

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made and entered into as of _____ (“Effective Date”), by and between _____, (“Covered Entity”) and Physitrack Plc. (“Business Associate”). Covered Entity and Business Associate are sometimes collectively referred to herein as the “parties” and individually as a “party.”

RECITALS

WHEREAS, Business Associate is providing services for Covered Entity clinics, and Business Associate performs services involving access to, or creation, receipt, maintenance or transmission of, Protected Health Information (“PHI”) of Covered Entity, or otherwise qualifies Business Associate as a business associate under HIPAA.

WHEREAS, under the services, Covered Entity discloses certain information to Business Associate so that Business Associate can perform on Covered Entity’s behalf certain functions or activities, which information constitutes Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, including the Privacy Rule, the Security Standards, and all associated guidance as well as the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) and all its implementing regulations and guidance as amended from time to time (collectively “HIPAA”).

WHEREAS, the purpose of this Agreement is to satisfy the requirements of HIPAA that Business Associate provide satisfactory written assurances to Covered Entity that it will comply with applicable requirements of HIPAA.

Now, therefore, in consideration of the mutual promises contained herein and the exchange of information pursuant to the Service Agreement, the parties intending to be legally bound hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, including the definitions set forth in the Recitals portion of this Agreement, which are incorporated into this Section 1 by reference, capitalized terms used in this Agreement shall have the meanings ascribed to them under HIPAA. Accordingly, for purposes of this Agreement:

a) Breach. “Breach” means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under HIPAA which compromises the security or privacy of the Protected Health Information, subject to the exceptions and further explanation provided at 45 C.F.R. Section 164.402 and any future amendments thereto

Physitrack Plc.
4th Floor, 140 Aldersgate Street
London
EC1A 4HY

Registered in the United Kingdom
Companies House Number
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(b) Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for an individual patient by Covered Entity (a "Patient") that is/are (i) the medical records and billing records about individuals maintained by or for a Patient; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Patient to make decisions about individuals. For purposes of this definition, record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Patient.

(c) HITECH Compliance Date. "HITECH Compliance Date" shall mean September 23, 2013, the date on which compliance with the HITECH Modifications to the HIPAA Privacy, Security Enforcement and Breach Notification Regulations is required.

(d) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g)

(e) Guidance. "Guidance" shall mean official guidance of the Secretary as specified in the HITECH Act and any other official guidance or interpretation of HIPAA by a federal governmental agency with jurisdiction.

(f) HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, and implementing Regulations and Guidance.

(g) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and implemented by Guidance.

(h) Protected Health Information or PHI and ePHI. "Protected Health Information" and "PHI" shall have the same meaning as the term "protected health information" in HIPAA. References to PHI in this Agreement shall be deemed to include references to PHI of Covered Entity in electronic form held, created, received, maintained, transmitted or otherwise controlled by Business Associate ("ePHI") unless specifically stated otherwise herein.

(i) Security Incident. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(j) Security Standards. "Security Standards" shall mean the Security Standards at 45 CFR Parts 160, 162 and 164, as amended by the HITECH Act and implemented by Guidance.

(k) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(l) Unsecured. "Unsecured" as applied to Protected Health Information means Protected Health Information in any form, electronic, paper or oral, that is not secured through the use of a technology or methodology specified by the Secretary in published Regulations or Guidance.

2. Obligations and Activities of Business Associate Concerning PHI.

(a) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by the Service Agreement, this Agreement or as required by law. As of the HITECH Compliance Date, this includes the restrictions on the Sale of PHI, and on its use for Marketing, as provided in the HITECH modifications to the HIPAA Privacy, Security Enforcement and Breach Notification Regulations.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information, other than as provided for by the Service Agreement or this Agreement, in accordance with all requirements at 45 C.F.R. Sections 164.301 through 164.314. If and to the extent Business Associate, creates, receives, maintains, transmits or otherwise controls ePHI of Covered Entity, Business Associate shall comply with the applicable provisions of the Security Standards, by providing Administrative, Physical, and Technical Safeguards for all ePHI and by developing Policies and Procedures implementing those Safeguards.

