



HIPAA Business Associate Agreement

This Business Associate Agreement ("BA Agreement") is made between DARKHORSE TECH, INC., a New York corporation ("Provider"), and the undersigned covered entity that has a business relationship with Provider ("Client"), and forms part of the Agreement between Provider and Client relating to the provision of Services to Client by Provider.

WHEREAS, Pursuant to the federal Health Insurance Portability and Accountability Act, Public Law 104-191 ("HIPAA"), the U.S. Department of Health and Human Services issued final regulations entitled "Standards for Privacy of Individually Identifiable Health Information" (the "Privacy Rule"); Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") and Breach Notification for Unsecured Protected Health Information (the "Breach Notification Rule").

WHEREAS, the Privacy Rule requires certain entities to have their Business Associates with whom the entities may share Protected Health Information (as such term is defined in the Privacy Rule) to agree to certain provisions related to the use and disclosure of such Protected Health Information (the "Business Associate Contract Provisions"); and

Now therefore, the parties hereby agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this BA Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule and the Breach Notification Rule.

2. **Obligations and Activities of Provider.**

2.1. Provider agrees to not use or further disclose Protected Health Information ("PHI") other than as permitted or required by the BA Agreement or as Required by Law.

2.2. Provider agrees to use reasonably appropriate safeguards intended to prevent use or disclosure of the PHI other than as provided for by this BA Agreement, including implementing administrative, physical, and technical safeguards that are aimed at reasonably and appropriately protecting the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Client.

2.3. Provider agrees to report to Client any use or disclosure of the PHI that is not provided for by this BA Agreement of which it becomes aware. Provider further agrees to notify Client of any Breach of Unsecured PHI of which it becomes aware.

2.4. Provider agrees to ensure that any agent, including a subcontractor, to whom it provides PHI or which is received from, or created or received by Provider on behalf of Client, complies with

the provisions of this BA Agreement. Likewise, Client agrees to the same restrictions and conditions protecting and/or governing the receipt or provision of PHI that apply through this BA Agreement to Provider with respect to such information.

2.5. Provider agrees to provide access, at the request of Client, and within a reasonable time and manner not materially disruptive of Provider's operations or business, to PHI in a Designated Record Set to Client in order to meet the requirements under 45 CFR 164.524.

2.6. Provider agrees to document such disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC17935(c), and to reasonably cooperate with Client in responding to such requests. Client shall be responsible for such costs and expenses of Provider.

2.7. If, in the performance of its obligations set forth herein, Provider expends time and materials in addition to the Services to be provided by Provider pursuant to their Master Client Agreement, Provider shall provide Client with an estimate of the fees for such time and materials. Such fees to may be charged by Provider for such time and materials, Provider shall invoice Client on a time and materials basis at reasonable rate, and Client shall pay Provider all such fees in accordance with the payment terms of their Master Client Agreement.

3. Permitted Uses and Disclosures by Provider.

Except as otherwise limited in this BA Agreement, Provider may use or disclose PHI to perform functions, activities, or services for, or on behalf of Client as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Client or the minimum necessary policies and procedures of the Client of which Provider has been informed. It shall be Client's responsibility to inform Provider of Client's policies and procedures.

4. Specific Use and Disclosure Provisions.

4.1. Except as otherwise limited in this BA Agreement, Provider may use PHI for the proper management and administration of regular and ordinary business or to carry out the legal responsibilities of Provider under their Master Client Agreement or this BA Agreement.

4.2. Except as otherwise limited in this BA Agreement, Provider may disclose PHI for the proper management and administration of regular and ordinary business, provided that disclosures are required or compelled by law, or Provider 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 Provider of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Obligations of Client.

5.1 Client shall provide Provider with any limitations in its notice of privacy practices of Client in accordance with 45 CFR 164.520, to the extent that such limitation may affect Provider's use or disclosure of PHI.

5.2. Client shall provide Provider with any changes in, or revocation of, any permission by an Individual to use or disclose PHI, to the extent that such changes may affect Provider's use or disclosure of PHI.

