

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into between _____, located at _____, including any subsidiary corporations as listed on Addendum A attached hereto (“Covered Entity”), and **Senscio Systems Inc.** (“Business Associate”) located at 1740 Massachusetts Avenue, Boxborough, MA 01719 as of _____
June 1, 2015.

1. **HEALTHCARE PRIVACY ASSURANCES.**

A. Covered Information:

This Agreement governs the use and/or disclosure of all Protected Health Information (PHI) that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity (“Covered Information”). Terms not otherwise defined herein shall have the same meanings as set forth in the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 as implemented by the U.S. Department of Health and Human Services (“DHHS”) Privacy, Security, Breach Notification and Enforcement Rules, codified at 45 C.F.R. Parts 160 and 164 (the “HIPAA/HITECH Rules”).

B. Permitted Uses and Disclosures:

Business Associate, shall keep confidential, and shall not use or disclose, Covered Information except as expressly permitted by this Section or as required by law. Business Associate shall use or disclose Covered Information for the following purposes only:

- 1) As necessary to perform the services set forth in the underlying services agreement(s) between Covered Entity and Business Associate;
- 2) For the proper management and administration of Business Associate;
- 3) To carry out the legal responsibilities of Business Associate.

Business Associate shall not disclose Covered Information pursuant to Subsections 2 or 3 above unless the disclosure is required by law, or Business Associate has obtained written reasonable assurances from the person to whom the Covered Information will be disclosed which meet the criteria set forth in the HIPAA/HITECH Rules, including the requirement that the recipient must notify Business Associate if it becomes aware of any instances in which the confidentiality of the Covered Information has been breached. Business Associate shall not use or disclose Covered Information in any manner that would constitute a violation of the HIPAA/HITECH Rules, 22 M.R.S.A. §§1711-C and 1711-E, or any other applicable laws and regulations governing the privacy and security of Covered Information, if done by the Covered Entity.

C. Business Associate's Obligations and Assurance:

Business Associate hereby warrants and represents to Covered Entity that it will:

- 1) Not use or disclose, and shall ensure that its employees, contractors and agents will not use or disclose, Covered Information other than as permitted or required by this Agreement or as required by law;
- 2) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Covered Information that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- 3) Ensure that any agent, including a subcontractor, that will have access to Covered Information agrees to implement reasonable and appropriate safeguards to protect it;
- 4) Use appropriate safeguards to prevent unauthorized use or disclosure of Covered Information;
- 5) Report to Covered Entity when it becomes aware of an unauthorized use or disclosure of, or security incident involving, Covered Information;
- 6) Ensure that any agents, including subcontractors, that will have access to Covered Information agree in writing to the same restrictions and conditions applicable to Business Associate as set forth in this Agreement and the HIPAA/HITECH Rules;
- 7) Make Covered Information available to the individual as required by the HIPAA/HITECH Rules;
- 8) Make Covered Information available for amendment by the individual, and incorporate any such amendment as required by the HIPAA/HITECH Rules;
- 9) Make Covered Information available as required to provide an accounting of disclosures pursuant to the HIPAA/HITECH Rules; and
- 10) Make its internal practices, books and records relating to the use and disclosure of Covered Information available to the Secretary of DHHS for purposes of determining compliance with HIPAA/HITECH Rules.
- 11) To the extent that Business Associate is to carry out any of the Covered Entity's obligations under the HIPAA/HITECH Rules, Business Associate shall comply with the requirements of those rules that apply to Covered Entity in the performance of those obligations.
- 12) With respect to subsections 7, 8 and 9 above, in the event an individual makes a direct request of Business Associate for access to such individual's Covered Information, to amend such individual's Covered Information, or for an accounting of such individual's Covered Information, Business Associate shall forward such request to Covered Entity within five (5) business days and Covered Entity shall determine whether and to what extent the request for access, amendment or accounting shall be granted or denied, and shall notify the individual requesting access, amendment or accounting, of its decision. Said determination shall be the sole responsibility of Covered Entity.

D. Indemnification:

Business Associate agrees to indemnify and hold harmless Covered Entity, its officers, directors, employees or agents from any and all third party claims, actions, suits, costs, or expenses (including reasonable attorneys' fees), whether pending or threatened, that arise from the improper use or disclosure of Covered Information by Business Associate, its officers, directors, employees, contractors or agents or the failure by Business Associate, its officers, directors, employees, contractors or agents, in fulfilling its or their obligations under this Agreement and/or applicable laws and regulations. This indemnification obligation shall survive termination of this Agreement.

E. Healthcare Privacy Provision:

The parties to this Agreement have structured this Agreement so as to comply with the HIPAA/HITECH Rules. Any provision of this Agreement found to be inconsistent therewith will be of no effect and will be severable without affecting the validity or enforceability of the remaining provisions of this Agreement, provided that provisions of this Agreement may be stricter than HIPAA/HITECH Rules without being inconsistent. In the event that any subsequent regulations are promulgated by DHHS which would be inconsistent with this Agreement, the parties hereto shall immediately and in good faith renegotiate the terms hereof.