(c) Business Associate agrees to promptly report to Covered Entity any use or disclosure of Protected Health Information which disclosure or use is not otherwise provided for in the Service Agreement or this Agreement, including, but not limited to, a Security Incident. Without limiting the foregoing, Business Associate agrees to report to Covered Entity any Breach of Protected Health Information accessed, created, received, maintained, transmitted, retained, modified, stored, destroyed or otherwise held or used in Unsecured form by Business Associate, or an agent or subcontractor of Business Associate, within three (3) business days of the first day the Breach is known, or reasonably should have been known, to Business Associate, including for this purpose known to any employee, officer, or other agent of the Business Associate (other than the individual committing the Breach) ("Breach Notice"). The Breach Notice shall include the identification of each individual whose Unsecured PHI was subject to the Breach, the nature of the PHI that

was subject to the Breach and the circumstances of the Breach, to the extent known to Business Associate as of the date of the Breach Notice. Business Associate shall diligently pursue investigation of the Breach and notify Covered Entity in writing as soon as reasonably possible, but in no event later than five (5) business days after the date the Breach Notice was received by Covered Entity, of the names of all individuals whose Unsecured PHI was subject to the Breach, of the full circumstances of the Breach (to the extent not provided in the Breach Notice) and of any other information related to the Breach that Business Associate discovers. Business Associate shall promptly provide other information relating to the Breach as discovered or as requested by Covered Entity and shall cooperate with Covered Entity with regard to the provision of required notices to individuals and, if applicable, government agencies, to the extent such notices are determined necessary by Covered Entity. The steps required of Business Associate under this Section 2(c) shall be at Business Associate's sole cost and expense up to a maximum total liability of \$2 million. (d) The parties agree that this Section 2(d) satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required, except on request as stated below. For purposes of this Agreement, such Unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with information system operations related to the ePHI, provided that, upon written request from Covered Entity, Business Associate will provide a log or similar documentation of Unsuccessful Security Incidents for the period of time reasonably specified in Covered Entity's request. Successful Security Incidents will be reported to Covered Entity within two (2) business days of the date the Successful Security Incident is, or in the exercise of reasonable efforts should have been known, to Business Associate. If the Successful Security Incident constitutes a Breach, the parties will proceed as required under this Agreement as to a Breach. (e) Business Associate agrees to mitigate at its sole expense, and to the fullest extent possible, any harmful effect, resulting from a use or disclosure of PHI by Business Associate in violation of HIPAA, this Agreement or the Service Agreement including, without limitation, a Breach of Unsecured PHI as set forth in Section 2(c) herein (collectively "Harmful Effect"), and to coordinate such mitigation efforts with Covered Entity. Notwithstanding the foregoing or anything to the contrary in the Service Agreement, Business Associate agrees to pay costs and expenses incurred by Covered Entity (including reasonable attorneys' fees) to address, investigate, notify, cure or pay

any fines or penalties associated with any Harmful Effect such as Breach of Unsecured PHI up to a maximum total liability of \$2 million.

(f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, provides satisfactory written assurances, in a form meeting all requirements of 45 C.F.R. § 164.314 (i.e., a Business Associate Agreement), to the same restrictions and conditions that apply through this Agreement to Business Associate, including requirements to terminate the relationship in certain circumstances, provide adequate Administrative, Physical, and Technical Safeguards for ePHI, and implement appropriate Policies and Procedures, with respect to such information.

(g) Upon Business Associate's knowledge of a pattern of activity or practice of a subcontractor in violation of assurances provided by a subcontractor pursuant to Section 2(e) herein, Business Associate may provide an opportunity for that subcontractor to end the violation. Business Associate shall terminate the agreement with that subcontractor if the subcontractor does not end the violation within the time specified by the Business Associate.

(h) To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity in order to meet the requirements of HIPAA.

