BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, dated as of the date of the last of the signatures of the Parties indicated below ("**BAA**"), entered into between

the entity whose details are indicated at the end of the Agreement, on its own behalf and on behalf of all entities controlling, under common control with or controlled by it ("**Covered Entity**"),

and

Piwik PRO LLC, ("**Business Associate**").

Covered Entity and Business Associate may be referred to herein collectively as the "**Parties**" or individually as "**Party**".

RECITALS

A. WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and

B. WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

C. WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the "Underlying Agreements") whereby Business Associate will provide certain services to Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information on Covered Entity's behalf, and accordingly Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

D. WHEREAS, Business Associate and Covered Entity wish to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity.

THEREFORE, in consideration of the Parties' new or continuing obligations under the Underlying Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this BAA.

1. DEFINITIONS

For purposes of this BAA, each of the following capitalized terms shall have the meaning set forth in this Section. Except as the context of a provision dictates otherwise, a term used in this BAA that is not defined in this Section shall have the meaning accorded to it under HIPAA or HITECH, as applicable.

1.1. **Breach.** "Breach" shall have the same meaning as the term "breach" in 45 CFR § 164.402.

1.2. **Business Associate**. "Business Associate" shall have the same meaning as the term "business associate" in 45 CFR § 160.103.

1.3. **Covered Entity**. "Covered Entity" shall have the same meaning as the term "Covered Entity" in 45 CFR § 160.103.

1.4. **Data Aggregation**. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR § 164.501.

1.5. **Designated Record Set**. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is (i) the medical records and billing records about individuals maintained by or for a covered health care Covered Entity; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein, the term "Record" means any item, collection or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity as defined in 45 CFR § 164.501.

1.6. **HIPAA**. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder relating to the privacy and security of Protected Health Information, as such statute and regulations may be amended from time to time.

1.7. **HIPAA Rules**. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.8. **HITECH**. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder relating to the privacy and security of Protected Health Information, as such statute and regulations may be amended from time to time.

1.9. **Individual**. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.10. **Protected Health Information/Electronic Protected Health Information**. "Protected Health Information" (or "PHI") and "Electronic Protected Health Information" (or "Electronic PHI") shall have the same meaning as the terms "protected health information" and "electronic protected health information,"

respectively, in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.11. **Public Health Activity**. "Public Health Activity" shall mean the activities described in 45 CFR § 164.512(b).

1.12. **Public Health Authority**. "Public Health Authority" shall have the same meaning as the term "public health authority" in 45 CFR § 164.103.

1.13. **Required By Law**. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

1.14. **Secretary**. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.15. **Subcontractor**. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR § 164.103.

1.16. **Underlying Agreement.** "Underlying Agreement" refers to the agreement(s) or arrangement(s) made by and between Covered Entity and Business Associate for certain services as described within the Underlying Agreement ("**Services**"). Any provision of the Underlying Agreement(s), including all exhibits or other attachments thereto and all documents incorporated therein by reference, that is directly contradictory to one or more terms of this BAA, shall be superseded by the terms of this BAA to the extent and only to the extent of the contradiction and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this BAA.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

2.2. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

2.3. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

a. the disclosures are required by law; or

b. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

2.4. Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this BAA or the Underlying Agreements or as required by law.

2.5. Business Associate will develop, implement, maintain and use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted or required by this BAA or as Required by Law. Business Associate will develop, implement, maintain and use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Standards, the HITECH Act, and all other applicable laws, regulations and requirements published by a federal agency authorized to issue guidance under HIPAA or HITECH applicable to Business Associate.

2.6. Business Associate agrees to ensure, through written agreements, that any Subcontractor to whom it provides PHI agrees to substantially the equivalent restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

2.7. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set and as far as technically possible for Business Associate, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual's request for access to his or her Protected Health Information in accordance with 45 C.F.R. § 164.524.

2.8. To the extent that Business Associate possesses or maintains PHI in a Designated Record Set and as far as technically possible for Business Associate, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by 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.

2.9. 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 CFR § 164.528.

2.10. Business Associate agrees to make internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule. However, it is understood that Business Associate will not be required to provide any of its internal cost and margin data, other customers' data, employee data or internal audit data reports and reviews.

2.11. Business Associate shall not receive any remuneration in exchange for any PHI unless such remuneration is both: (i) permitted under HIPAA and HITECH; and (ii) authorized by Covered Entity in writing.

2.12. Business Associate shall provide training to members of its workforce regarding the requirements in the Privacy and Security Standards. The training shall be updated periodically, as the laws and regulations evolve.

2.13. Following the discovery of a Breach, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than fifteen (15)

calendar days after discovery of the Breach, and shall assist in Covered Entity's breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity together with Business Associate will determine whether Business Associate or Covered Entity will be responsible for providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If the Parties determine that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing. If the Parties fail to agree on who is responsible for the notification, the provisions of the applicable law in this regard, in particular 45 CFR § 164.400 - 414, will apply.

