



Business Associates Addendum

HIPAA POLICIES AND PROCEDURES

This Business Associate Addendum (the “BAA”) is made and entered into as of the earlier of the date of last signature hereof or of the Services Agreement referenced below (the “Effective Date”) by and between Business Associate and Covered Entity.

1. Business Associate and Covered Entity have executed or may execute in the future, an agreement under which Business Associate provides certain services to Covered Entity (the “Services Agreement”), including services requiring Business Associate to have access to Protected Health Information.
2. The services provided by Business Associate to Covered Entity under the Services Agreement cause Business Associate to be considered a “business associate” under privacy and security regulations including the regulations contained in 45 C.F.R. Parts 160 and 164, as amended from time to time (the “HIPAA Rules”) promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (“HITECH”), along with any guidance and/or regulation issued by the U.S. Department of Health and Human Services.
3. Covered Entity and Business Associate acknowledge that each has obligations in its respective role as Covered Entity or Business Associate under HIPAA, HITECH and the HIPAA Rules to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to Business Associate’s performance of services for Covered Entity.
4. The purpose of this BAA is to satisfy certain standards and requirements of HIPAA, HITECH and the HIPAA Regulations including the requirement of a legally adequate Business Associate Agreement between them that meets the requirements of 45 C.F.R. § 164.504(e).

Definitions

General definitions:

The following terms used in this BAA, whether or not capitalized, shall have the same meaning as those terms in the HIPAA Rules: Breach, De-Identify, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean Foothold Technology, Inc.
- (b) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean the entity that entered into the Services Agreement with Business Associate.

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by this BAA, a

written agreement between the parties, or as required by law;

- (b) 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 protected health information other than as provided for by the Services Agreement or this BAA;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410
- (d) Report to covered entity any security incident involving protected health information of which it becomes aware;
- (e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information 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;
- (f) If Business Associate's services under one or more of the Services Agreement include hosting protected health information in a designated record set,
- Make available protected health information in a designated record set to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
 - Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate agrees in writing to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with HIPAA and the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

- (a) Business associate may use or disclose protected health information as necessary to perform the services set forth in Subscriber Agreement.
- (b) Business associate may use or disclose protected health information as required by law.
- (c) Business associate agrees to make uses and disclosures and requests for protected health information in the minimum amount reasonable necessary to accomplish the intended purpose of the use, disclosure or request.
- (d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity except for the specific uses and disclosures set forth below.
- (e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business

associate. Business associate may disclose protected health information for its proper management and administration, provided that (i) such disclosures are required by law; or (ii) business associate obtains, in writing, prior to making any disclosure to a third party (A) reasonable assurances from such third party that the protected health information will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to such third party; and (B) an agreement from such third party to notify business associate immediately of any breaches of the confidentiality of the protected health information, to the extent it has knowledge of such breach.

(f) Business associate may provide data aggregation services, subject to the terms of the Services Agreement. If applicable, Business associate shall provide the data aggregation services relating to the health care operations of the covered entity to the extent permitted by 45 CFR 164.504(e)(2)(i)(B)..

(g) Business associate may de-identify protected health information so long as (i) business associate complies with the requirements for de-identification of protected health information set forth in 45 C.F.R. 164.514(b); and (ii) such de-identification does not impair the integrity or availability of protected health information. The parties acknowledge and agree that health information that has been de-identified is not protected health information subject to HIPAA or the terms of this BAA and business associate may use and disclose such de-identified data for its commercial and other business purposes consistent with the limitations set forth in the Services Agreement.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

(c) Covered entity shall obtain permission of a patient and/or individual to use or disclose his or her protected health information, and notify business associate of any changes or revocation of that permission to the extent that such changes may affect business associate's use or disclosure of protected health information.

Permissible Requests by Covered Entity

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

Term and Termination

(a) The term of this BAA shall be effective as of the effective date of the Services Agreement, and shall terminate when protected health information is no longer needed by business associate to provide the services under the Services Agreement or on the date this BAA is terminated pursuant to paragraph (b) of this Section, whichever is sooner.

(b) If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this BAA, then the non-breaching party shall provide written notice of the material breach or violation to the other party that specifies the nature of the material breach or violation. The breaching party must cure the material breach or end the violation on or before thirty (30) days after receiving the written notice. In the absence of a cure reasonably satisfactory to the non-breaching party within the specified timeframe or in the event the material breach is reasonably incapable of cure, the non-breaching party may do the following: (i) if feasible, terminate this BAA and the Services Agreement; or (ii) if termination of this BAA is infeasible, report the issue to the Secretary

(c) Upon termination of this BAA for any reason, all protected health information maintained by business associate shall be returned to covered entity or destroyed by business associate. Business associate shall not retain any copies of such information; provided however, business associate may retain a single copy of protected health information for the sole and exclusive purpose of complying with its current or future legal obligations. This provision shall apply to protected health information in the possession of business associate's agents and subcontractors. If return or destruction of the protected health information is not feasible or if it retains a single copy as provided for above, business associate shall notify covered entity of the conditions that make return or destruction infeasible, and business associate will extend the protections of this BAA to such information for as long as business associate retains such information and limit further uses and disclosures to those purposes that make the return or destruction of the protected health information not feasible. This Section shall survive termination of this BAA.

Amendment and Interpretation

This BAA may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the parties. The Parties agree to negotiate in good faith to amend this BAA from time to time as necessary for both of them to comply with HIPAA and the HIPAA Rules. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. This BAA is subject to the terms and conditions of the Services Agreement, including without limitation any disclaimers and limitations of liability set forth therein. In the event of a conflict between the terms of this BAA and the terms of the Services Agreement, the terms of this BAA will control.

Covered Entity Name:

Business Associate:

FOOTHOLD TECHNOLOGY, INC.

Signature of Authorized Representative	Signature of Authorized Representative
PRINTED Name:	PRINTED Name: Marlowe Greenberg
Title:	Title: CEO
Date:	Date: