features of the Software.
- 1.3. "Services" - means the maintenance and support services that TheraManager agrees to provide under this Agreement. Supported services do not include networking or Information Technology support.
- 1.4. "Trial Period" - means the period of time commencing upon customer's downloading of the Software and continuing for thirty (30) days thereafter, during which period you will have free use of the Software in accordance with the License Agreement.
- 1.5. "Updates" - means: (i) program changes made by TheraManager to resolve issues in the Software; and, (ii) Software enhancements, improvements and additions not included as part of the Software and which are not major modifications or releases separately priced by TheraManager, or for which you are not registered.

2. STANDARD MAINTENANCE AND SUPPORT. TheraManager shall provide the Services specified in the following sections of this Support Agreement solely for the Software licensed by you.

- 2.1. Issue Reporting. You may report any issues in the operation of the Software to TheraManager by telephone or e-mail.

- 2.2. Software Maintenance. In consideration for the fees paid by you, TheraManager shall make a good faith effort to maintain the Software.
- 2.3. Telephone Support. TheraManager shall provide reasonable telephone assistance to you with respect to use of the Software at telephone numbers designated by TheraManager. Telephone support will be available from 9 a.m. to 5 p.m. ET, Monday through Friday, excluding U.S. holidays, or at other times by arrangement and at the discretion of TheraManager.
- 2.4. On-Site Services. Maintenance and support does not include any on-site services.
- 2.5. Broadband Access. In order to receive Support Services under this Support Agreement, your system must have broadband internet access.
- 2.6. Training. Training from scratch of new Customer employees or contractors is not included under this Agreement.
3. LIMITATION ON STANDARD MAINTENANCE AND SUPPORT.
- 3.1. Customer Problems. If you notify TheraManager of a problem and TheraManager determines that the problem is due to your incorrect or improper use of the Software, third party software, networking, hardware or systems, or your failure to comply with the terms of this Support Agreement or the License Agreement (as opposed to a problem in the Software), TheraManager shall have no obligation to take any action to correct the problem. At your request and at TheraManager's sole discretion, TheraManager may attempt to correct the problem, and you shall pay TheraManager's then current rates for all services provided and all expenses of TheraManager associated with performance of those services, whether or not the problem is corrected.
- 3.2. Third Party Products. Services under this Support Agreement do not cover third party products, any networking issues, or Software modified by you or used in any manner in violation of the License Agreement or this Support Agreement.
- 3.3. Data. TheraManager shall have no responsibility for loss of or damage to your data. You shall take all steps necessary to backup your data with appropriate frequency and methods including off-site storage.
- 3.4. Administrative Password. TheraManager reserves the right to charge at the then current rates for resetting the administrative password if lost.
- 3.5. Unreasonable Demands. TheraManager reserves the right to require you to pay TheraManager at the then current rates for demands for support deemed unreasonable by TheraManager. These might include repeated requests on the same topic, or for information in the on-line help, or for basic training in the use of Windows software, other software or peripherals used in conjunction with TheraManager program.
4. ADDITIONAL SUPPORT OR TRAINING OF NEW PERSONNEL. Additional support services including on-site support, and training of new personnel, which may be requested by you or is necessary to maintain the Software or third party software and which is agreed to by TheraManager shall be provided under a separate services agreement at TheraManager's then current rates plus expenses. In the event that TheraManager provides on-site support or training, you shall provide TheraManager reasonable on-site access, without charge, to your facilities, appropriate personnel, related computing equipment and any other information or systems reasonably requested by TheraManager so as to enable TheraManager to provide Services on-site.
5. MAINTENANCE AND SUPPORT FEES.
- 5.1. Renewal Fees. In the event the term of this Support Agreement is renewed in accordance with the terms set forth in this Agreement, the fees payable under this Support Agreement will be at TheraManager's then current rates.
- 5.2. Manner of Payment. All fees and expenses due under this Agreement shall be invoiced monthly and are due and payable by you within fifteen (15) days of the date of invoice.
- 5.3. Non-payment. Notwithstanding anything contained herein to the contrary, TheraManager reserves the right to refuse to provide Services when any charges to you remain unpaid after fifteen (15) days from the due date. Invoices remaining unpaid following fifteen days after the due date or invoice date, as applicable, shall be subject to interest at the rate of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.
- 5.4. Taxes. The fees payable under this Support Agreement shall not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties and any such taxes shall be assumed and paid by you.
- 5.5. Out of Pocket Expenses. All reasonable out-of-pocket expenses incurred by TheraManager on behalf of you shall be paid by you.
6. TERM, TERMINATION, AND DEFAULT.
- 6.1. Term. The term of this Support Agreement shall commence upon receipt of payment and continue for the period of time paid for by you as agreed with TheraManager, unless earlier terminated pursuant to this Support Agreement.
- 6.2. Termination of License. This Support Agreement shall automatically terminate upon termination or expiration of the License Agreement for any reason.
- 6.3. Termination for Default. An "Event of Default" by a party under this Support Agreement includes the following:
- 6.3.1. Any material representation by such party is discovered to be materially misleading or inaccurate;
- 6.3.2. Such party fails to perform any material covenant, agreement, obligation, term or condition contained in this Support Agreement;
- 6.3.3. You breach your obligations under the License Agreement; or,
- 6.3.4. Such party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, becomes subject to a bankruptcy or similar action, appoints or acquiesces in the appointment of a receiver, trustee, or liquidator.
- 6.4. Right to Cure. A party may not terminate this Support Agreement upon the occurrence of an Event of Default unless the non-defaulting party delivers written notice to the defaulting party of the subject Event of Default, and the defaulting party fails to cure such Event of Default, with respect to non-monetary obligations, within thirty (30) days after receiving the subject notice, and with respect to monetary obligations, within ten (10) days after receiving the subject notice.
- 6.5. Rights Upon Termination. Upon an uncured Event of Default as provided in Section 6.4, the non-defaulting party may terminate this Support Agreement immediately by providing written notice of termination to the defaulting party. Upon termination of this Support Agreement by TheraManager, all amounts under this Support Agreement shall become immediately due and payable. If this Support Agreement is terminated by you due to an uncured Event of Default by TheraManager, you will be entitled to receive a proportionate refund of any prepaid fees applicable to future Services. Termination will not affect: (i) your obligation to pay for Services already performed prior to the date of termination; or (ii) other of your obligations under this Support Agreement or the License Agreement.

