

SphereMail HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement ("BAA") is incorporated by reference into the SphereMail Terms of Service and, when applicable, forms part of the Agreement between SphereMail, Inc. ("SphereMail") and the customer or operator ("Customer"), including any applicable Order Form or other agreement that incorporates or is governed by the SphereMail Terms of Service.

This BAA applies only when Customer is a Covered Entity or Business Associate subject to the HIPAA Rules and Customer's use of the HIPAA-Covered Services causes SphereMail to create, receive, maintain, or transmit Protected Health Information ("PHI") on Customer's behalf.

When Customer is a Covered Entity, SphereMail acts as Customer's Business Associate. When Customer is itself a Business Associate, SphereMail acts as Customer's Business Associate subcontractor, as applicable under the HIPAA Rules.

No separate signature is required for this BAA when it becomes part of the Agreement through incorporation by reference in the SphereMail Terms of Service or an applicable Order Form or other agreement governed by those Terms.

1. Definitions

HIPAA Rules means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164, as amended.

Protected Health Information or PHI has the meaning assigned to that term under the HIPAA Rules and, for purposes of this BAA, is limited to PHI that SphereMail creates, receives, maintains, or transmits on behalf of Customer through the HIPAA-Covered Services.

Electronic Protected Health Information or ePHI has the meaning assigned to that term under the HIPAA Rules.

HIPAA-Covered Services means the SphereMail digital mail-management functions through which PHI may be created, received, maintained, or transmitted on Customer's behalf, including, as applicable:

- mail-item records associated with digital mail management;
- envelope imaging;
- opening and scanning of mail requested through the SphereMail platform;

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- storage and retrieval of scanned mail and associated envelope images; and
- related access to such mail information through SphereMail's web, mobile, and API mail-management functionality.

Unless expressly designated by SphereMail in writing as a HIPAA-Covered Service, other SphereMail products or services are not included within the scope of this BAA.

Capitalized terms not otherwise defined in this BAA that are defined by the HIPAA Rules will have the meanings assigned to them under the HIPAA Rules.

2. Permitted Uses and Disclosures of PHI

SphereMail may use or disclose PHI only:

1. as necessary to provide the HIPAA-Covered Services to Customer;
2. as directed by Customer when such direction is permitted by the HIPAA Rules and this BAA; or
3. as Required by Law.

SphereMail will not use or further disclose PHI in a manner not permitted by this BAA or the HIPAA Rules.

To the extent applicable, SphereMail will limit its uses, disclosures, and requests for PHI in accordance with the minimum necessary requirements of the HIPAA Rules.

3. SphereMail Obligations

With respect to PHI subject to this BAA, SphereMail will:

3.1 Safeguards

Use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this BAA.

With respect to ePHI, SphereMail will comply with the applicable requirements of the HIPAA Security Rule.

3.2 Reporting

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Report to Customer any use or disclosure of PHI not permitted by this BAA of which SphereMail becomes aware.

SphereMail will report any Breach of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410, without unreasonable delay and in no event later than 60 calendar days after discovery of the Breach.

SphereMail will report Security Incidents of which it becomes aware as required by the HIPAA Rules.

3.3 Subcontractors

Ensure that any subcontractor engaged by SphereMail that creates, receives, maintains, or transmits PHI on SphereMail's behalf agrees in writing to restrictions and conditions that are at least as protective of PHI as those applicable to SphereMail under this BAA, as required by the HIPAA Rules.

3.4 Access to PHI

To the extent SphereMail maintains PHI in a Designated Record Set on behalf of Customer, SphereMail will make such PHI available to Customer as necessary for Customer to satisfy its obligations under 45 C.F.R. § 164.524.

3.5 Amendment

To the extent applicable, SphereMail will make PHI available for amendment and incorporate amendments as necessary for Customer to satisfy its obligations under 45 C.F.R. § 164.526.

3.6 Accounting of Disclosures

SphereMail will maintain and make available to Customer the information required for Customer to provide an accounting of disclosures as required by 45 C.F.R. § 164.528, to the extent applicable to PHI handled by SphereMail.

