

HEALTHCARE ADDENDUM

This Healthcare Addendum (together with the Business Associate Agreement attached as Exhibit A, this “**Healthcare Addendum**”), dated as of the last date set forth below (“**Addendum Effective Date**”), is by and between OpenAI, L.L.C., located at 548 Market Street, PMB 97273, San Francisco, CA 94104 (“**OpenAI**”), and MQO RESEARCH INC. (“**Customer**”) and supplements the OpenAI Business Terms agreed to by Customer (located at openai.com/policies/business-terms) or such other agreement executed by both parties for the Services (such Business Terms or other agreement executed by both parties, the “**Business Agreement**”) and any related Order Forms (collectively as supplemented by this Healthcare Addendum, the “**Services Agreement**”). Capitalized terms not defined in this Healthcare Addendum shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations promulgated thereunder (collectively, “**HIPAA**”) and, if not defined therein, elsewhere in the Services Agreement.

BACKGROUND

WHEREAS, as part of the products and services provided by OpenAI under the Services Agreement, Customer desires to receive, and OpenAI desires to provide, certain Services (as defined in the Services Agreement) that pursuant to which OpenAI may create, receive, maintain or transmit PHI;

WHEREAS, OpenAI has developed the HIPAA Workflow (as defined below) to enable the creation, receipt, maintenance, and transmittal of PHI (as defined below); and

WHEREAS, Customer desires to utilize, and OpenAI desires to provide Customer with access to, the HIPAA Workflow to enable compliance with HIPAA pursuant to the terms and restrictions set forth in this Healthcare Addendum.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Services Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

TERMS

1. HIPAA Workflow.

1.1. Purpose of HIPAA Workflow. Subject to the terms and conditions set forth in the Services Agreement, OpenAI agrees to provide Customer with access to the HIPAA Workflow during the Term set forth in the applicable Order Form. The “**HIPAA Workflow**” is a proprietary OpenAI Zero Data Retention transmission and processing solution that is designed to avoid retention of any PHI that Customer discloses to OpenAI under this Healthcare Addendum. “**Zero Data Retention**” means that data transmitted via the HIPAA Workflow will not (i) be logged for human review, (ii) result in storage of PHI persistently in the cloud, and (iii) be saved to disk or retained. The HIPAA Workflow may result in the storage of PHI temporarily in memory to perform the Services, but such storage of PHI is intended to be transient in nature.

1.2. Sharing PHI via the HIPAA Workflow. Customer is only permitted to transmit and disclose data that includes PHI through the Services: (i) via the HIPAA Workflow, (ii) once Customer’s account indicates that Zero Data Retention is activated for the Org ID associated with the HIPAA Workflow, and (3) to those endpoints that are specified at <https://platform.openai.com/docs/models/default-usage-policies-by-endpoint> as eligible for Zero Data Retention. Customer (including its Workforce, agents, contractors, Upstream Customers, and other data custodians) will not transmit or disclose data that includes PHI to OpenAI or the Services through any other form or medium. “**Protected Health Information**” or “**PHI**” has the meaning set forth in Exhibit A (Business Associate Agreement) (“**BAA**”). An “**Upstream Customer**” is a customer of Customer and may be either a Covered Entity or Business Associate (each as defined in the BAA).

