



Business Associate Agreement

This Aptible Business Associate Agreement (this "**BAA**") is an addendum to the Aptible Terms of Service.¹ It is entered into by and between Aptible, Inc. ("**Aptible**," "**we**" or "**us**") and:

{{_es_:signer1:company}}
("you") as of

{{_es_:signer1:date}}
(the "**Effective Date**").

This BAA sets forth the terms and conditions pursuant to which you are authorized to make PHI available to Aptible in connection with your use of the Services.

The parties hereby agree as follows:

1. Applicability and Definitions

1.1 Applicability

This BAA governs Aptible's Use and Disclosure of any PHI that we create, receive, maintain, or transmit on your behalf. You agree to only use PHI in conjunction with Dedicated Environments, as defined in Section 1.2.

You agree never to use shared (i.e., non-Dedicated) environments to create, transmit, receive, or maintain PHI. For any of your Aptible environments that are not Dedicated Environments, as defined in Section 1.2, Aptible does not act as a Business Associate under HIPAA and will have no obligations to you under this BAA.

¹ Available at https://www.aptible.com/legal/terms_of_service.html
Business Associate Agreement
Version: 17 March 2016
© 2016 Aptible, Inc.

1.2 Definitions

Unless otherwise expressly defined in this BAA, all capitalized terms in this agreement will have the meanings set forth in the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended, by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations (together, "**HIPAA**").

"**PHI**" means "**protected health information**" as defined in Title 45, Code of Federal Regulations, § 160.103 that is created, received, transmitted, or maintained by Aptible on your behalf.

"**Dedicated Environment**" means a deployment environment running on a dedicated stack, to which you have applied the required security configurations, as specified in Section 4.2 of this BAA.

"**Services**" has the meaning set forth in the Aptible Terms of Service.

2. Permitted and Required Uses and Disclosures

2.1. Service Offerings

Pursuant to 45 CFR § 164.502(a)(3), Aptible may Use or Disclose PHI for you or on your behalf only as specified in this BAA, and only to provide you with the Services.

2.2. Administration and Management of Aptible

Pursuant to 45 CFR §§ 164.504(e)(4) and (e)(5), Aptible may Use and Disclose PHI as necessary for our proper management and administration, or to carry out our legal responsibilities. Any Disclosures under this section will be made only if Aptible obtains reasonable assurances from the entity to whom the PHI is Disclosed that (a) the recipient will hold the PHI confidentially and will Use or Disclose the PHI only as required by law or for the purpose for which it was Disclosed to the recipient, and (b) the recipient will notify Aptible of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. Our Obligations

3.1. Limit on Uses and Disclosures

Aptible will only Use or Disclose PHI as permitted by this BAA or as required by law. We may Use or Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

3.2. Safeguards

Aptible will use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI in a manner other than as permitted by this BAA, consistent with the requirements of Subpart C of 45 CFR Part 164 (with respect to electronic PHI). Without limiting the foregoing, Aptible will select and implement such safeguards.

3.3. Reporting

For all reporting obligations under HIPAA and this BAA, the parties acknowledge that because Aptible does not know the nature of PHI contained in your properly configured Dedicated Environments, it is not possible for Aptible to provide information about the identities of individuals who may have been affected, or a description of the type of information that may have been subject to a Breach, Security Incident, or Impermissible Use or Disclosure.

3.3.1. Reporting of Breaches

Aptible will report to you any Breach (as defined by 45 CFR § 164.402) of your Unsecured PHI that Aptible may discover to the extent required by 45 CFR § 164.410, including Breaches of your Unsecured PHI by our subcontractors. Aptible will make such report without unreasonable delay, and in no case later than two (2) calendar days after our discovery of such Breach.

3.3.2. Reporting of Security Incidents Not Constituting Breaches

Aptible will report to you, as soon as practicable and on no less than a quarterly basis, any Security Incidents involving your PHI of which Aptible becomes aware in which there is a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system in a manner that risks the confidentiality, integrity, or availability of such PHI, but which we have determined do not constitute Breaches pursuant to 45 CFR § 164.402.

The parties agree that notice is hereby given for unsuccessful attempts at such unauthorized access, use, disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful

login attempts, interception of encrypted PHI where the key is not compromised, or any combination of the above. No additional notice will be provided.

3.3.3. Reporting of Impermissible Uses and Disclosures

We will report to you any other Use or Disclosure of your PHI not permitted or required by this BAA of which we become aware without unreasonable delay, and in no case later than five (5) business days after our discovery of such Use or Disclosure.

3.4. Subcontractors

Pursuant to 45 CFR § 164.504(e)(5), Aptible will ensure that any subcontractors that create, receive, maintain, or transmit PHI on our behalf agree to privacy restrictions and conditions at least as stringent as those found in this BAA.

We will also ensure that such subcontractors agree to implement reasonable and appropriate safeguards to protect electronic PHI, as required by 45 CFR § 164.308(b)(2).

3.5. Access to PHI

We will make PHI in a Designated Record Set available to you so that you can comply with obligations arising under 45 CFR § 164.524. We will provide this data as a database or database backup of the type and format you select when you provision the database.

3.6. Amendment to PHI

We will make PHI in a Designated Record Set available to you for amendment by giving you access to the database or database backups where that data is kept. You shall incorporate any amendments to the PHI in accordance with 45 CFR § 164.526.

3.7. Accounting of Disclosures

You acknowledge that Aptible is not required by this BAA to make disclosures of PHI to any individual, person, or party other than yourself. You shall be solely responsible for retaining records of any disclosures made by us at your request, direction, due to your configuration, or by the Services you use.