(i) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set maintained by Business Associate that Covered Entity directs, or to which Covered Entity agrees, pursuant to HIPAA, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity.

(j) Subject to receiving notice as described in Section 4(b) herein, Business Associate agrees to abide by any restriction on the use or disclosure of PHI agreed to by Covered Entity including, without limitation, agreements required by HIPAA not to disclose an item or service paid for entirely out-of-pocket by an individual to a Health Plan for payment or health care operations purposes, unless such disclosure is required by law.

(k) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Covered Entity, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, available at the request of the Covered Entity to the Secretary, in a time and

manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's and Business Associate's compliance with the Privacy Rule.

(l) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with HIPAA. If Covered Entity uses or maintains an Electronic Health Record(s), as defined in the HITECH Act, Covered Entity will advise Business Associate in writing and Business Associate's accounting obligations shall include, but not be limited to, disclosures by Business Associate for purposes of Treatment, Payment and Health Care Operations as of the date and to the extent required by HIPAA, as described in Covered Entity's notice under this Section 2 (k).

(m) Business Associate shall, as directed by Covered Entity, provide individuals with access to their Protected Health Information in an electronic format and transmit such information in electronic format directly to an entity specified by the individual, to the extent the individual's PHI is Covered Entity's PHI and is held or controlled by Business Associate, in accordance with HIPAA.

(n) To the extent that Business Associate will carry out any obligation of Covered Entity, Business Associate shall perform that obligation in compliance with all applicable HIPAA provisions that would apply were the Covered Entity to perform the obligation itself.

3. Permitted Uses and Disclosures of PHI by Business Associate. Except as otherwise limited in this Agreement or the Service Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, including the following:

(a) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out legal responsibilities of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware where the confidentiality of the information has been breached; and

(b) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by HIPAA to the extent specified in the Service Agreement.

4. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.

(a) Covered Entity will provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with HIPAA as well as any changes to such Notice.

(b) Covered Entity will notify Business Associate of any restriction on the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with the Privacy Rule, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information, at least ten (10) days in advance of the date on which compliance by the Business Associate is required, including agreements required by HIPAA not to disclose an item or service paid for entirely out-of-pocket by an Individual to a Health Plan for payment or health care operations purposes, unless such disclosure is required by law.

5. Permissible Requests or Disclosures; Minimum Necessary. Except as otherwise specifically provided in the Service Agreement or this Agreement, Covered Entity will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Without limiting the generality of the foregoing, Covered Entity will provide, and Business Associate agrees to request, no more than, the Minimum Necessary amount of PHI required for the performance of Business Associate's services under the Service Agreement. Business Associate and Covered Entity will comply with the Guidance on minimum necessary to be issued by the Secretary as to the Minimum Necessary as specified by Covered Entity.

6. Term and Termination.

(a) Term. This Agreement is effective as of the effective date of the Service Agreement ("Effective Date") and replaces and supersedes any prior Business Associate Agreements between the parties relating to the Service Agreement. This Agreement shall terminate when the Service Agreement terminates and all of the Protected Health Information provided by Covered Entity to Business Associate, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy such Protected Health Information, Business Associate shall extend protections to such

information, in accordance with the termination provisions of Section 6(c) of this Agreement.

(b) Termination for Cause.

(1) Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may provide an opportunity for Business Associate to cure the breach or end the violation; provided, however, that, Covered Entity may terminate the Service Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Notwithstanding the foregoing in Section 6(b)(1), Covered Entity may immediately terminate the Service Agreement if Business Associate has breached a material term of this Agreement and Covered Entity determines that cure is not possible.

(3) Notwithstanding the foregoing in Sections 6(b)(1) or (2), if Covered Entity determines that neither cure, as specified in Section 6(b)(1) herein, nor termination, as specified in Section 6(b)(2) herein, is feasible, Covered Entity shall report the violation to the Secretary.

(4) In the event that Business Associate becomes aware of a pattern of activity or a practice of Covered Entity that constitutes a material violation of the obligations of Covered Entity under this Agreement, Business Associate will have the same rights and obligations specified as to Covered Entity in Sections 6(b)(1), (2) and (3).

