



THREE-YEAR SERVICE AGREEMENT

Effective Date ("Effective Date"): _____

Organization ("Client"): _____

Address: _____

Expiration Date: _____

Compass Training Package: **Number of Trainees (Year 1):**

- Compass for Case Managers _____

- Compass for Physician Advisors _____

THIS ACMA SERVICE AGREEMENT (the "Agreement") is effective as of the Effective Date by and between the AMERICAN CASE MANAGEMENT ASSOCIATION, an Arkansas non-profit corporation (the "ACMA") and Client.

WHEREAS, the Client wishes to utilize the service(s) offered by ACMA as noted below ("Services") and defined in the corresponding Section 6: Description of Services

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises and undertakings contained herein, and other good and valuable consideration, the parties agree as follows:

1. Definitions

- (a) "Agreement" means this ACMA Service Agreement, including any attached Exhibits.
- (b) "Services" means the services provided by ACMA to client as set forth above and specified in the Section 6: Description of Services.
- (c) "Intellectual Property Rights" means all rights in and to any copyright, trademark, service mark, trade name, design, patent, trade secret, know how, and any and all other intellectual property or proprietary rights, and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights.
- (d) "Party" means a person or business entity who has executed this Agreement.

- (e) "Term" means the term of this Agreement commencing on the Effective Date, and "Expiration Date."
- (f) "System" refers to ACMA's operational software, protocols, or processes.

2. Confidential Information

(a) Confidential Information. Neither party may use, disclose or make available to any third party the other party's confidential or proprietary information ("Confidential Information"), including without limitation information that (1) is by its nature confidential, (2) is designated in writing by ACMA as confidential, (3) the Client knows or reasonably ought to know is confidential; (4) is information comprised in or relating to any Intellectual Property Rights of ACMA, or (5) all Client data entered into the System, and (6) all of the parties' respective intellectual property rights. Notwithstanding the foregoing, Confidential Information shall not include information that (i) was generally known and available to the public as of the Effective Date of this Agreement or which becomes generally known and available to the public through no action of either Party; (ii) was known to the disclosing Party prior to the Effective Date hereof, as evidenced by contemporaneous written records; (iii) is disclosed with the prior written approval of the non-disclosing Party; (iv) becomes known to the disclosing Party from a source other than the non-disclosing Party without breach of this Agreement; or (v) after prompt, advance written notice to the non-disclosing Party, is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body. Client and its employees, agents, and representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Client, or divulge, disclose, or communicate in any manner, any information that is proprietary to ACMA. Client and its employees, agents, and representatives will protect such information and treat it as strictly confidential. ACMA and its employees, agents, and representatives will not at any time or in any manner, either directly or indirectly divulge, disclose, or communicate in any manner any information that is proprietary to Client, including but not limited to contacts stored in databases, content and any information proprietary to a third-party client of Client stored in the System. ACMA and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Agreement.

(b) Actions Upon Disclosure. Client shall immediately report to the ACMA in writing any use or disclosure of the Confidential Information of which it becomes aware other than the use and disclosure explicitly authorized by this Agreement. Client agrees to cooperate with the ACMA to mitigate any deleterious effect arising from any such improper use or disclosure.

(c) Injunctive Relief. Client acknowledges that the disclosure of Confidential Information could result in irreparable harm to the ACMA, and the ACMA will have no adequate remedy in money or damages. Client therefore agrees that in such event the ACMA shall be entitled to obtain injunctive relief in any court of competent jurisdiction, without the necessity of posting a bond even if otherwise normally required. Such injunctive relief shall in no way limit the ACMA's right to obtain other remedies available under applicable law.