Notwithstanding the foregoing, if we are required to make a disclosure to an entity other than yourself, Aptible will retain records of all disclosures of PHI we make sufficient to provide an Accounting of Disclosures in accordance with 45 CFR § 164.528. We will make available to you the information of which we are aware that is required to provide an Accounting of Disclosures, if requested by you, within ten (10) days. Because Aptible cannot readily identify which individuals are identified or what types of PHI are included in your Dedicated Environments, you will be solely

responsible for (a) identifying which individuals, if any, may have been included in information that Aptible has disclosed and for (b) providing a brief description of the PHI disclosed.

3.8. Internal Records

Aptible will make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services ("**HHS**") for purposes of determining your compliance with HIPAA. Nothing in this section will waive any applicable privilege or protection, including with respect to trade secrets and confidential commercial information.

4. Your Obligations

4.1. Appropriate Use of Accounts

You are solely responsible for selecting and implementing appropriate privacy and security safeguards in order to protect PHI under your control in compliance with HIPAA and this BAA.

Without limitation, you will never cause Aptible to create, receive, maintain, or transmit protected health information in connection with any Service that is not in a Dedicated Environment. To the extent the Aptible Services can be configured by you to create and retain audit logs, you agree to utilize the highest level of audit logging in connection with your use of all Dedicated Environments, and maintain the maximum retention of logs in connection with your use of all Dedicated Environments.

4.2. Appropriate Encryption Configurations

You are responsible for ensuring all PHI stored in or transmitted using the Aptible Services is encrypted in motion and at rest in accordance with the Secretary of HHS's Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, 74 FR 19006 (April 27, 2009),² as it may be updated from time to time, and as may be made available on any successor or related site designated by HHS.

When we implement encryption as a Service or a feature of the Services, you remain responsible for determining whether that implementation is reasonable and appropriate for your PHI, and implementing additional safeguards as you deem reasonable and appropriate.

² Available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html>
Business Associate Agreement
Version: 17 March 2016
© 2016 Aptible, Inc.

4.3. Necessary Consents

You warrant that you have obtained any and all necessary authorizations, consents, and other permissions that may be required under applicable law prior to placing information, including without limitation PHI, on the Aptible Services.

4.4. Restrictions on Disclosures

You will not agree to any restriction requests or place any restrictions in any notice of privacy practices that, if complied with by Aptible, would cause us to violate this BAA or any applicable law, and you hereby agree that we will not be responsible for complying with any such restrictions.

4.5. Compliance with HIPAA

You will not request or cause Aptible to make a Use or Disclosure of PHI in a manner that does not comply with HIPAA or this BAA. This includes the obligation not to cause Aptible to transmit PHI to third parties with whom (a) you are required by 45 CFR § 164.502(e)(2) to have a contract or other arrangement in place, and (b) you do not have such an agreement in place.

4.6. Back up Data Before Termination

You agree that you are solely responsible for making and retaining copies of PHI maintained by Aptible before terminating this BAA.

5. Term and Termination

5.1. Term

The term of this BAA will commence on the Effective Date and will remain in effect with respect to each Dedicated Environment you create with us until the termination of this BAA.

5.2. Termination

This BAA shall terminate automatically when you cease to use any Dedicated Environments and we no longer create, receive, maintain, or transmit PHI on your behalf.

Either party has the right to terminate this BAA in the event of an uncured material breach of this BAA upon ten (10) days prior written notice to the other party.

A material breach of this BAA constitutes a material breach of the Aptible Terms of Service, and may result in termination of your account(s) with us.

5.3. Effect of Termination

Pursuant to 45 CFR § 164.504(e)(2)(ii)(J), upon termination of this BAA, to the extent reasonably feasible, Aptible will return or destroy all PHI that Aptible has in its possession at such time in any form and retain no copies of such PHI. If such return or destruction is not reasonably feasible, Aptible will notify you in writing of the reason such return or destruction is not reasonably feasible, and shall extend the protections of this BAA to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

Termination of this BAA does not terminate your obligations under any Aptible purchase order or billing agreement.

6. Miscellaneous

6.1 No Agency Relationship

As set forth in the Aptible Terms of Service, nothing in this BAA is intended to make either party an agent of the other. Nothing in this BAA is intended to confer upon you the right or authority to control Aptible's conduct in the course of Aptible complying with the Terms of Service or this BAA.

6.2 Entire Agreement; Conflict

Except as amended by this BAA, the Aptible Terms of Service will remain in full force and effect. This BAA, together with the Aptible Terms of Service as amended by this BAA (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement; and (b) supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter hereof. If there is a conflict between the Aptible Terms of Service, this BAA, or any other amendment or addendum to the Aptible Terms of Service or this BAA, the document executed by the parties later in time will prevail.

6.3 Counterparts

This BAA may be executed in two or more counterparts, each of which will be deemed an original and all of which taken together will be deemed to constitute one and the same document. The parties may sign and deliver this BAA by electronic transmission.

IN WITNESS WHEREOF, the parties have executed this BAA as of the Effective Date.

Aptible, Inc.

{{_es_:signer1:company}}

By:

By:

{{_es_:signer2:signature}}

{{_es_:signer1:signature}}

Name: {{_es_:signer2:fullname}}

Name: {{_es_:signer1:fullname}}

Title: {{_es_:signer2:title}}

Title: {{_es_:signer1:title}}

Date Signed: {{_es_:signer2:date}}

Date Signed: {{_es_:signer1:date}}