- 1.3. Customer Content. Without limiting the terms of the Services Agreement pertaining to Customer Content, as between the parties, Customer is solely responsible for (i) the development, content, and integrity of the HIPAA Workflow Input, (ii) ensuring accurate matching (including patient matching) so that HIPAA Workflow Input is properly matched to HIPAA Workflow Output, and (iii) ensuring that HIPAA Workflow Output is returned to the appropriate Upstream Customer.
- (i) **“HIPAA Workflow Input”** means Input (as defined in the Business Agreement) containing PHI that Customer transmits to OpenAI via the HIPAA Workflow.
- (ii) **“HIPAA Workflow Output”** means Output (as defined in the Business Agreement) that OpenAI returns to Customer via the HIPAA Workflow.
- 1.4. Zero Data Retention Policy.
- (i) Customer Obligations. Customer must only use Zero Data Retention for HIPAA Workflow Output and HIPAA Workflow Input. Any other use case must be submitted separately for review and approval. If Input or Output ceases to include HIPAA Workflow Input or HIPAA Workflow Output, then Customer must inform OpenAI and submit the updated use case for review and approval. Customer is responsible for ensuring all HIPAA Workflow Input is directed to Org IDs (as specified in an applicable Order Form) that have been approved for Zero Data Retention.
- (ii) Platform Abuse. OpenAI may perform automated screening of the Customer Content for safety purposes (the **“Safety Classifiers”**), which shall consist solely of metadata (including classifier types, dates, counts and confidence scores) and shall not include any Customer Content (including summarizations of Customer Content), PHI, or any portion thereof. OpenAI may retain Safety Classifiers indefinitely. In the event the Safety Classifiers indicate persistent or material violations of law or OpenAI Policies, or OpenAI reasonably suspects that Customer is in violation of this Section 1.4, OpenAI may suspend or revoke approval for Zero Data Retention upon notice to Customer, suspend Customer’s access to the Services, or take other action in its sole discretion.
- 1.5. Business Associate Agreement. The parties shall be bound by the BAA, which is hereby incorporated by reference into this Healthcare Addendum.
- 1.6. Audit Rights. Upon OpenAI’s request, Customer will make available to OpenAI all information necessary to demonstrate compliance with this Healthcare Addendum.
2. Health Care Restrictions and Requirements.
- 2.1. Health Care Purposes Generally. To the extent that Customer uses the Services or uses or discloses Output, or permits the Services or Output to be used or disclosed, in connection with any health care activities (including without limitation the practice of medicine, billing, coding, claims processing, or clinical research), Customer will: (i) test the Services and Output for accuracy in Customer’s use cases and disclose to Upstream Customers any limitations associated with Output; (ii) ensure that Customer’s Workforce, Upstream Customers, agents, and contractors understand and comply with this Healthcare Addendum and all applicable laws and regulations, including by providing appropriate training; and (iii) ensure that only duly trained and qualified individuals who maintain licenses, certifications or other authorizations required to perform such healthcare activities will use the Services or use or disclose the Outputs in connection with such healthcare activities.
- 2.2. Upstream Customers. Customer shall enter into a written agreement with each Upstream Customer that contains terms that are at least as restrictive as the Services Agreement (including this Healthcare Addendum). Customer shall require in writing that each Upstream Customer complies with all applicable laws and regulations that are relevant to its use of the Services and Output, as applicable.

