

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is incorporated by reference into, and made part of, the applicable Underlying Contracts between VirtuSense Technologies, Inc. a Delaware corporation with offices located at 4501 N. Sterling Ave, 2nd Floor, Peoria, Illinois 61615 (“Business Associate”) and the Customer (“Covered Entity”) that expressly references this BAA. This BAA becomes effective as of the effective date of such Underlying Contracts (the “Effective Date”).

1. **BACKGROUND AND PURPOSE.** The Parties have entered into one or more agreements, written or oral, pursuant to which Business Associate performs functions or activities for, or provides services to, Covered Entity that involve the use and disclosure of Protected Health Information (as defined below) (the “**Underlying Contracts**”). In connection with the Underlying Contracts, the Parties wish to execute this BAA (1) to ensure Covered Entity’s and Business Associate’s compliance with applicable provisions of the health information privacy and security rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and codified at 45 C.F.R. Part 160, Part 162, and Part 164, subparts A and C (the “**Security Rule**”), subparts A and D (the “**Breach Notification Rule**”), and subparts A and E (the “**Privacy Rule**”), as amended, and (2) to ensure that Business Associate protects the privacy and security of Protected Health Information as further provided herein. This BAA is intended to apply to any existing relationships between Covered Entity and Business Associate involving the exchange of Protected Health Information.
2. **DEFINITIONS.** Unless otherwise defined in this BAA, all capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA, the Privacy Rule, the Security Rule, and the Breach Notification Rule; provided, however, that “**Protected Health Information**” or “**PHI**” shall mean Protected Health Information limited to the information Business Associate received from, or created, maintained, transmitted, or received on behalf of, Covered Entity.
3. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.**
 - 3.1 **Obligations of Business Associate.** With regard to its use and disclosure of PHI, Business Associate agrees to:
 - a. not use or further disclose PHI other than as permitted or required by this BAA or as Required by Law.
 - b. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA. Without limiting the generality of the foregoing, Business Associate will:
 - implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (or “**EPHI**”) that it receives from, or creates, receives, maintains, or transmits on behalf of, Covered Entity;

- ensure that any agent of Business Associate, including a subcontractor, to whom Business Associate provides such EPHI agrees to implement substantially the same safeguards and other measures to protect such EPHI as set forth in this BAA; and
 - report to Covered Entity any Security Incident of which Business Associate becomes aware; provided, however, that the Parties acknowledge that unsuccessful attempts at unauthorized access or system interference may occur frequently and that there is no significant benefit for data security in requiring the documentation and reporting of such unsuccessful intrusion attempts, and the Parties therefore agree that this BAA shall constitute the documentation, notice, and written report of such unsuccessful attempts at unauthorized access or system interference as required above and by 45 C.F.R. Part 164, Subpart C and that no further notice or report of such attempts will be required.
- c. report to Covered Entity any use or disclosure of PHI in violation of this BAA, as well as any incident which, in Business Associate's view, compromises the security of PHI, of which Business Associate becomes aware.
- d. ensure that any agent, including any subcontractor, to whom Business Associate provides PHI agrees to the same restrictions and conditions on the use and disclosure of PHI that apply to Business Associate pursuant to this BAA.
- e. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all PHI required for Covered Entity to respond to an Individual's request for access to PHI about such Individual in accordance with 45 C.F.R. 164.524. Business Associate acknowledges that individuals may have the right to obtain PHI about them in an electronic format, and Business Associate will provide PHI in an electronic format as may be reasonably requested by Covered Entity to the extent that Business Associate maintains such PHI in an electronic format.
- f. make available, in the form, time, and manner reasonably requested by Covered Entity, PHI for amendment and incorporate any such amendment as directed by Covered Entity to allow Covered Entity to comply with 45 C.F.R. 164.526.
- g. document any and all disclosures of PHI by Business Associate or its agents, including subcontractors, as well as any other information related to such disclosures of PHI that would be required for Covered Entity to respond to an Individual's request for an accounting of disclosures in accordance with 45 C.F.R. 164.528.
- h. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all information documented in accordance with subsection 3.1.g.
- i. subject to any applicable privileges, and, to the extent permitted by law, following consultation with Covered Entity, make available to the Secretary of the U.S. Department of Health and Human Services ("HHS") any and all internal practices, books, and records of Business Associate or its agents, including subcontractors,

relating to the use and disclosure of PHI, for purposes of determining Covered Entity's compliance with the Privacy Rule.

- j. comply with the Security Rule.
- k. determine and use, disclose, or request the Minimum Necessary PHI needed for uses, disclosures, or other requests of or for Covered Entity's PHI, other than those exempt from the Minimum Necessary requirement specified in 45 C.F.R. 164.502(b)(2), in order to accomplish the intended purpose of the use, disclosure, or request, consistent with the terms of the Underlying Contracts.
- l. not, directly or indirectly, receive remuneration in exchange for Covered Entity's PHI unless Business Associate or Covered Entity has obtained an authorization from the subject individual(s) which complies with all applicable requirements, or unless an exception applies.
- m. to the extent Business Associate agrees to carry out one or more of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that Business Associate apply to the Covered Entity in the performance of such obligations.

