



**Proofpoint Essentials
Business Associate Agreement Addendum**

This Business Associate Agreement Addendum (“**Addendum**”) is effective on the last signature date below (“**Effective Date**”) and is entered into by and between the entity identified below (“**Customer**”) and Proofpoint, Inc., with an address at 892 Ross Drive, Sunnyvale, California 94304 (“**Proofpoint**”) (each, individually, a “**Party**” and both, collectively, the “**Parties**”). This Addendum is subject to and incorporated into the Proofpoint Essentials End User License Agreement previously acknowledged and accepted by Customer (the “**Proofpoint Agreement**”).

WHEREAS, Customer uses Proofpoint’s service known as Essentials (“**Services**”) pursuant to the Proofpoint Agreement to end customers (“**Customer**”). During the Term of the Services Proofpoint may be provided with or have access to protected health information that is included in the Customer Data which may be subject to the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191 (Aug. 21, 1996), and its implementing regulations, and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) and its implementing regulations (collectively “**HIPAA**”); and

WHEREAS, the Parties desire to supplement and/or amend the Proofpoint Agreement only with respect to Proofpoint’s receipt, use and disclosure of such protected health information under the Proofpoint Agreement to allow Customer to comply with HIPAA to the extent Customer is deemed a Covered Entity or Business Associate.

NOW, THEREFORE, in consideration of the mutual covenants, provisions and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. DEFINITIONS. The Proofpoint Agreement is an integral part of this Business Associate Addendum and is incorporated by reference. Capitalized terms used in this Business Associate Addendum without separate definition shall have the meaning specified in the Proofpoint Agreement. Unless otherwise defined in this Addendum or the Proofpoint Agreement, all capitalized terms used in this Addendum have the respective meanings ascribed in the HIPAA Regulations, provided, however, that “**PHI**” and “**ePHI**” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 CFR § 160.103, and shall be limited to the information Proofpoint received from or on behalf of Customer as Customer’s vendor.

2. BACKGROUND, PURPOSE AND SCOPE.

This Addendum is made pursuant to, and shall hereby supplement and/or amend, the Proofpoint Agreement only with respect to Proofpoint’s receipt, use and disclosure of PHI under the Proofpoint Agreement to allow Customer to comply with HIPAA to the extent Customer is deemed a Covered Entity or Business Associate. Except as so supplemented and/or amended by this Addendum, the terms of the Proofpoint Agreement shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this Addendum and in the Proofpoint Agreement. The parties hereto understand and agree that this Addendum only applies if and to the extent Proofpoint is deemed a Business Associate to the Customer (as defined in HIPAA), however this Addendum is not itself intended create a Business Associate agency relationship.

3. OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.

3.1. Obligations of Proofpoint. Proofpoint shall:

- a. not use or disclose PHI other than as permitted or required by the Proofpoint Agreement or this Addendum or as required by law;
- b. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Proofpoint creates, receives, maintains, or transmits on behalf of the Customer, if any;



- c. to the extent Proofpoint has agreed in writing to carry out specific Customer's obligations under HIPAA, comply with the requirements of HIPAA that apply to the Customer in the performance of such obligations, if any;
- d. within a reasonable period of time (but no later than thirty (30) days) report to Customer any access, acquisition, use or disclosure of PHI that is not provided for by the Proofpoint Agreement, this Addendum, or written approval of Customer, of which Proofpoint becomes aware, including a Security Incident and/or Breach of Unsecured PHI as required at 45 CFR 164.410, which notification shall include, to the extent reasonably possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Proofpoint to have been, accessed, acquired, used, or disclosed during the breach. Proofpoint shall provide the Customer with any other reasonably available information that the Customer is required to include in notification to the individual under 45 CFR 164.404(c) at the time of the notification or promptly thereafter as information becomes available;
- e. in performing its obligations in connection with the Proofpoint Agreement, access, use, disclose and/or request only the minimum PHI necessary to accomplish the intended purpose of the access, use, disclosure or request;
- f. in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors to which PHI is disclosed, agree to the same restrictions, conditions, and requirements that apply to Proofpoint with respect to such information, including reasonable and appropriate safeguards;
- g. within ten (10) days of receiving a written request from Customer, where applicable from the Proofpoint Agreement and the nature of the Services, make available to Customer PHI necessary for the relevant Covered Entities to respond to Individuals' requests for access to PHI about them in the event that the PHI in Proofpoint's possession constitutes a Designated Record Set;
- h. within ten (10) days of receiving a written request from Customer, where applicable from the Proofpoint Agreement and the nature of the Services, make available to Customer PHI for amendment and incorporate any amendments to the PHI in accordance with HIPAA in the event that the PHI in Proofpoint's possession constitutes a Designated Record Set;
- i. within ten (10) days of receiving a written request from Customer, make available to Customer the information required for Customer or Covered Entity to provide an accounting of disclosures as required by HIPAA;
- j. as soon as reasonably practicable, but no later than thirty (30) days of receiving a written notice from Customer, return to Customer or destroy all PHI, including such information in the possession of its agent or subcontractors, and retain no copies, if it is feasible to do so; provided, however, in the event that Proofpoint determines that returning or destroying PHI is infeasible, Proofpoint shall provide to the Customer notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Proofpoint shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Proofpoint maintains such PHI;
- k. use commercially reasonable efforts to assist Customer's mitigation of any harmful effects caused by use or disclosure of PHI by Proofpoint and/or its agents and subcontractors in violation of the requirements of this Addendum;
- l. upon Customer's request, provide Customer with access to and copies of any policies and procedures developed or utilized by Proofpoint regarding the protection of PHI; and
- m. make its internal practices, books, and records available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with HIPAA, subject to attorney-client and other applicable legal privileges.