- 2.3. Transparency. Customer shall not represent, whether to an Upstream Customer or otherwise, that the Services were performed by a human or that Output was human-generated.
- 2.4. Training. Customer shall train its Workforce members, agents, contractors, and other data custodians, for whom such training is relevant, on its obligations, restrictions, and responsibilities relating to this Healthcare Addendum.
3. Disclaimers. Notwithstanding any warranties or other terms in the Services Agreement, and without limiting any disclaimers set forth in the Services Agreement, the Services and Output are not intended to substitute for the function or services of properly trained and licensed individuals, including without limitation physicians or other clinicians, billing, coding, or claims personnel, or clinical researchers. OpenAI is not responsible or liable for any advice, course of treatment, diagnosis, or any other information or services that any patient or other individual may obtain or receive; billing, coding, or claims activities conducted by Customer or its Upstream Customers; or for the accuracy, completeness, or suitability of any data or information used in any healthcare activities, including clinical research activities conducted by Customer or its Upstream Customers. The Services and Output are not intended to be used in a manner that constitutes a medical device.
4. Limitation of Liability. Notwithstanding anything to the contrary in the Business Agreement, (i) except for a breach by Customer of Sections 1 (HIPAA Workflow) or 2 (Health Care Restrictions and Requirements), neither party will be liable under this Healthcare Addendum for any indirect, punitive, incidental, special, consequential, or exemplary damages (including damages for loss of profits, revenue, customers, or data; business interruption; or costs of procuring substitute technology or services), even if such party has been advised of the possibility of such damages, and (ii) OpenAI's total aggregate liability under this Healthcare Addendum shall be capped at the greater of \$1 million (one million dollars) or three (3) times the total amount paid (and payable) by Customer to OpenAI in the twelve (12) month period prior to the date of the claim. The foregoing limitations will apply notwithstanding any failure of essential purpose of any limited remedy and to the maximum extent permitted under applicable law.
5. Term and Termination. This Healthcare Addendum shall remain in full force and effect for as long as the Business Agreement remains in effect, unless otherwise terminated. The termination provisions set forth in the Business Agreement shall apply equally to this Healthcare Addendum. If this Healthcare Addendum expires or is terminated for any reason, Customer shall not transmit or otherwise disclose, and shall ensure that its Upstream Customers do not transmit or otherwise disclose, PHI to OpenAI by any means or methods. Upon termination or expiration of this Healthcare Addendum, the provisions of Section 1.3 (Customer Content and the HIPAA Workflow), Section 4 (Warranties; Disclaimers), Section 5 (Limitation of Liability), and Section 8 (General), and this last sentence of Section 8 (Term and Termination), of this Healthcare Addendum shall survive and shall continue in full force and effect.
6. General. A reference in this Healthcare Addendum to a regulatory section means the section as in effect or as amended. In addition, any notification required in this Healthcare Addendum to be made to OpenAI (or that is otherwise provided to OpenAI in connection with this Healthcare Addendum) shall also be sent to hipaa@openai.com. The recitals and exhibits to this Healthcare Addendum are hereby incorporated by reference into this Healthcare Addendum and made a binding part of this Healthcare Addendum. The Services Agreement shall remain in full force and effect and, except as modified by this Healthcare Addendum, applies equally to this Healthcare Addendum, which is hereby incorporated by reference into the Services Agreement and made a binding part of the Services Agreement. In the event of a conflict between this Healthcare Addendum and the Services Agreement, this Healthcare Addendum shall prevail with respect to the subject matter of this Healthcare Addendum.

Accepted and Agreed:

MQO RESEARCH INC.:

Organization ID: org-xQTNoAIC9rIXiWZxqeYFrZUy

Name: Brenden Sommerhalder

Title: Managing Director

Date: August 30, 2024

OpenAI, L.L.C.:



Signature:

Name: Ashley Pantuliano

Title: Authorized Signer

Date: August 30, 2024

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

1. Purpose. OpenAI and Customer entered into the Healthcare Addendum, pursuant to which OpenAI provides Customer access to certain OpenAI products and services that implicate HIPAA. For purposes of the Healthcare Addendum, Customer is either a Covered Entity, or a Business Associate of its Upstream Customers. OpenAI is either a Subcontractor of Customer, or a Business Associate of Customer.
2. Definitions. The following definitions shall apply for purposes of this Business Associate Agreement.
 - 2.1. **"Business Associate"** has the same meaning as the term "Business Associate" in 45 C.F.R. § 160.103.
 - 2.2. **"Covered Entity"** has the same meaning as the term "covered entity" in 45 C.F.R. § 160.103.
 - 2.3. **"HIPAA Breach Notification Rule"** means the Breach Notification for Unsecured Protected Health Information regulations, codified at 45 C.F.R. parts 160 and 164, as amended.
 - 2.4. **"HIPAA Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. parts 160 and 164, as amended.
 - 2.5. **"HIPAA Security Rule"** means the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. parts 160 and 164, as amended.
 - 2.6. **"Protected Health Information" or "PHI"** has the same meaning as under HIPAA, limited to such information that OpenAI receives from Customer via the HIPAA Workflow.
 - 2.7. **"Required by Law"** has the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - 2.8. **"Security Incident"** has the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
 - 2.9. **"Subcontractor"** has the same meaning as the term "subcontractor" in 45 C.F.R. § 160.103.
 - 2.10. **"Unsecured Protected Health Information" or "Unsecured PHI"** have the same meaning as under the HIPAA Breach Notification Rule, limited to such information that OpenAI receives from Customer via the HIPAA Workflow.
3. OpenAI Requirements and Obligations.
 - 3.1. Prohibited Uses and Disclosures of PHI. OpenAI shall not use or disclose PHI other than as permitted or required by this BAA or the Services Agreement, or as Required by Law. OpenAI may not use or disclose PHI in a manner that would violate the HIPAA Privacy Rule if done by Customer or its Upstream Customers that are Covered Entities, except as provided in this BAA.
 - 3.2. Permissible Use and Disclosure of PHI. OpenAI is permitted to collect, receive, use, maintain, create, disclose, transmit, destroy, and otherwise process PHI (i) in connection with performing its obligations and exercising its rights under the Services Agreement, (ii) as permitted or required by this BAA, (iii) as Required by Law, (iv) as authorized by an Individual, and (v) as otherwise permitted by applicable law. OpenAI may use PHI for the proper management and administration of OpenAI or to carry out the legal responsibilities of OpenAI. OpenAI may disclose PHI for the proper management and administration of OpenAI or to carry out the legal responsibilities of OpenAI, provided the disclosures are Required by Law, or OpenAI obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies OpenAI of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