2.14. Business Associate shall bear all of Covered Entity's costs of any Breach and resultant notifications, if applicable, only when the Breach arises solely from Business Associate's negligence, willful misconduct, violation of law, violation of the Underlying Agreements, or violation of this BAA. If the costs are only partly due to an act, breach or omission of the Business Associate, the Business Associate will be responsible for the relevant remedial action mentioned above in respect of that part.

2.15. Business Associate may create, use and disclose de-identified PHI if the de-identification is in compliance with 45 CFR §164.502(d), and any such de-identified PHI meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b), as they may be amended from time to time.

3. OBLIGATIONS OF COVERED ENTITY

3.1. Covered Entity shall furnish Business Associate with its notice of privacy practices prepared in accordance with 45 CFR § 164.520 and of any modifications thereto that affect Business Associate's obligations.

3.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

3.3. Covered Entity shall notify Business Associate of all types of accountings of disclosures that it may require Business Associate to provide under 45 CFR § 164.528 or Section 13405(c) of HITECH.

3.4. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522 or Section

13405(a) of HITECH to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.5. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or HITECH if done by Covered Entity. Covered Entity shall not request Business Associate to use or disclose more than the minimum PHI necessary.

4. TERM AND TERMINATION

4.1. Term. This BAA shall remain in effect as long as the Underlying Agreement is in effect, that is for no longer than a period of 6 months from the date of the conclusion. The obligations set forth in this BAA shall be effective as of the date the first Protected Health Information is released to Business Associate pursuant to this BAA, and shall terminate only when (1) all of the Protected Health Information 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 (2) if it is infeasible to return or destroy Protected Health Information, and protections are extended to such information, in accordance with the termination provisions of this section.

4.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity shall provide in writing an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this BAA if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity. If a cure by Business Associate is not reasonably possible as solely determined by Covered Entity, Covered Entity reserves the right to terminate this BAA immediately.

4.3. Effect of Termination.

a. Except as provided in paragraph (b.) of this section, upon termination of this BAA, for any reason, Business Associate shall return, transfer to another entity designated by Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

4.4. Survival. The respective rights and obligations of Business Associate under this section shall survive the termination of this BAA.

5. INDEMNIFICATION

5.1. Each party (the "**Indemnifying Party**") shall indemnify and hold the other party and its officers, directors, employees and agents (each an "**Indemnified Party**") harmless from and against any claim, cause of action, liability, damage, cost or expense ("**Liabilities**") to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys' fees and court or proceeding costs) brought against the Indemnified Party, and any costs or expenses (including reasonable attorneys' and consulting fees) and penalties incurred by Indemnified Party in connection with any governmental investigation, audit, breach notification and remediation required by federal, state or local law, which arise as a result of: (i) the material breach of this BAA by the Indemnifying Party or its Subcontractors; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the Indemnified Party.

5.2. A party entitled to indemnification under this Section shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third-party claim or governmental investigation or audit for which Indemnification is sought, subject to applicable confidentiality constraints. This Section 5 shall survive termination of this BAA.

6. MISCELLANEOUS

6.1. Regulatory References. A reference in this BAA to a section in HIPAA or HITECH, as applicable, means the section as in effect or, as applicable, as it has been redesignated after execution of this BAA.

6.2. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA or HITECH, as each may be amended or construed by courts of applicable jurisdiction or the Secretary from time to time. All amendments to this BAA, except those occurring by operation of law, shall be in writing and signed by both Parties.

6.3. Survival. Any provision of this BAA which contemplates performance or observance subsequent to any termination or expiration hereof or by its sense or context is intended to survive the termination or expiration hereof and shall survive any such termination or expiration and shall continue in full force and effect.

6.4. Governing Law. This BAA shall be governed and construed in accordance with the laws of the State of New York, without regard to conflict of law principles. Any legal action, suit or proceeding arising out of or relating to this BAA or the breach thereof will be instituted in a federal or state court of competent

jurisdiction in the State of New York and each Party hereby consents and submits to the personal jurisdiction of such court, waives any objection to venue in such court including any defense of forum non conveniens.

6.5. Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA and HITECH.

6.6. No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer upon any person or Individual, other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

6.7. Assignment. No assignment of rights or obligations under this BAA shall be made by either Party without the prior written consent of the other Party; provided however, that Business Associate may assign this BAA to an affiliate.

6.8. Effect on Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the underlying Services Agreement shall remain in force and effect.

6.9. Headings/Counterparts. The descriptive headings of the sections of this BAA are for convenience only and do not constitute a part of this BAA. This BAA may be executed in any number of counterparts, including facsimile or electronic copies, each of which shall be deemed to be an original and all such counterparts shall together constitute one and the same document.

6.10. Validity. This BAA is effective provided it is properly signed by the Covered Entity and then sent to legal+hipaa@piwik.pro. This BAA applies only to the use of Piwik PRO Analytics Suite by a healthcare customer in the US.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement.

PIWIK PRO LLC
222 Broadway, 19th Floor
New York, NY 10038
("BUSINESS ASSOCIATE")

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Piotr Korzeniowski, CEO

("COVERED ENTITY")

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