- 3.2. Permitted Uses and Disclosures of PHI by Proofpoint. Except as otherwise specified in this Addendum, Proofpoint shall access, acquire, use, and/or disclose PHI only as be reasonably necessary to perform its obligations under the Proofpoint Agreement. ALL OTHER ACCESS, ACQUISITION, USES AND/OR DISCLOSURES OF PHI, INCLUDING, BUT NOT LIMITED TO DE-IDENTIFICATION OF PHI, ARE PROHIBITED UNLESS EXPRESSLY PERMITTED IN WRITING BY CUSTOMER. Nothing in this Addendum shall be construed to prohibit Proofpoint's disclosure to Customer of PHI obtained from Customer or created or obtained on behalf of Customer, or disclose the PHI in its possession as required by law; provided, Proofpoint obtains reasonable assurances in writing from the third party to whom the PHI is disclosed that (i) the PHI will be held confidentially in the manner specified by HIPAA and used or further disclosed only as required by law and (ii) the third party will notify Proofpoint of any instances of which it is aware in which the confidentiality of unsecured PHI has been breached.
- 3.3. Notification, Consent and Authorization Obligations of Customer. The Customer shall use commercially reasonable efforts (a) to notify Proofpoint of any limitations(s) in Covered Entity's notice of privacy practices under 45 CFR 164.520 to the extent that such limitations may affect Proofpoint's permitted or required uses and disclosures of the PHI; (b) to notify Proofpoint of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such event may affect Proofpoint's permitted or required uses and disclosures; (c) to notify Proofpoint of any restriction regarding the use or disclosure of PHI that Covered Entity has agreed to in accordance with HIPAA to the extent that such restrictions may affect Proofpoint's access, acquisition, use or disclosure of PHI; and (d) to not request Proofpoint to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Customer, except as set forth in Section 3.2 above.

Notwithstanding anything to the contrary in the Proofpoint Agreement or in this Addendum, for the purposes of Proofpoint's compliance with its obligations under the Proofpoint Agreement and this Addendum, or to the extent required by law, the Company shall have obtained or obtain appropriate consent or authorization and be deemed to have consented to and authorized Proofpoint (and its authorized subcontractors) to retain, store and transmit any PHI pursuant to the normal functioning of the Services, including but not limited to (i) all configuration, rules and policies executed at the Company's direction; (ii) any email message headers or other messaging protocols that would transmit or route email to any Company-specified domains, MX records and destinations, any Company email addresses, domains, MX records or destinations, or any other recipient email address, MX record or domain specified as such in a given email message; and (iii) any requests by the Company or required hereunder for log, access, support-related or other transmissions under the Proofpoint Agreement.

- 3.4. Effect of Changes to HIPAA. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of the Parties that are embodied in the terms of this Addendum, the Parties shall negotiate in good faith appropriate amendment(s) to this Addendum to give effect to such revised obligations.

4. TERM AND TERMINATION.

- 4.1. Term. The term of this Addendum shall be effective as of the Effective Date and shall terminate when all of the PHI provided by the Customer to Proofpoint, or created or received by Proofpoint on behalf of the Customer, is destroyed or returned to the Customer, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with this Addendum.
- 4.2. Termination for Cause. Upon the Customer's knowledge of a material breach of this Addendum by Proofpoint, the Customer shall provide an opportunity for Proofpoint to cure the breach or end the violation. The Customer may terminate this Addendum and the Proofpoint Agreement if the Proofpoint does not cure the breach or end the violation within the time specified by the Customer, or immediately terminate this Addendum if cure or end of the violation is not possible.
- 4.3. Effect of Termination. Except as provided in this Section 4.3, upon termination of this Addendum, for any reason, Proofpoint shall return or destroy all PHI received from the Customer, or created or received by Proofpoint on behalf of the Customer. This provision shall apply to PHI that is in the possession of agents



or subcontractors of Proofpoint. Proofpoint shall retain no copies of PHI. In the event that Proofpoint determines that returning or destroying PHI is infeasible, Proofpoint shall provide to the Customer notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Proofpoint shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Proofpoint maintains such PHI.

5. MISCELLANEOUS.

- 5.1. Interpretation. The terms of this Addendum shall prevail in the case of any conflict with the terms of the Proofpoint Agreement. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Customer to comply with applicable laws protecting the privacy, security and confidentiality of the PHI.
- 5.2. Survival. Notwithstanding any other provision of this Addendum to the contrary, the obligations of Proofpoint under this Addendum, including but not limited to Articles 1, 2, 3, and 5 and Section 4.3 shall survive termination of this Addendum and continue indefinitely solely with respect to PHI Proofpoint retains in accordance with this Addendum.
- 5.3. Regulatory references. Subject to Section 3.4, a reference in this Addendum to HIPAA or a section in HIPAA means that section as in effect as of the Effective Date.
- 5.4. No Third Party Beneficiaries. Nothing in this Addendum shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be executed in its name and on its behalf by its duly authorized representative.

Acknowledged and Agreed to By:

Proofpoint Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Customer Name: _____

Address: _____
