

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is entered into by and between Clocktree Systems Inc., a Delaware company (“Business Associate”) and [insert name of covered entity] (“Covered Entity”). This Agreement is effective as of [insert date] (“Effective Date”). Terms used herein shall have the meanings assigned or referred to in Schedule A of this Agreement.

RECITALS

- A. Covered Entity has agreed to Business Associate’s terms of service (the “Terms of Service”) pursuant to which Business Associate has agreed to perform certain services for Covered Entity (the “Services”).
- B. In connection with the Services, Covered Entity may need to disclose to Business Associate, or Business Associate may need to create, receive, maintain or transmit on behalf of Covered Entity, certain PHI and electronic PHI (ePHI).
- C. Business Associate and Covered Entity desire to enter into this Agreement to reflect their mutual understanding of the use, disclosure and general confidentiality obligations of the parties in connection with the delivery of the Services, as well as for Business Associate and Covered Entity to comply with the requirements of HIPAA and the regulations issued thereunder, as they exist at the time this Agreement is executed and as the same are amended from time to time, for so long as this Agreement is in effect.

NOW, THEREFORE, for adequate consideration as described in the Terms of Service and this Agreement, the receipt and sufficiency of which are hereby acknowledged by each party, the parties mutually agree as follows:

1. Permitted Uses and Disclosures by Business Associate

(a) For Covered Entity. Except as otherwise limited in the Terms of Service and this Agreement, Business Associate (i) may create, maintain, transmit, access, use or disclose PHI for the benefit of Covered Entity to perform the Services, (ii) may use and disclose PHI as permitted by this Agreement, and (iii) shall not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity. To the extent Business Associate is to carry out one or more of Covered Entity’s obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

(b) Management of Business Associate. Business Associate may use or disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided that, with respect to any disclosure of PHI for such purposes, (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the recipient. Business Associate shall require any person to whom PHI is disclosed under this subsection to notify Business Associate of any instance of which it becomes aware in which the confidentiality of the PHI has been breached.

(c) Data Aggregation. Business Associate may use PHI to provide Data Aggregation services to Covered Entity, as permitted by 45 C.F.R. 164.504(e)(2)(i)(B), or to de-identify PHI in accordance with 45 C.F.R. 164.514(a)-(c).

(d) **Other Disclosures.** Business Associate may disclose PHI for any purpose under 45 C.F.R. 164.512 and to report violations of law to state and federal authorities under 45 C.F.R. 164.502(j).

2. **Obligations of Business Associate**

(a) **Use and Disclosure.** Business Associate shall not use or disclose PHI other than as permitted or required by the [Terms of Service](#), this Agreement, or as Required by Law.

(b) **Safeguards.** Business Associate agrees to use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the [Terms of Service](#), this Agreement or as Required by Law. Business Associate agrees to comply with the Security Rule, to the extent applicable, and agrees to appropriately protect the confidentiality, integrity and availability of ePHI that it receives, maintains, transmits or creates on behalf of Covered Entity.

(c) **Notify Covered Entity.** Business Associate shall notify Covered Entity of any use or disclosure of PHI that is not permitted by this Agreement, including any successful Security Incident or Breach of Unsecured PHI, in writing as soon as practicable, but not to exceed thirty (30) calendar days following Business Associate's Discovery unless (i) required by applicable law to provide notice within a shorter time period, in which case Business Associate shall notify Covered Entity within the time period required by such applicable law, or (ii) law enforcement requests a delay in such notice as permitted under 45 C.F.R. 164.412. Covered Entity and Business Associate acknowledge and agree that unsuccessful Security Incidents include but are not limited to: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; (ii) immaterial incidents such as "pinging," "denial of services" attacks, port scans, unsuccessful log-on attempts; and (iii) any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. This paragraph hereby constitutes notice to Covered Entity and no further notification is required regarding unsuccessful Security Incidents. Notwithstanding any notice provisions in the [Terms of Service](#), notice under this Agreement shall be made to Covered Entity's Privacy Official:

[insert privacy official's contact information for the Covered Entity]

(d) **Breach Notification.** Following notification to Covered Entity of a Breach of Unsecured PHI and in accordance with the Breach Notification Rule and other applicable law, if any, Business Associate shall cooperate with Covered Entity and, to the extent available, shall provide all information required by 45 C.F.R. 164.404(c) that would permit Covered Entity to comply with the content requirements applicable to any notification mandated by 45 C.F.R. 164.404, 164.406, and 164.408, as applicable. Business Associate is under no other obligation to make any report of a Breach of Unsecured PHI, including to any individual, state, federal or other government agency or attorney general, or the media.

(e) **Access.** If Business Associate holds PHI in Designated Record Sets on behalf of Covered Entity, Business Associate shall provide access to the PHI to Covered Entity whenever so reasonably requested by Covered Entity in order for Covered Entity to meet the requirements of 45 C.F.R. 164.524. If requested, such access shall be in electronic format. If Patient requests access directly from Business Associate to inspect or copy his or her PHI, or requests its disclosure to a third party, the Business Associate shall notify Covered Entity's Privacy Official of such request.

(f) **Amendments.** Business Associate shall make amendment(s) to PHI in a Designated Record Set requested by Covered Entity to pursuant to 45 CFR 164.526, and shall do so in the time and manner reasonably requested by Covered Entity. If Patient requests an amendment to his or her PHI directly from Business Associate, the Business Associate shall notify Covered Entity's Privacy Official of such request and await such Official's direction.