- 3.2 **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise specified in this BAA, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited by this BAA, Business Associate may also: (a) use the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate; (b) disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or that Business Associate has obtained reasonable assurances from the third party to whom PHI is to be disclosed that the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the third party, and the third party has agreed to notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached; and (c) if required by the Underlying Contracts, use and disclose PHI to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by the Privacy Rule. Business Associate may only use and disclose PHI as described above if such use and disclosure is in compliance with 45 C.F.R. 164.504(e).

- 3.3 **Obligations of Covered Entity.** Covered Entity agrees to notify Business Associate in writing of any restrictions on uses and disclosures of PHI to which Covered Entity agrees that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this BAA. Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this BAA. Covered Entity agrees to provide or make available to Business Associate its Notice of Privacy Practices and to notify Business

Associate of any changes in its Notice of Privacy Practices that will impact in any manner the use and/or disclosure of PHI by Business Associate under this BAA.

3.4 **Breach of Unsecured Protected Health Information.** Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI within ten (10) business days of the first day the Breach is known to Business Associate, including for this purpose any employee, officer, or other agent of Business Associate who knows of the Breach (other than the individual committing the Breach). The notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI was, or is reasonably believed to have been, subject to the Breach and the circumstances of the Breach, as both are known to Business Associate at that time. To the extent possible, the description of the circumstances of the Breach shall include: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach; (2) a description of the types of Unsecured PHI that were involved in the Breach; and (3) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. Following the notice, Business Associate shall conduct such further investigation and analysis as is reasonably required, and shall promptly advise Covered Entity of additional information pertinent to the Breach which Business Associate obtains. Business Associate shall cooperate with Covered Entity with respect to Covered Entity's investigation of the Breach and, if necessary, as reasonably determined by Covered Entity, to allow Covered Entity to provide notice of the Breach to individuals and others as required by the Breach Notification Rule. Covered Entity is responsible for the provision of notice to individuals in a timely manner, provided that Covered Entity shall consult with Business Associate as needed regarding the details of the notice.

3.5 **Marketing.** The Parties agree to comply with the restrictions on marketing and fundraising communications contained in the Privacy Rule. If the Parties wish for Business Associate to engage in any marketing or fundraising communications on behalf of Covered Entity, the Parties agree to amend the Underlying Contracts or this BAA accordingly.

3.6 **Effect of Changes to HIPAA, the Privacy Rule, Security Rule, or Breach Notification Rule.** To the extent that any relevant provision of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule is amended in a manner that materially changes the obligations of Business Associate or Covered Entity that are embodied in the terms of this BAA, the Parties agree to amend this BAA in order to give effect to such revised obligations or, if the Parties cannot agree on an amendment to this BAA, terminate this BAA and the Underlying Contracts.

4. TERMINATION.

4.1 **Term.** The term of this BAA shall commence on the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the provisions of Section 4.3, unless earlier terminated as provided herein.

- 4.2 **Material Breach.** Upon either Party's knowledge of a material breach of the terms of this BAA by the other Party, the non-breaching Party shall provide the breaching Party written notice of that breach in sufficient detail to enable the breaching Party to understand the specific nature of that breach and afford the breaching Party an opportunity to cure the breach. If the breaching Party fails to cure the breach within a reasonable time as specified by the non-breaching Party, the non-breaching Party may terminate this BAA and the Underlying Contracts.
- 4.3 **Effect of Termination.** Upon the termination or expiration of this BAA for any reason, Business Associate shall return to Covered Entity or destroy any and all PHI in the possession or control of Business Associate and its agents, including subcontractors, and retain no copies, if it is feasible to do so. If return or destruction of PHI is infeasible, as determined by Business Associate, Business Associate agrees to, for so long as Business Associate or its agents, including subcontractors, maintain such PHI, extend all protections contained in this BAA to the use and/or disclosure of any PHI retained by Business Associate or its agents, including subcontractors, and limit any further uses and/or disclosures of such PHI by Business Associate or its agents, including subcontractors, to the purposes that make the PHI's return or destruction infeasible.

5. MISCELLANEOUS.

- 5.1 **Interpretation.** The terms of this BAA shall prevail in the case of any conflict with the terms of any Underlying Contracts to the extent necessary to allow Covered Entity and Business Associate to comply with applicable provisions of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule.
- 5.2 **Survival.** The obligations imposed on Business Associate pursuant to this BAA with respect to PHI shall survive termination of this BAA and continue indefinitely with respect to PHI that Business Associate or its agents, including subcontractors, retain in accordance with Section 4.3.
- 5.3 **No Third Party Beneficiaries.** Except as may be specifically set forth in this BAA, nothing in this BAA shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.4 **Privileges and Protections Not Waived.** Nothing herein shall be construed as waiver of applicable legal or other privileges or protections held or enjoyed by Covered Entity.
- 5.5 **Amendment.** This BAA shall not be amended except by the mutual written agreement of the Parties.
- 5.6 **Governing Law.** To the extent not governed by federal law, this BAA shall be governed by and construed in accordance with the laws of the State of Illinois.

5.7 Assignment. Neither Party may assign any of its rights or obligations under this BAA without the prior written consent of the other Party.

5.8 Limit on Liability. In no event shall the liability of Business Associate under this BAA exceed the available coverage of Business Associate's cyber liability or other insurance policies.