(c) Effect of Termination.

(1) Except as provided in Section 6(c)(2), upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction impossible. Business Associate shall thereafter extend the protections of this Agreement to such Protected Health Information and shall limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction impossible, for so long as Business Associate maintains such Protected Health Information.

7. Notice. Whenever this Agreement requires or permits any notice, request, or demand from one Party to another, the notice, request, or demand must be in writing to be effective and shall be deemed to be delivered and received (i) if personally delivered or if delivered by email, telex, telegram, email or courier service, when actually received by the party to whom notice is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate Party, at the address of such party set forth below (or at such other address as such Party may designate by written notice to all other Parties in accordance herewith):

If to Business Associate:

Physitrack Plc.

4th Floor, 140 Aldersgate Street

London

EC1A 4HY

United Kingdom

hpm@physitrack.com (CEO)

If to Covered Entity:

8. Miscellaneous.

(a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, the Security Standards, or Regulations or Guidance means the referenced material as in effect as of the Effective Date or as subsequently amended or as supplemented or implemented.

(b) **State Privacy or Security Laws.** Business Associate will comply with privacy and data security laws imposed by HIPAA and the respective states in which each Covered Entity

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is doing business, and other applicable state laws, if any, requiring other or further actions, restriction on or handling of PHI of Covered Entity by Business Associate, as specified by Covered Entity or as known, or reasonably should be known, to Business Associate.

(c) No Limitation of Remedies. The actions of Business Associate to comply with this Agreement in the event of a breach by Business Associate shall be in addition to, and not in limitation of, any other rights and remedies available to Covered Entity, at law or in equity, for such a breach under this Agreement or the Service Agreement. In the event any term or condition of this Agreement conflicts with a term or condition of the Services Agreement, the terms of this Agreement shall control.

(d) Amendment. The Parties agree that in the event that Covered Entity determines that the provisions of this Agreement or of the Service Agreement require amendment based on HIPAA including, but not limited to, Guidance or Regulations to be published by the Secretary after the Effective Date of this Agreement pursuant to the HITECH Act, or other legislative or regulatory changes to the Privacy Rule or the Security Standards, Covered Entity shall have the right to notify Business Associate in writing, including of the text of the required amendment, the effective date of the amendment and the basis for the amendment in reasonable detail ("Amendment Notice"), and the relevant agreement will be deemed amended as of the date specified in Amendment Notice unless, within five (5) days after Business Associate's receipt of the Amendment Notice, Business Associate notifies Covered Entity in writing of an objection to the amendment ("Objection Notice"), including the basis for the objection in reasonable detail. In the event Business Associate timely provides an Objection Notice, the parties will thereafter promptly discuss the Amendment in an effort to resolve Business Associate's objection while assuring compliance with HIPAA by both the Business Associate and Covered Entity. If the parties are unable to agree to such changes, in writing, within ten (10) days after receipt by Covered Entity of the Objection Notice, Covered Entity may terminate the Service Agreement, without cost or penalty, effective on or before the date on which the proposed amendment was to be effective, as specified in the Amendment Notice.

(e) Survival. The respective rights and obligations of the parties under this Agreement which require or contemplate compliance after termination of this Agreement including, without limitation, rights and obligations set forth in Section 2 of this Agreement, shall survive termination.

(f) Independent Contractor, Not Agent. For purposes of this Agreement, the Service Agreement and HIPAA, Business Associate, at all times, shall be considered and deemed to be an independent contractor, and not an Agent, of Covered Entity.

(g) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both Covered Entity and Business Associate to comply with the Privacy Rule or the Security Standards, as appropriate, consistent with the Service Agreement.

In witness whereof, the parties have executed this Agreement, effective as of the Effective Date.

Covered Entity:

By: _____

Date: _____

Title: _____

Business Associate: Physitrack Plc.

_____ By: Henrik Molin

Date:

Title: CEO, and Co-Founder