5.3. Client shall notify Provider in writing of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Provider's use or disclosure of PHI.

5.4. Client shall not request Provider to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client.

5.5 Client shall adhere to and comply with the requirements set forth in the HIPAA regulations, the Privacy Rule, and the Security Rule.

5.6 Client shall indemnify and hold harmless Provider for losses, claims, damages, expenses and costs, and attorney's fees for Client's breach of this BA Agreement or Client's failure to adhere to 5.5 of this BA Agreement.

6. **Term and Termination.**

6.1. *Term.* The Term of this BA Agreement shall be effective as of the Effective Date contemplated by the Master Client Agreement to which the Parties have entered into, and shall terminate when all of the PHI provided by Client to Provider, or created or received by Provider on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section, or on the date Client terminates the Master Client Agreement, whichever is sooner.

6.2. *Termination For Cause.* In the event of a material breach of this BA Agreement, the other party shall either: (i) provide the breaching party with an opportunity to cure the breach or end the violation, and terminate this BA Agreement if the breaching party does not cure the breach or end the violation within sixty (60) days, or (ii) immediately terminate this BA Agreement if cure is not possible. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary as required by the applicable U.S. Code of Regulations governing the disclosure and protection of PHI.

6.3. *Termination upon Issuance of Guidance or Change In Law.* If the Secretary provides additional guidance, clarification or interpretation on the Privacy Rule, or there is a change or supplement to the HIPAA statutes or regulations (both referred to as a "HIPAA Change"), such that a party hereto determines that the service relationship between Provider and Client is no longer a Business Associate relationship as defined in HIPAA, such party shall provide written notice to the other

party of the HIPAA Change, and upon mutual agreement of the parties that the HIPAA Change renders this BA Agreement unnecessary, this BA Agreement shall terminate and be null and void.

6.4. Effect of Termination.

A. Except as provided in paragraph (B) of this subsection, upon termination of this BA Agreement, for any reason, Provider shall return or destroy all PHI received from Client, or created or received by Provider on behalf of Client that Provider maintains. Except as provided in paragraph (B) below, Provider shall retain no copies of the PHI.

B. In the event that Provider determines that returning or destroying the PHI is infeasible, Provider shall retain only that PHI which is necessary for Provider to continue its proper management and administration or to carry out its legal responsibilities; return to Client the remaining protected health information that Provider still maintains in any form; continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Provider retains the protected health information; not use or disclose the protected health information retained Provider other than for the purposes for which such protected health information was retained and subject to the same conditions set out at under Section 3 which applied prior to termination; and, return to Client the protected health information retained by Provider when it is no longer needed by Provider for its proper management and administration or to carry out its legal responsibilities.

7. Miscellaneous.

7.1. Client Rights and Remedies Upon Breach By Provider. In the event Provider fails to perform its obligations hereunder or otherwise breaches this BA Agreement, Client may exercise its rights and remedies available to it under the Master Client Agreement, subject to applicable limitations of liability or such other conditions as may apply to Client rights or remedies.

7.2. Indemnification. Client shall indemnify, hold harmless, and defend Provider from any and all claims, loss, liability, or costs resulting from or relating to any act, omission, or negligence of Client in connection with any representation, duties or obligations of Client under this BA Agreement.

7.3. Amendment. The parties agree to take such action as is necessary to amend this BA Agreement and Master Client Agreement from time to time as is necessary for Client to comply with the Privacy Rule, Security Rule, and/or HIPAA. Client shall notify Provider of any modifications to this BA Agreement which are required to comply with changes in the applicable Code of Federal Regulations pertaining to PHI. To the extent that either Party requests further modifications to the Agreement, they shall negotiate in good faith for up to ninety (90) days to come to a mutual agreement on such changes.

7.4. *Regulatory References.* A reference in this BA Agreement to a section in the Privacy Rule, Security Rule or Breach Notification Rule, as applicable means the section as in effect or as amended.

Business Associate:

Darkhorse Tech, Inc.

Reuben Kamp

Authorized Signatory: Reuben Kamp, as President

Covered Entity:

Name: _____

Date: _____