(g) **Internal Records.** Business Associate shall make its internal practices, books, records, including its policies and procedures, relating to the use, disclosure, or security of PHI, available to the Secretary, in a reasonable time and manner or as designated by the Secretary, to enable the Secretary to determine Covered Entity's and Business Associate's compliance with HIPAA.

(h) **Accountings.** Business Associate shall document all disclosures of PHI and information related to such disclosures as required under 45 C.F.R. 164.528 in order that it may provide information related to such disclosures as necessary for Covered Entity to respond to a request by a Patient for an accounting of disclosures of PHI. If Patient requests an accounting directly from Business Associate, Business Associate shall notify Covered Entity's Privacy Official of such request.

(i) **Subcontractors.** Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI for or on behalf of Business Associate agrees in writing to substantially similar restrictions and conditions to those that apply to Business Associate with respect to PHI and ePHI under this Agreement and that such Subcontractor shall comply with the Security Rule, as applicable.

3. **Obligations of Covered Entity.**

(a) Covered Entity shall notify Business Associate of any limitations in the Covered Entity's Notice of Privacy Practices, to the extent such limitations may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission granted by any Patient to use or disclose PHI, to the extent such changes or revocations may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any (1) restrictions on the use or disclosure of PHI; or (2) requests for confidential communications that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent such restrictions may affect Business Associate's use or disclosure of PHI.

(d) All notifications to Business Associate under this Section 3 of this Agreement shall include such detail as Business Associate reasonably requires in order to honor the limitations, restrictions, or requests for confidential communications.

(e) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if made by Covered Entity.

4. **Termination.** This Agreement shall terminate in accordance with the [Terms of Service](#) and as set forth below.

(a) **Termination for Cause:** Upon either party's knowledge of a breach of a material term of this Agreement by the other party, the non-breaching party shall notify the breaching party of such breach and:

(i) **Cure.** Provide an opportunity to cure the breach, to the extent curable, and end the violation within thirty (30) days. If the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, the non-breaching party may terminate this Agreement and its obligations under the [Terms of Service](#); or

(ii) **No Cure.** Immediately terminate the Agreement and its obligations under the [Terms of Service](#), if the breaching party has breached a material terms of this Agreement and cure is not possible.

(iii) Notwithstanding the foregoing, if Business Associate determines that it is not reasonably able (A) to comply with any final new or amended provision under HIPAA, or (B) to accommodate any restrictions or limitations to which Covered Entity has agreed pursuant to Section 3, Business Associate may terminate this Agreement and its obligations under the [Terms of Service](#) upon notice to Covered Entity.

5. **Effect of Termination**

(a) **Disposition of PHI.** Upon termination of the Agreement and subject to Section 5(b) below, Business Associate shall return to Covered Entity or destroy all PHI.

(b) **Infeasible; Survival.** If the return or destruction of PHI is infeasible in Business Associate's sole discretion, 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 return or destruction infeasible, for so long as Business Associate retains such PHI. The obligations of the Business Associate governing the protection of PHI under this Agreement shall survive the termination of this Agreement in such case.

6. **Amendment.** The parties agree to promptly modify or amend this Agreement to permit parties to comply with changes under HIPAA and/or its implementing regulations.

7. **General.** The [Terms of Service](#), this Agreement and any attachments hereto are intended to be construed in harmony with each other, but in the event that any provision in this Agreement conflicts with the provisions of the [Terms of Service](#), the provisions in this Agreement shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict.

8. **No Third Party Beneficiary.** The provisions and covenants set forth in this Agreement are expressly entered into only by and between Business Associate and Covered Entity, and are only for their benefit. Neither Business Associate nor Covered Entity intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

9. **Indemnity.** The parties' respective indemnification obligations under the Agreement are as set forth in the [Terms of Service](#) .

10. **Limitation of Liability.** The limitations of liability applicable to the parties under this Agreement are as set forth in the [Terms of Service](#).

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

[Covered Entity]

Clocktree Systems Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Schedule A

Definitions. All capitalized terms not defined herein shall have the meaning ascribed to them by HIPAA (defined below), including Business Associate, Covered Entity, Data Aggregation and Designated Record Set.

(a) **“Breach Notification Rule”** means the final regulatory provisions set forth at 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164, Subparts A and D

(b) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005) and the rules, guidance and regulations promulgated thereunder, as amended from time to time, including 45 C.F.R., Parts 160 and 164.

(c) **“Patient”** shall have the same meaning as the term “individual” under HIPAA and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(d) **“Privacy Rule”** means the final regulatory provisions set forth at 45 C.F.R. Parts 160 and 164, Subparts A and E.

(e) **“Protected Health Information” (“PHI”)** shall have the meaning given to such term under 45 C.F.R. 160.103 and shall include any information, whether oral or recorded in any form or medium, limited to the information created, received, transmitted or maintained by Business Associate from or on behalf of Covered Entity.

(f) **“Secretary”** shall mean the Secretary of the U.S. Department of Health and Human Services or her/his designee.

(g) **“Security Incident”** has the meaning given to such phrase under the 45 C.F.R. 164.304.

(h) **“Security Rule”** shall mean the final regulatory provisions at 45 C.F.R. Parts 160 and 164, Subparts A and C.