- 3.3. Minimum Necessary. To the extent that OpenAI uses, discloses, or requests PHI to provide the Services, OpenAI shall use reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, unless an exception to the minimum necessary requirements under HIPAA applies. Notwithstanding anything to the contrary, the parties acknowledge and agree that all PHI that is transmitted to OpenAI via the HIPAA Workflow is the minimum necessary required by OpenAI to perform its obligations and exercise its rights under the Services Agreement.
- 3.4. Incident Reporting. OpenAI will report to Customer (i) any use or disclosure of PHI by OpenAI that is not permitted under this BAA of which OpenAI becomes aware, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, and (ii) any Security Incident of which OpenAI becomes aware. Any such report(s) must be made promptly after, but in no case more than five (5) days after, Discovery by OpenAI of such impermissible use or disclosure, such Security Incident, or such Breach of Unsecured PHI. OpenAI will provide such reasonable cooperation as is reasonably requested by Customer in responding to such event and will supplement such initial report with additional information, including all information reasonably available to OpenAI that is required to be included in notices to affected Individuals, regulators, the media, or other entities as required by HIPAA or applicable state laws. The parties agree that notice is hereby deemed given for all attempted, unsuccessful Security Incidents involving trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings, or other similar types of events that do not compromise the security or privacy of PHI.
- 3.5. Mitigation. OpenAI will take reasonable steps to mitigate, to the extent practicable, any harmful effects known to OpenAI from any unauthorized use or disclosure of PHI by OpenAI in violation of HIPAA or this BAA.
- 3.6. Subcontractors of OpenAI. OpenAI shall ensure that any Subcontractors of OpenAI that create, receive, maintain, or transmit PHI agree to the same restrictions and conditions that apply to OpenAI with respect to such information, to the extent required by HIPAA. If OpenAI learns of any pattern or activity that constitutes a material breach of a Subcontractor's obligations with respect to PHI, OpenAI will take reasonable steps to cure the breach, end the violation, or terminate the relationship with its Subcontractor.
- 3.7. Requests for Access. The parties acknowledge and agree that OpenAI does not maintain a Designated Record Set for or on behalf of Customer or Upstream Customers. In the event that OpenAI receives a request for access to PHI under 45 C.F.R. § 164.524, OpenAI's sole responsibility shall be to promptly forward the request to Customer. In the event that Customer or any Upstream Customer receives a request for access to PHI under 45 C.F.R. § 164.524, OpenAI shall have no obligations.
- 3.8. Requests for Amendment. The parties acknowledge and agree that OpenAI does not maintain a Designated Record Set for or on behalf of Customer or Upstream Customers. In the event that OpenAI receives a request for amendment of PHI under 45 C.F.R. § 164.526, OpenAI's sole responsibility shall be to promptly forward the request to Customer. In the event that Customer or any Upstream Customer receives a request for amendment of PHI under 45 C.F.R. § 164.526, OpenAI shall have no obligations.
- 3.9. Accounting of Disclosures. In the event that OpenAI discloses PHI in a manner that is required to be included in an accounting under 45 C.F.R. § 164.528, OpenAI shall maintain and, within ten (10) business days of a request from Customer, make available such information as Customer or Upstream Customer would be required to provide an Individual requesting an accounting of disclosures under 45 C.F.R. § 164.528.

