

Business Associate Agreement**1. PREAMBLE AND DEFINITIONS.**

1.1 Pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**"), the applicable healthcare provider that has agreed to the Darktrace Master Services Agreement ("**Covered Entity**") and **Darktrace Holdings Limited**, a private limited company registered in England and Wales (together with any of its corporate affiliates, "**Business Associate**"), enter into this Business Associate Agreement ("**BAA**"), which is incorporated by reference into, and entered into as of the date of, the Darktrace Master Services Agreement, to address the HIPAA requirements with respect to "business associates," as defined under the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164 ("**HIPAA Rules**"), including as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (the "**HITECH Act**") and by the American Recovery and Reinvestment Act of 2009 ("**ARRA**"). A reference in this BAA to a section in the HIPAA Rules means the section as currently in effect or as amended.

1.2 This BAA is intended to ensure that Business Associate has, or will, establish and implement appropriate safeguards for the Protected Health Information ("**PHI**") (as defined under the HIPAA Rules) that Business Associate may receive, maintain, use, or disclose in connection with the functions, activities, and services that Business Associate performs for Covered Entity. The functions, activities, and services that Business Associate performs for Covered Entity are defined in the Darktrace Master Services Agreement or any other written agreement between the parties for the provision of services by Business Associate to Covered Entity (the "**Underlying Agreement**").

1.3 Unless the context clearly indicates otherwise, the following terms in this BAA shall have the same meaning as those terms in the HIPAA Rules: Designated Record Set, disclosure, Electronic Protected Health Information (ePHI), individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Subcontractor, Unsecured PHI, and use. Additional definitions are as follows:

(a) "**Breach**" shall mean a "breach" as defined in 45 C.F.R. § 164.402 with respect to Unsecured PHI save that for the purposes of this Agreement, a Breach shall exclude log-on attempts, denials of service or any combination of the above, so long as no such incidents result in actual unauthorized access, use or disclosure of Covered Entity's Unsecured PHI.

(b) "**Discovery**" shall mean, with respect to a Breach or Security Incident, the first day on which such Breach or Security Incident is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate).

(c) "**Security Incident**" shall have the meaning given such term in 45 C.F.R. § 164.304, save that for the purposes of this Agreement, a Security Incident shall exclude log-on attempts, denials of service or any combination of the above, so long as no such incidents result in actual unauthorized access, use or disclosure of Covered Entity's unsecured PHI .

(d) "**Privacy Rule**" shall mean the Privacy Rule, in conformity with the regulations at 45 C.F.R. Parts 160-164, as interpreted under applicable regulations and guidance of general application published by the HHS, including all

amendments thereto for which compliance is required, as amended by the HITECH Act, ARRA, and the HIPAA Rules.

(e) “**Security Rule**” shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. § 160 and § 164, subparts A and C.

2. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE.

2.1 Business Associate agrees not to use or disclose PHI, other than as permitted or required by this BAA or as Required By Law, or if such use or disclosure does not otherwise cause a Breach of Unsecured PHI.

2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the BAA.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result of a use or disclosure of PHI by Business Associate in violation of this BAA's requirements or that cause a Breach of Unsecured PHI.

2.4 Business Associate agrees to report to Covered Entity any Breach of Unsecured PHI not provided for by the BAA of which it becomes aware, or any Security Incident of which it becomes aware, within seven (7) calendar days of the Discovery of such Breach or Security Incident. Business Associate shall provide, as much as may be reasonably practicable, such additional information reasonably requested by Covered Entity for purposes of investigating the Breach or Security Incident and any other available information that Covered Entity is required to include to the individual under 45 C.F.R. § 164.404(c) at the time of notification or promptly thereafter as information becomes available.

2.5 Business Associate does not presently use any Subcontractors. However and to the extent may be applicable, Business Associate agrees, in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), to require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

2.6 Business Associate does not maintain a Designated Record Set (as defined in 45 C.F.R. § 164.501), nor does Business Associate maintain any unique PHI to which Covered Entity does not have access. Covered Entity retains all obligations related to Designated Record Sets, including maintenance, individual access, amendments to the Designated Record Set, and responding to individuals' requests for access.

2.7 To the extent applicable and practicable given that Business Associate does not maintain a Designated Record Set, Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.

2.8 Business Associate agrees to make its internal practices, books, and records, including policies and procedures regarding PHI, relating to the use and disclosure of PHI and Breach of any Unsecured PHI received from Covered Entity, or created or received by the Business Associate on behalf of Covered Entity, available to the Secretary for the purpose of the Secretary determining compliance with the Privacy Rule.