3. Limitations.

(a) No Warranties. Client acknowledges that Services and System are under ongoing improvement and development by ACMA. THEREFORE, THE SERVICES AND SYSTEM ARE PROVIDED TO CLIENT ON AN "AS IS" BASIS. THE ACMA MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT

TO THE ACCURACY, COMPLETENESS, OR CURRENCY OF ANY INFORMATION IN THE SYSTEM OR PROVIDED TO CLIENT AS PART OF SERVICES. THE ACMA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) Limitations of Liability. THE ACMA SHALL NOT BE LIABLE ON ACCOUNT OF ANY ERRORS, OMISSIONS, DELAYS, OR LOSSES, UNLESS CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CLIENT AGREES THAT IN NO EVENT SHALL THE ACMA BE LIABLE FOR THE RESULTS OF CLIENT'S USE OF THE SERVICES OR SYSTEM, ITS INABILITY OR FAILURE TO CONDUCT ITS BUSINESS, OR FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. CLIENT FURTHER AGREES THAT IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF THE ACMA FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING UNDER THIS AGREEMENT AND SERVICES PERFORMED HEREUNDER, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, INCLUDING NEGLIGENCE, EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER, EVEN IF THE ACMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS, OR DAMAGE. THE FOREGOING LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

4. Termination.

(a) Termination. Either party may terminate this Agreement in the event that the other party commits a material breach of this Agreement, provided that the aggrieved party shall first notify the other party of the breach and give such other party at least thirty (30) days to cure such breach. Failure by Client to pay any fee or fees due under this Agreement shall be considered a material breach of the Agreement.

5. Miscellaneous.

(a) Assignment; No Third-Party Beneficiaries. This Agreement is personal to Client and may not be assigned or transferred by Client, in whole or in part, other than as a part of the transfer or sale of substantially all of Client's business related thereto. This Agreement does not confer, and is not intended to confer, any rights upon any person not a party to this Agreement.

(b) Notice. Unless otherwise specified herein, all notices and other communications to a party shall be in writing and shall be given to such party at its address or facsimile number set forth on the signature page, or such other address or facsimile number as such party may hereafter specify by notice to the other party. Notices shall be deemed to have been made upon delivery in person, if delivered by facsimile upon confirmation of receipt by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the address specified below.

(c) Change of Law. Client agrees to negotiate in good faith any changes to this Agreement as required by amendments to any applicable law, rule, or regulation, including without limitation amendments to HIPAA or its implementing regulations set forth at 45 C.F.R. parts 160 through 164; provided, however, that if the parties are unable to agree on such changes to this Agreement, either party may terminate this Agreement effective upon notice to the other party.

(d) Independent Contractors. The parties acknowledge that their relationship is that of independent contractors and that nothing contained in this Agreement shall be construed to place the parties in the relationship of principal and agent, master and servant, partners or joint ventures. Neither

party shall have, expressly or by implication, or represent itself as having any authority to make contracts or enter into any agreement in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

(e) Amendment; Waiver. No amendment of any provision of this Agreement shall be effective unless set forth in writing signed by a representative of each party, and then only to the extent specifically set forth therein. No course of dealing on the part of either party, or any failure or delay by either party with respect to exercising any of its rights, powers or privileges under this Agreement or under applicable law shall operate as a waiver thereof. No waiver by any party of any condition or the breach of any provision of this Agreement in any one or more instances shall be deemed a further or continuing waiver of any such condition or provision.

(f) Legal Compliance. Client agrees that it will not at any time take any action which violates, and shall at all times comply with, any and all applicable federal, state and local laws, rules and regulations related to this Agreement or its use of the Services provided hereunder.

(g) Survival. The confidentiality and limitation provisions of this Agreement shall survive the expiration or termination of this Agreement.

(h) Choice of Law. This Agreement shall be governed by the laws of the State of Arkansas, without regard to its conflict of law rules.

(i) Entire Agreement. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter hereof. No representation, promise or inducement has been made by the parties that is not embodied in this Agreement.

(j) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision which can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(k) Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reason of any act of God, fire, natural disaster, act of government, strikes or labor disputes, inability to provide raw materials, power or supplies, or any other act or condition beyond the reasonable control of the party, provided that such party gives the other party written notice thereof promptly and uses its best efforts to cure the delay. In the event that any act of force majeure prevents either party from carrying out its obligations under this Agreement for a period of more than thirty (30) days, the other party may terminate this Agreement without liability upon ten (10) days' written notice; provided, however, that any payments still owing at the time of termination shall become due immediately upon termination if not already due.