3.7 Performance of Customer HIPAA Obligations

If SphereMail is expressly engaged by Customer to perform an obligation of Customer under the HIPAA Privacy Rule, SphereMail will comply with the requirements of the HIPAA Privacy Rule applicable to Customer in performing that obligation.

3.8 Government Access

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SphereMail will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of, Customer available to the Secretary of the U.S. Department of Health and Human Services as required for purposes of determining compliance with the HIPAA Rules.

4. Customer Responsibilities

Customer will not request or direct SphereMail to use or disclose PHI in a manner that would violate the HIPAA Rules if performed by Customer, except to the extent expressly permitted by the HIPAA Rules.

Customer is responsible for:

- determining whether HIPAA applies to Customer and its use of the SphereMail services;
- determining whether information submitted to or handled through the HIPAA-Covered Services constitutes PHI;
- ensuring that Customer is authorized to provide PHI to SphereMail;
- managing Customer's workforce, users, account permissions, and access to the SphereMail services; and
- Customer's own compliance with the HIPAA Rules.

Customer will notify SphereMail of any restriction or limitation concerning PHI that Customer is legally required to communicate to SphereMail and that materially affects SphereMail's permitted use or disclosure of PHI.

5. Scope of SphereMail's Responsibility

This BAA applies only to PHI that SphereMail creates, receives, maintains, or transmits on Customer's behalf through the HIPAA-Covered Services.

SphereMail is not responsible under this BAA for Customer's:

- workforce or personnel;
- internal policies or procedures;
- devices, networks, or systems outside SphereMail's control;
- account-access decisions or permissions;

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- physical handling, storage, forwarding, shredding, or disposal of mail performed by Customer or Customer's personnel;
- third-party vendors that are selected or engaged independently by Customer; or
- PHI that SphereMail does not create, receive, maintain, or transmit on Customer's behalf.

Nothing in this Section limits an obligation imposed directly on SphereMail by the HIPAA Rules with respect to PHI that SphereMail creates, receives, maintains, or transmits as a Business Associate or Business Associate subcontractor.

6. Term and Termination

6.1 Term

This BAA becomes applicable when the conditions described in the introductory provisions of this BAA are satisfied.

The protections and obligations of this BAA will continue with respect to PHI retained by SphereMail for as long as required by the HIPAA Rules.

6.2 Termination for Material Breach

Customer may terminate the applicable agreement with SphereMail if Customer determines that SphereMail has violated a material term of this BAA and SphereMail fails to cure the violation after being provided a reasonable opportunity to do so, where cure is possible.

Nothing in this Section limits any termination rights required by the HIPAA Rules.

6.3 PHI Following Termination

Upon termination of the applicable services, SphereMail will, where feasible, return or destroy PHI received from Customer or created, received, maintained, or transmitted on Customer's behalf that SphereMail continues to maintain in any form.

If return or destruction of PHI is not feasible, SphereMail will continue to protect such PHI in accordance with this BAA and will limit further uses and disclosures to those purposes that make return or destruction infeasible, for as long as SphereMail maintains the PHI.

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7. Relationship to SphereMail Terms of Service and Agreement

This BAA is incorporated by reference into the SphereMail Terms of Service and, when applicable, forms part of the Agreement between Customer and SphereMail, including any applicable Order Form or other agreement that incorporates or is governed by those Terms.

In the event of a conflict between this BAA and the SphereMail Terms of Service, an applicable Order Form, or another agreement between Customer and SphereMail, this BAA will control solely to the extent necessary with respect to the use, disclosure, safeguarding, and handling of PHI under the HIPAA Rules.

All other provisions of the SphereMail Terms of Service, applicable Order Form, and Customer's other applicable SphereMail agreement terms remain in effect.

8. Regulatory Changes and Interpretation

References in this BAA to the HIPAA Rules mean those provisions as amended from time to time.

Any ambiguity in this BAA will be interpreted in a manner that permits Customer and SphereMail to comply with the applicable requirements of the HIPAA Rules.

Nothing in this BAA is intended to expand SphereMail's obligations beyond those applicable to SphereMail as a Business Associate or Business Associate subcontractor under the HIPAA Rules or beyond PHI handled through the HIPAA-Covered Services.