THIS REMEDY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ANY OTHER RIGHTS OR REMEDIES YOU MAY HAVE AGAINST THERAMANAGER WITH RESPECT TO ANY BREACH OF THIS SUPPORT AGREEMENT BY THERAMANAGER.

6.6. Resumption of Support after a break will require payment of an Upgrade fee calculated at the rate of 2% per month for the period of the discontinuity of support, times TheraManager's then current price of your complete installation.

7. WARRANTY; LIMITATION OF LIABILITY; DISCLAIMER.

7.1. Warranty. TheraManager warrants that the Services performed under this Support Agreement shall be of professional quality, and performed in a workmanlike manner with qualified personnel. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERAMANAGER DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2. Limitation of Liability. YOU AND THERAMANAGER AGREE THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION 7.2. THERAMANAGER SHALL NOT BE SUBJECT TO ANY LIABILITY, IN CONTRACT, TORT, OR OTHERWISE RELATING TO THE SERVICES OR THIS AGREEMENT. IN PARTICULAR, WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT SHALL THERAMANAGER OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, EVEN IF THERAMANAGER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THERAMANAGER'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES ACTUALLY PAID BY YOU TO THERAMANAGER UNDER THIS AGREEMENT DURING THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE SUBJECT CLAIM FOR DAMAGES.

7.3. Disclaimer. TheraManager shall not be responsible under this Support Agreement to provide Services, Updates, or any other maintenance and support for Software that you (a) misuse, improperly use, alter or damage; (b) use with any hardware or software not supplied or approved by TheraManager; (c) uses in an operating environment other than the Designated Operating Environment; or (d) otherwise use in a manner not in accordance with the License Agreement.

8. GOVERNING LAW; VENUE. This Support Agreement shall be governed by the laws of the State of New Jersey, excluding choice of law principles. Any action or other judicial proceeding arising out of or relating to this Support Agreement or the transactions or other activities contemplated by this Support Agreement shall be instituted only in the United States District Court for the State of New Jersey or Superior Court in the State of New Jersey, County of Bergen. The parties irrevocably and unconditionally submit to the jurisdiction of such courts in any such action and agree that all claims in respect of such action may be heard and determined in such courts. The parties irrevocably and unconditionally waive any objection it may now or later have as to the venue of any such action brought in such a court or that such a court is an inconvenient forum.

9. INDEMNITY. You agree to defend and indemnify TheraManager against all any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees, which TheraManager may incur as a result of or in connection with your breach of this Support Agreement.

10. SUBCONTRACTING. TheraManager reserves the right to subcontract all or part of the Services.

11. NON-SOLICITATION. You agree not to recruit or employ, either directly or indirectly, a present employee of TheraManager during the term of this Support Agreement or any other agreement between them, and for one year following termination of all such agreements.

12. FORCE MAJEURE. Neither party shall be liable to the other by reason of any failure of performance hereunder (except failure to pay) if such failure arises out of causes beyond such party's reasonable control, despite the reasonable efforts of such party. The terms of this Section 12 shall not apply to any monetary obligations of either party under this Support Agreement.

13. MISCELLANEOUS. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the address for each party listed in the latest order form. Unless agreed to in writing, either party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. All remedies under this Agreement, at law or in equity, are cumulative and nonexclusive. If you actually, threaten to, or would inevitably breach this Agreement, you acknowledge that the breach would cause TheraManager irreparable harm, a remedy at law alone would be inadequate, and TheraManager is entitled to apply for injunctive relief without any requirement to post a bond or other security. No third party is a beneficiary of this Agreement. This Agreement represents the entire agreement between TheraManager and you with respect to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software. This Agreement may not be modified except in writing signed by a duly authorized representative of each party. This Agreement is binding upon and inures to the benefit of you and TheraManager, and to the successors and assigns of TheraManager. You may not assign your rights, in whole or in part, under this Agreement to a person or legal entity separate from you without the prior written consent of TheraManager, and any attempted assignment not so consented to shall be null and void. Sections 5, 6.5, 7.2, 8, 11, 13 and all accrued and unpaid obligations arising hereunder shall survive the termination or expiration of this Support Agreement.