6. Description of Services. Beginning on the Service Effective Date, the ACMA will provide to the client the following services:

(a) Compass Directional Training Modules. Client will be provided access to ACMA's Compass platform (the "Compass Services"), and will be able to use all functionality included therein, including the ability to:

1. Utilize administrative accounts and reporting,
2. Setting up “trainee” access based on number of “seats”,
3. Provide trainee viewing access to Compass modules,
4. Provide trainee quiz access to Compass modules.

7. License.

(a) Grant of License. Upon the terms and conditions specified herein, the ACMA grants to Client, and Client hereby accepts, a nonexclusive, nontransferable right and license, without the right to sublicense, to utilize the Compass Services.

(b) Limitations on Use. The license granted to Client herein is solely for Client’s own internal purposes in the practice of case management in the hospital or healthcare setting. Client may not engage in any activity related to the commercial sale, redistribution, broadcast, or transfer of information related to the Compass Services whatsoever. Client may not rent, lease, time-share, or act as a service bureau in connection with the Compass Services or information provided in connection therewith.

(c) Ownership. All title and ownership rights with respect to the Compass Services and all information provided hereunder shall remain at all times with the ACMA. No right, title, or other interest is transferred to Client except as expressly set forth herein; in no event shall Client be deemed, by virtue of the terms of this Agreement or by any disclosure to or discussion with the ACMA, to have acquired any ownership right or interest in or to any information provided hereunder.

8. Term, Renewal and Termination.

(a) Service Effective Date. The effective date for the services provided under this Agreement shall be the Effective Date shown above.

(b) Term. The term of this Agreement will commence on the Effective Date shown above and end on the Expiration Date shown above.

(c) Renewal. After the Initial Term, this Agreement will renew for successive terms of one (1) year each, unless either party gives the other party at least sixty (60) days’ advance written notice of termination, effective upon the expiration of the then-current term.

(d) Termination. After the Initial Term, this Agreement may be terminated without affecting other services provided to Client by ACMA.

9. Fees.

(a) Trainees. License is granted for the number of trainees shown above.

(b) Fee for Initial Term. Fees for the initial term shall be as follows:

	Fee Due Annually
Year 1	[\$\$\$]*
Year 2	[\$\$\$]**
Year 3	[\$\$\$]**

** May be prorated based on the Effective Date of this Agreement.*

***May be modified based on addition of trainee seats.*

(c) Fee Schedule. The fee for the first year of this Agreement shall be due and payable immediately upon execution of this Agreement. Fees for the subsequent years of this Agreement shall be due and payable on or before January 31st of each year.

(d) Changes to Number or Trainees. Client may increase number of Trainees annually, and ACMA will adjust fees according to the then-current per-trainee fee. Client is not required to use all Trainee seats purchased.

(e) Annual Fee Increases. During the Initial and Renewal Terms, and for each year of Services provided by ACMA hereunder, per trainee fees due to ACMA from Client shall increase by not more than five percent (5%) over the previous year.

10. Limitations.

(a) Trainee Performance. ACMA shall not be liable under any circumstance for trainee performance in modules or quizzes of the system, nor the sharing of this information by their account administrators or other users, nor any effect that information from the Compass Services may have on their employment.

(b) Continuing Education. ACMA shall not be liable for acceptance of continuing education by any board, organization, or accrediting body. Trainees are responsible for verifying that the applicable approving organizations are accepted by their state's practicing board, or other accrediting body applicable to their professional licensure or certification. Trainees are also responsible for submitting their earned continuing education credits/certificates to the appropriate accrediting and/or certifying organization(s) to maintain their individual certification(s), recertification(s), licensure(s), etc.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized agents as of the Effective Date.

Please read the following information: By signing this document, you are agreeing that you have reviewed this Agreement in full and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and opt out at any time.

Address:

THE AMERICAN CASE MANAGEMENT ASSOCIATION

11701 W. 36th Street
Little Rock, AR 72211

**Electronically
Signed By:**

Title:

Date:

Address:

CLIENT NAME

**Electronically
Signed By:**

Title:

Date:
