

Passthrough Terms – Google Apps for Work HIPAA Business Associate Addendum

Customer has entered into a certain written agreement (the “Agreement”), including the applicable Product Passthrough Terms, pursuant to which Customer is entitled to access and use the Product: Google Apps for Work. This HIPAA Business Associate Addendum (“HIPAA BAA”) is effective as of the date of the Product Passthrough Terms for the purpose of implementing the requirements of HIPAA (defined below) to support the compliance requirements thereunder. Together with the Product Passthrough Terms, this HIPAA BAA will be applicable to Protected Health Information (defined below).

1. **Definitions.** For purposes of this HIPAA BAA, any capitalized terms not otherwise defined herein will have the meaning given to them in the Product Passthrough Terms and under HIPAA.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the rules and the regulations thereunder, as amended (including with respect to the HITECH Act).

“HIPAA Implementation Guide” means the informational guide that Google makes available describing how Customer can configure and use the Services to support HIPAA compliance. The HIPAA Implementation Guide is available for review at the following URL:

https://static.googleusercontent.com/media/www.google.com/en/us/work/apps/terms/2015/1/hipaa_implementation_guide.pdf (as the content at such URL and the URL itself may be updated or modified from time to time).

“HITECH Act” means the Health Information Technology for Economic and Clinical Health Act enacted in the United States Congress, which is Title XIII of the American Recovery & Reinvestment Act, and the regulations thereunder, as amended.

“Included Functionality” means functionality within the Product as described at the following URL:

www.google.com/work/apps/terms/2015/1/hipaa_functionality.html

(as the content at that URL, or such other URL as may be provided, may be updated from time to time).

“Product” means only the Google Apps Core Services that Provider makes available to Customer under the applicable Product Passthrough Terms as further described at the following URL:

http://www.google.com/apps/intl/en-in/terms/user_features.html (as the content at such URL and the URL itself may be updated or modified from time to time).

“Protected Health Information” or “PHI” will have the meaning given to it under HIPAA to if provided as Customer Data in connection with Customer’s permitted use of Included Functionality.

“Provider” means the third party provider of the Product.

“Security Rule” means 45 C.F.R., Part 164, Subpart C, under HIPAA.

2. **Applicability.**

2.1. **Parties.** This HIPAA BAA applies to the extent Customer is acting as a Covered Entity or Business Associate, to create, receive, maintain or transmit PHI via the Included Functionality and where Provider, as a result, is deemed under HIPAA to be acting as a Business Associate of Customer.

2.2. **Services Scope.** This HIPAA BAA is applicable only to the Included Functionality. The scope of Included Functionality may expand. If the scope of Included Functionality expands, then this HIPAA BAA will automatically apply to such additional new functionality and features as of the date the Included Functionality description is updated, or the date Provider has otherwise provided written communication regarding an update to the scope of Included Functionality to Customer’s Notification Email Address (whichever date is earlier).

3. **Permitted Use and Disclosure.**

3.1. **By Provider.** Provider may use and disclose PHI only as permitted under HIPAA as specified in the Product Passthrough Terms and under this HIPAA BAA. Provider may also use and disclose PHI for the proper management and administration of Provider’s business, for provisioning the Product, and to carry out the legal responsibilities of Provider, provided that any disclosure of PHI for such purpose may

only occur if: (1) required by applicable law; or (2) Provider obtains written reasonable assurances from the person to whom PHI will be disclosed that it will be held in confidence, used only for the purpose for which it was disclosed, and that Provider will be notified of any Breach.

- 3.2. **By Customer.** Customer will not request Provider or the Product to use or disclose PHI in any manner that would not be permissible under HIPAA if done by a Covered Entity itself (unless otherwise expressly permitted under HIPAA for a Business Associate). In connection with Customer's management and administration of the Product to End Users, Customer is responsible for using the available controls within the Product to support its HIPAA compliance requirements, including reviewing the HIPAA Implementation Guide and enforcing appropriate controls to support Customer's HIPAA compliance. Customer will not use the Product to create, receive, maintain or transmit PHI to other products or services outside of the Included Functionality, except where Customer has expressly entered into a separate HIPAA business associate agreement for use of such other products or services. If Customer uses Included Functionality in connection with PHI, Customer will use controls available within the Product to ensure: (i) all other products or services not part of the Product are disabled for all End Users who use Included Functionality in connection with PHI (except those products or services where Customer already has an appropriate HIPAA business associate agreement in place); and (ii) it takes appropriate measures to limit its use of PHI in the Product to the minimum extent necessary for Customer to carry out its authorized use of such PHI. Customer agrees that Provider has no obligation to protect PHI under this HIPAA BAA to the extent Customer creates, receives, maintains, or transmits such PHI outside of the Included Functionality (including Customer's use of its offline or on-premise storage tools or third party applications).
4. **Appropriate Safeguards.** The Product is subject to appropriate safeguards designed to prevent against unauthorized use or disclosure of PHI, consistent with this HIPAA BAA, and as otherwise required under the Security Rule, with respect to the Included Functionality. Customer will use appropriate safeguards designed to prevent against unauthorized use or disclosure of PHI, consistent with this HIPAA BAA, and as otherwise required under the Security Rule, with respect to the Included Functionality.
5. **Reporting.** Customer will be promptly notify following the discovery of a Breach resulting in the unauthorized use or disclosure of PHI in violation of this HIPAA BAA in the most expedient time possible under the circumstances, consistent with the legitimate needs of applicable law enforcement and applicable laws, and after taking any measures necessary to determine the scope of the Breach and to restore the reasonable integrity of the Services system by using commercially reasonable efforts to mitigate any further harmful effects to the extent practicable. Customer will receive any applicable Breach notifications via the Notification Email Address (as such contact is designated in the Product by Customer) or via direct communication with the Customer. For clarity, Customer and not Provider, is responsible for managing whether its End Users are authorized to create, receive, maintain or transmit PHI within the Product and Provider does not have any obligations relating thereto. This Section 5 will be deemed as notice to Customer that Provider periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of Provider's information systems and the Services and even if such events are defined as a Security Incident under HIPAA, Customer will not receive any further notice regarding such unsuccessful attempts.
6. **Agents and Subcontractors.** As related to the Product, appropriate measures are taken to ensure that any agents and subcontractors used by Provider to perform its obligations related to the provision of the Product that require access to PHI on behalf of Provider are bound by written obligations that provide the same material level of protection for PHI as this HIPAA BAA. To the extent Provider uses agents and subcontractors in its performance of obligations hereunder, Provider will remain responsible for their performance as if performed by Provider itself under the Product Passthrough Terms.
7. **Accounting Rights.** PHI will be made available to Customer via the Product so Customer may fulfill its obligation to give individuals their rights of access, amendment, and accounting in accordance with the requirements under HIPAA. Customer is responsible for managing its use of the Product to appropriately respond to such individual requests.
8. **Access to Records.** To the extent required by law, and subject to applicable attorney client privileges, Provider will make its internal practices, books, and records concerning the use and disclosure of PHI received from Customer, or created or received by Provider on behalf of Customer, available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for the purpose of the Secretary determining compliance with this HIPAA BAA.

9. **Return/Destruction of Information.** Upon termination of the Product Passthrough Terms or the Agreement, all PHI received from Customer, or created or received by Provider on behalf of Customer, which is still maintained in accordance with the section titled "Effects of Termination" (or as otherwise expressly agreed in writing) under the Product Passthrough Terms will be returned or destroyed; provided, however, that if such return or destruction is not feasible, the protections of this HIPAA BAA will extend to the PHI not returned or destroyed and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible. In the event this HIPAA BAA is terminated earlier than the the Product Passthrough Terms or Agreement Customer may continue to use the Product in accordance with the the Product Passthrough Terms, but must delete any PHI it maintains in the Product and cease to create, receive, maintain or transmit such PHI to Provider or within the Product.
10. **Breach/Cure.** Customer may immediately terminate this HIPAA BAA and the Product Passthrough Terms upon 10 days written notice if Provider has materially breached this HIPAA BAA and such breach is not reasonably capable of being cured.
11. **Term.** This HIPAA BAA will expire upon the earlier of: (i) a permitted termination in accordance with this HIPAA BAA; (ii) the natural expiration or termination of the Product Passthrough Terms; (iii) the natural expiration or termination of the existing Agreement; or (iv) the execution of an updated HIPAA BAA that supersedes this HIPAA BAA.
12. **Interpretation.** It is the parties' intent that any ambiguity under this HIPAA BAA be interpreted consistently with the intent to comply with applicable laws.
13. **Effect of Addendum.** This HIPAA BAA supersedes in its entirety any pre-existing HIPAA BAA executed by the parties covering the same Product. To the extent of any conflict or inconsistency between the terms of this HIPAA BAA and the Product Passthrough Terms or the Agreement, the terms of this HIPAA BAA will govern. Except as expressly modified or amended under this HIPAA BAA, the terms of the Passthrough Terms and the Agreement remain in full force and effect.