2. REQUIREMENTS OF THE HITECH ACT.**A. Prohibition against Sale of Covered Information:**

Business Associate shall not directly or indirectly receive any remuneration from or on behalf of a recipient of Covered Information in exchange for Covered Information without the written consent of Covered Entity and as specifically permitted by the HIPAA/HITECH Rules, except for payment by Covered Entity for services provided by Business Associate.

B. Limitations on Use and Disclosures of Covered Information:

Business Associate shall limit its use and disclosure of and requests for Covered Information to a limited data set to the extent practicable or, if more information is needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request.

C. Reporting of Breach of Confidentiality of Covered Information:

Business Associate shall promptly notify Covered Entity of any breach of unsecured protected health information or any unauthorized access to or acquisition, use or disclosure of Covered Information in violation of the HIPAA/HITECH Rules or this Agreement. The notice shall be made without unreasonable delay and in no event later than twenty (20) days following the discovery of the breach, and shall include the following information:

- 1) a description of the facts pertaining to the breach, including but not limited to the dates of the breach and its discovery;
- 2) a description of the Covered Information involved, including identification of individuals whose Covered Information has or may have been compromised;
- 3) identification of the individuals who committed or were involved in the breach, to the extent known;
- 4) identification of the persons or entities to whom the Covered Information was disclosed, to the extent known;
- 5) actions taken or proposed to be taken by Business Associate to mitigate the breach; and
- 6) any other information requested by Covered Entity to comply with the HIPAA/HITECH Rules.

D. Compliance with HIPAA Requirements:

Business Associate shall comply with the requirements imposed on it, in its capacity as a Business Associate, and implement requirements of those rules with regard to electronic protected health information, pursuant to HIPAA/HITECH Rules, including 45 CFR Parts 164.308; 164.310; 164.312; 164.316; and 164.504.

3. TERMINATION.

A. Termination for Cause: This Agreement may be terminated:

- 1) By Covered Entity, upon ten (10) days' advance written notice to Business Associate of Business Associate's breach of this Agreement, provided that no such termination notice shall be effective if Business Associate, within the 10 day notice period, cures the breach, mitigates the effect of the breach, and provides further assurances acceptable to Covered Entity that the breach, or a similar breach, will not occur in the future.
- 2) By Covered Entity immediately upon written notice, in the event that Covered Entity believes, in its sole opinion, that Business Associate can no longer satisfy its obligations as set forth in this Agreement.

B. Return of Covered Information: Upon termination of the Agreement, Business Associate shall return all Covered Information without retaining any copies of such information, or at Covered Entity's option, destroy all Covered Information, including all copies, and provide Covered Entity with acceptable written confirmation upon completion. In the event that the return or destruction of all Covered Information is not feasible, Business Associate shall make no further use or disclosure except for those purposes that make the return or destruction infeasible, and Business Associate shall continue to be bound by Section 1 (B), (C) and (Section

2) of this Agreement, so long as it retains possession or control of any Covered Information (or copies thereof).

4. MISCELLANEOUS.

- A. **Notices**: All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand delivered or when sent by overnight delivery service, facsimile or U.S. Mail to the appropriate address of the receiving party. Notices to the Covered Entity shall be addressed to the attention of its Privacy Officer with a copy to the Executive Director.
- B. **Construction**: Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the HIPAA/HITECH Rules and other applicable laws and regulations. The parties agree that individuals who are the subject of protected health information are not third-party beneficiaries of this Agreement.
- C. **Prior Agreements**: In the event any provision of this Agreement is inconsistent with the terms of any other agreement between Covered Entity and Business Associate pertaining to the subject matter hereof, the terms of this Agreement shall cancel and supersede the inconsistent terms of such other agreement and such other agreement shall be considered to have been amended by the terms of this Agreement.
- D. **Entire Agreement**: This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties. It is expressly understood and agreed that no verbal representation, promise or condition, whether made before or after the signing of this Agreement, shall be binding upon the parties hereto. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA/HITECH Rules and any other applicable laws. Notwithstanding anything to the contrary set forth in the underlying services agreement between the parties, in the event of a conflict between the terms of the underlying services agreement and this Business Associate Agreement, this Business Associate Agreement shall control.
- E. **Governing Law**: This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Massachusetts except to the extent preempted by the Health Insurance Portability and Accountability Act and corresponding HIPAA/HITECH Rules.
- F. **Severability**: In the event that any provision of this Agreement violates any applicable statute, regulation, or rule of law in any jurisdiction that governs this

Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

G. Headings: The section headings in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.

H. Parties: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(“Covered Entity”)

By: _____

Title: _____

Date: _____

Senscio Systems, Inc. (“Business Associate”)

By: _____

Title: _____

Date: _____

ADDENDUM A

“Covered Entity” includes but is not limited to the following subsidiary corporations:

- (List if any)