

BUSINESS ASSOCIATE ADDENDUM TO PARTNER AGREEMENT

NOTICE TO ALL PARTNERS: PLEASE READ THIS ADDENDUM CAREFULLY. BY CONTINUING TO OPERATE UNDER THE MCAFEE PARTNER AGREEMENT AFTER THE EFFECTIVE DATE, YOU AGREE TO THE TERMS OF THIS ADDENDUM.

This Business Associate Addendum (“Addendum”) is entered into between McAfee, Inc., a Delaware corporation with its corporate offices at 2821 Mission College Blvd., Santa Clara, CA 95054 (“McAfee”) and its channel partner who has a current and valid Channel Partner Agreement with McAfee (“Partner”) (collectively “Parties”). This Addendum is entered into on September 23, 2013 (“Effective Date”).

BACKGROUND

- A. McAfee is an information technology security vendor, providing cloud-based email and web services (“Services”) through a channel sales program.
- B. Partner entered into a Channel Partner agreement with McAfee (“Partner Agreement”), to sell the Services to, among others, end users who may qualify as Covered Entities under HIPAA and Title XIII of the American Recovery and Reinvestment Act of 2009 (“HITECH”). This Addendum supplements the Partner Agreement.
- C. To deliver the Services, Partner will enter into an underlying agreement with the Covered Entity. (“Services Agreement”).
- D. Under the terms of the Services Agreement, Covered Entity may disclose Protected Health Information that is protected under HIPAA and Title XIII of the American Recovery and Reinvestment Act of 2009 (“HITECH”).
- E. To the extent that it receives Protected Health Information from or on behalf of Covered Entity, McAfee is a “Business Associate” as that term is defined under HIPAA and HITECH.

AGREEMENT

To ensure compliance with their obligations under HIPAA and HITECH, the Parties agree as follows:

1. **Definitions.**

Unless otherwise defined in this Addendum, capitalized terms shall have the same meanings as set forth in HIPAA or HITECH, as applicable:

- a. **Breach** For purposes of Section 4 (j) of this Addendum only, “Breach” means the acquisition, access, use, or disclosure of Protected Health Information in an unauthorized manner that poses a significant risk of financial, reputational, or other harm to the individual or the privacy of the Protected Health Information. This definition is supplemented by 45 C.F.R. § 164.402, as amended; all other uses of the term “breach” will have their ordinary contract meaning.
- b. **Disclose** means release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. This definition is supplemented by 45 C.F.R. §160.103.
- c. **Individual** means a person who is the subject of Protected Health Information, as defined by 45 C.F.R. §160.103 and includes a person who has the legal authority to act on behalf of an Individual or otherwise qualifies as a personal representative under 45 C.F.R. § 164.502(g).
- d. **Protected Health Information (“PHI”)** means individually identifiable health information, received by McAfee from or on behalf of, Covered Entity. This definition is supplemented by 45 C.F.R. § 160.103.
- e. **Required By Law** means a legal mandate that compels an entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law. This definition is supplemented by 45 C.F.R. § 164.103.

- f. **Secretary** means the Secretary of the Department of Health and Human Services or his/her designee.
- g. **Unauthorized Use** means any Use or Disclosure that is not authorized by this Addendum, the Partner Agreement or by law.
- h. **Unsecured Protected Health Information** means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals.
- i. **Use** means, with respect to Protected Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

2. **Party Relationship and General Obligations:**

- a. To deliver the Services, Partner has entered into a Services Agreement with the Covered Entity. As such, Partner is a “Business Associate” of the Covered Entity as defined by HIPAA and HITECH.
- b. McAfee is a subcontractor to the Partner for delivery of the Services, as detailed in the Partner Agreement. In its role as a subcontractor, McAfee may receive PHI from or on behalf of a Covered Entity. McAfee is therefore a “Business Associate” under HIPAA and HITECH.
- c. McAfee has no contract with the Covered Entity and, except as specifically stated herein, McAfee’s obligations under this Addendum run solely to Partner.
- d. As required by law, Partner is responsible for entering into a separate Business Associate Agreement with each Covered Entity and retains all responsibility and liability for such agreements.

3. **Scope of Use and Disclosure of Protected Health Information:**

- a. Except as otherwise expressly limited in this Addendum and the Partner Agreement, (collectively, “Agreements”), McAfee may Use or Disclose PHI to perform all functions, activities or services for, or on behalf of, Partner and Covered Entity in connection with the Agreements, provided that such Use or Disclosure would not violate HIPAA or HITECH if done by Covered Entity.
- b. Except as otherwise expressly limited in the Agreements, McAfee may Use or Disclose PHI for the proper management and administration of McAfee or to carry out its legal responsibilities if:
 - i. the Disclosure is Required By Law, or
 - ii. McAfee obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to such person, and the person agrees to notify McAfee of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. If requested by Partner in writing, McAfee may Use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R § 164.504(e)(2)(i)(B) of HIPAA.
- d. McAfee may Disclose PHI to appropriate Federal and State authorities to report any incidents it believes in good faith violate the law. This provision is supplemented by 45 C.F.R. § 164.502(j) of HIPAA.

4. **Obligations of McAfee with Respect to Protected Health Information:**

- a. McAfee shall Use and Disclose PHI only as permitted or required by the Agreements and as Required By Law.
- b. McAfee shall, where applicable, comply with the Security Rule and use appropriate safeguards to prevent Use or Disclosure of the PHI other than as provided for by the Agreements.

- c. McAfee shall implement administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains or transmits to or on behalf of Covered Entity, as required by HIPAA. The safeguards will, where applicable, comply with the HIPAA Privacy Rule.
- d. McAfee does not maintain a Designated Record Set as defined by 45 C.F.R. §164.524. Partner or Covered Entity retain all obligations related to Designated Record Sets, including maintenance, individual access, amendments to the Designated Record Set and additional obligations defined by 45 C.F.R. §§ 164.524 and 164.526. McAfee will promptly direct all inquiries regarding Designated Record Sets to the Partner.
- e. McAfee shall mitigate, to the extent reasonably practicable, any harmful effect that is known to McAfee of a Use or Disclosure of PHI by McAfee in violation of the requirements of the Agreements.
- f. McAfee shall report Unauthorized Use to Partner within 10 business days after becoming aware of the Unauthorized Use.
- g. McAfee shall ensure that agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions that apply to McAfee with respect to the PHI.
- h. McAfee shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary in a time and manner designated by the Secretary, for purposes of the Secretary determining Partner's or Covered Entity's compliance with HIPAA.
- i. McAfee shall document Disclosures by McAfee of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528 of HIPAA. McAfee shall make all such information available to the Partner within five (5) business days of the written request.
- j. Following McAfee's discovery of a Breach of Unsecured Protected Health Information, McAfee shall take reasonable steps to cure the Breach and notify Partner of such Breach in accordance with 45 C.F.R. § 164.410 of HIPAA. To the extent possible, the notice shall include the identification of each Individual whose PHI has been Used or Disclosed during the Breach.
- k. McAfee shall forward all Individual inquiries regarding PHI to Partner for resolution. McAfee will provide reasonable assistance to Partner to respond to the Individual requests.

5. Obligations of Partner:

- a. Partner represents and warrants it: (1) has included, and will include, in its public-facing privacy policy that PHI may be Disclosed for health care operations purposes; and (2) has obtained, and will obtain, from Covered Entities, authorizations and other permissions required by applicable laws to allow McAfee and Partner to fulfill their obligations under the Agreements.
- b. Partner shall promptly notify McAfee in writing of any changes in, or revocation of, permission by an Individual or Covered Entity to Use or Disclose PHI, if such changes or revocation could reasonably be expected to affect McAfee's ability to perform its obligations under the Agreements.
- c. Partner shall promptly notify McAfee of any agreements restricting the Use or Disclosure of PHI that Partner enters into with any Covered Entities or Individuals in accordance with 45 C.F.R. § 164.522, to the extent the agreements may affect McAfee's Use or Disclosure of PHI.
- d. Partner shall not request McAfee to Use or Disclose PHI in any manner that is not permissible under the law if done by Partner or Covered Entity.
- e. Partner shall be responsible for resolving all inquiries from Covered Entity or Individuals as further described in paragraph 4(k) of this Addendum.

6. Term and Termination:

- a. **Term.** This Addendum will terminate upon the earlier of: (1) termination of the Partner Agreement; or (2) termination of this Addendum as allowed by law.
- b. **Termination.** In the event of either party's material breach of this Addendum, the non-breaching party must provide the breaching party with written notice detailing the alleged breach. The breaching party will have 10 days from receipt of the notice to cure the alleged breach. If the breach is not cured to the reasonable satisfaction of the non-breaching party within the 10 day period, the non-breaching party may terminate the Agreements. In the event that cure of a breach is not reasonably possible, the non-breaching party may immediately terminate the Agreements. If neither termination nor cure is feasible, the non-breaching party may report the breach to the Secretary.
- c. **Effect of Termination.** Upon termination of the Agreements, McAfee shall return or destroy all PHI in its possession that was received from or on behalf of Partner or Covered Entity. McAfee shall retain no copies of such PHI. If return or destruction is not feasible, McAfee will extend the protections of this Addendum to the PHI and limit Uses and Disclosures of such PHI to those purposes that make the return or destruction of the information infeasible. The extended protections exist for as long as McAfee maintains such PHI.

7. Miscellaneous:

- a. **Changes to Laws.** If either party determines that changes or additions in the law or regulations require a modification of this Addendum, the parties agree to promptly engage in good faith negotiations to address the new requirement. If the parties are unable to agree on an acceptable modification, then any party that would become noncompliant in the absence of such modifications shall have the right to terminate the Agreements.
- b. **Notices.** Any notice under this Addendum shall be given in writing to: McAfee, Inc. Office of the General Counsel 5000 Headquarters Dr., Plano, TX 75204. Notices will be deemed to have been received upon actual receipt, one business day after being sent by overnight courier service or facsimile, or three business days after mailing by first-class mail, whichever occurs first.
- c. **Survival.** Sections 4(h) and 6(c) of this Addendum shall survive any termination of this Addendum or the Agreements.
- d. **Amendments.** This Addendum may not be modified in any respect other than by a written instrument signed by both parties.
- e. **Assignment.** This Addendum is not assignable by either party without the other party's written consent.
- f. **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit compliance by the parties with HIPAA and HITECH. Any conflict between the Partner Agreement and this Addendum will be controlled by the Addendum.
- g. **No Third Party Beneficiary.** Nothing in this Addendum is intended, nor shall be deemed, to confer any benefits on any third party.