- 3.10. Customer Privacy Rule Obligations. The parties acknowledge and agree that OpenAI is not intended to carry out one or more of Customer's or any of Upstream Customer's obligation(s) under the HIPAA Privacy Rule.
- 3.11. Availability of Books and Records. OpenAI will make its HIPAA policies and any other books and records that relate to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (or his or her designee) for purposes of determining compliance with HIPAA.
- 3.12. Privacy and Security Safeguards. OpenAI shall use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule (as codified in 45 C.F.R. §§ 164.302-164.318) with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA.
4. Customer Restrictions and Obligations.
- 4.1. Compliance with Upstream Customer Business Associate Agreements. Customer shall comply with the terms and conditions of Customer's business associate agreements (entered into pursuant to 45 C.F.R. §§ 164.502(e), 164.504(e), 164.308(b), and 164.314(a)) with its Upstream Customers that are relevant to the Services.
- 4.2. Upstream Customer Limitation(s) in Notice of Privacy Practices. Customer shall ensure that there are no limitation(s) in its own notice of privacy practices and that of any Upstream Customer under 45 C.F.R. § 164.520 that may affect OpenAI's use or disclosure of PHI pursuant to the Services Agreement.
- 4.3. Permissions, Authorizations, and Consents. Customer represents and warrants that any permissions, authorizations (including authorizations under 45 C.F.R. § 164.508), or consents that may be required for OpenAI to provide Services, or to otherwise collect, receive, use, maintain, create, disclose, transmit, destroy, or otherwise process PHI as permitted or required under this BAA, have been obtained and reasonably documented.
- 4.4. Restrictions on the Use and Disclosure of PHI. Customer shall ensure that Customer and Upstream Customers have not agreed to, or are not otherwise required to abide by, restrictions on the use or disclosure of PHI under 45 C.F.R. § 164.522 that may affect OpenAI's use or disclosure of PHI pursuant to the Services Agreement.
- 4.5. Permissible Requests by Customer. Customer shall not ask OpenAI to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by Customer or any Upstream Customer. Customer shall not request that OpenAI collect, receive, use, maintain, create, disclose, transmit, maintain, destroy, or otherwise process PHI in any manner that violates HIPAA or any other applicable law or regulation.
- 4.6. Mitigation. Customer shall take reasonable steps to mitigate, to the extent practicable, any harmful effects known to Customer of a breach of this BAA by Customer.
5. Term and Termination. The term of this BAA shall begin on the first date Customer transmits PHI to OpenAI pursuant to the Services Agreement and shall continue for as long as the Healthcare Addendum remains in effect. The Healthcare Addendum, including this BAA, may be terminated in accordance with Section 6 of the Healthcare Addendum. Following termination or expiration of this BAA for any reason, upon Customer's written request, OpenAI shall certify that all PHI has been returned or destroyed.
6. General. Except as modified by this BAA, the Healthcare Addendum applies equally to this BAA. In the event of a conflict between this BAA and the Healthcare Addendum, this BAA shall prevail with respect to the subject matter of this BAA.

Electronic Record of Contracts

This document was generated as a record of certain contracts created, accepted and stored electronically.



Summary of Contracts

This document contains the following contracts.

Title	ID
HIPAA Amendment (MQO RESEARCH INC. and OpenAI)	6e42ad59-11b4-4b36-92da-6eae3c54f73b

Contract signed by:

MQO RESEARCH INC.		Signer ID:	cc5e01b9-71a7-45ad-95cb-2bcd49d71c5a
		Email:	bsommerhalder@mqoresearch.com
Date / Time:	Aug 30, 2024 at 5:08 PM EDT		
IP Address:	134.41.54.216		
User Agent:	Mozilla/5.0 (Linux; Android 10; K) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/127.0.0.0 Mobile Safari/537.36 EdgA/127.0.0.0		