2.9 Business Associate shall not sell any PHI without the express prior written consent of Covered Entity.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 General Uses and Disclosures. Business Associate agrees to receive, create, use, or disclose PHI only in a manner that is consistent with this BAA, the Privacy Rule, or Security Rule, and only in connection with providing services to Covered Entity.

3.2 Business Associate may use or disclose PHI as Required By Law, and may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

3.3 Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's Minimum Necessary policies and procedures.

3.4 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.

3.5 Except as otherwise provided in this BAA, Business Associate may use PHI for its proper management and administration or to carry out its legal responsibilities as permitted under applicable law.

3.6 Business Associate may de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from the Business Associate. To the extent described in 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this BAA.

4. **OBLIGATIONS OF COVERED ENTITY.**

4.1 Covered Entity shall:

(a) Provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with the Privacy Rule, and any changes or limitations to such notice under 45 C.F.R. § 164.520, to the extent that such changes or limitations may affect Business Associate's use or disclosure of PHI.

(b) Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI under this BAA.

(c) Notify Business Associate of any changes in or revocation of permission by an individual to use or disclose PHI, if such change or revocation may affect Business Associate's permitted or required uses and disclosures of PHI under this BAA.

(d) Use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate in accordance with the standards and requirements of the HIPAA Rules.

4.2 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity, except for the specific uses and disclosures provided under Section 3 of this BAA.

5. **TERM AND TERMINATION.**

5.1 This BAA shall be in effect as of the date of the Underlying Agreement and shall terminate on the earlier of the date that:

(a) Either party terminates for cause as authorized under Section 5.2 of this BAA.

(b) All of the PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is not feasible to return or destroy PHI, protections are extended in accordance with Section 5.3 of this BAA.

5.2 Upon either party's knowledge of material breach by the other party, the non-breaching party shall provide an

opportunity for the breaching party to cure the breach or end the violation; or terminate the BAA. If the breaching party does not cure the breach or end the violation within a reasonable timeframe not to exceed thirty (30) days from the notification of the breach, or if a material term of the BAA has been breached and a cure is not possible, the non-breaching party may terminate this BAA, upon written notice to the other party.

5.3 Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- (a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- (b) Return to Covered Entity or destroy the remaining PHI that the Business Associate still maintains in any form;
- (c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in] this Section 5, for as long as Business Associate retains the PHI;
- (d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Sections 2 and 3 above which applied prior to termination; and
- (e) Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5.4 The obligations of Business Associate under this Section 5 shall survive the termination of this BAA.

6. **MISCELLANEOUS.**

6.1 Limitation of Liability. Except to the extent may be precluded by HIPAA or other applicable laws, the parties' maximum liability to each other will be limited to the total amount paid or payable to Business Associate during the term of this BAA, and in no event will either party be liable to the other party for any indirect, moral, incidental, special, economic, exemplary, punitive or consequential damages.

6.2 The parties agree to take such action as is necessary to amend this BAA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, ARRA, the HITECH Act, the HIPAA Rules, and any other applicable law.

6.3 The respective rights and obligations of Business Associate under Section 5 of this BAA shall survive the termination of this BAA.

6.4 This BAA shall be interpreted in the following manner:

- (a) Any ambiguity shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.
- (b) Any inconsistency between the BAA's provisions and the HIPAA Rules, including all amendments, as interpreted by the HHS, a court, or another regulatory agency with authority over the Parties, shall be interpreted according to the interpretation of the HHS, the court, or the regulatory agency.
- (c) Any provision of this BAA that differs from those required by the HIPAA Rules, but is nonetheless permitted by the HIPAA Rules, shall be adhered to as stated in this BAA.

6.5 This BAA constitutes the entire agreement between the parties related to the subject matter of this BAA, except to the

extent that the Underlying Agreement may impose more stringent requirements related to the use and protection of PHI upon Business Associate. This BAA supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written. This BAA may not be modified unless done so in writing and signed by a duly authorized representative of both parties. If any provision of this BAA, or part thereof, is found to be invalid, the remaining provisions shall remain in effect.

6.6 Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the laws of the State of California, and any disputes arising under or relating to this BAA shall be brought before the state and federal courts located in the City of San Francisco, California to whose exclusive jurisdiction the parties irrevocably consent.

6.7 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.