



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into between the following entities and is effective as of the date of the last signature below (“**Effective Date**”). Together with the Terms of Use or Master Services Agreement, this BAA will govern each party’s respective obligations regarding Protected Health Information.

“Covered Entity” or “CE” or “Business Associate”

Entity name: **[insert full legal entity name plus jurisdiction of organization]**
Address: **[insert]**
Business contact for this document:
Contact name: **[insert]**
Contact title: **[insert]**
Contact email: **[insert]**
Contact phone: **[insert]**

If notices should be provided to someone or someplace other than above, complete the following section:

Notices to: _____

“SurveyMonkey”

Entity name: **SurveyMonkey Inc.**, a Delaware corporation
Address: 1 Curiosity Way
San Mateo, CA 94403
Business contact for this document:
Notices to: By certified mail or courier to the address above
Attn: Legal Department, with a copy to your SurveyMonkey business contact by email

Details

Account username:	[insert]
Team name:*	[insert, if applicable]

*Complete if account username specified belongs to an Enterprise team. If specified, CE is an “**Enterprise Subscriber**” for the purposes of this BAA.

Signatures

By signing below, the parties agree to be bound by the terms of this Agreement as of the Effective Date.

COVERED ENTITY

Signed: _____
Print name: _____
Title: _____
Date signed: _____

SURVEYMONKEY INC.

Signed: _____
Print name: _____
Title: _____
Date signed: _____

Recitals

- A. CE is either (i) a “covered entity” or (ii) a “business associate” to one or more “covered entities under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and 45 CFR Part 160.103 and, as such, must enter into “business associate” contracts with certain contractors or subcontractors that may have access to certain health-related personal information regulated by HIPAA.
- B. Pursuant to the Terms of Use (defined below), SurveyMonkey provides certain services to CE, including the provision of the Account and the services accessible with that Account. To facilitate SurveyMonkey’s provision of such services, CE wishes to disclose certain information to SurveyMonkey, some of which may constitute Protected Health Information (defined below).
- C. CE and SurveyMonkey desire to protect the privacy, and provide for the security, of Protected Health Information provided to SurveyMonkey through the Account in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-005 (“**HITECH Act**”), and HIPAA Regulations (defined below) promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws, including without limitation state patient privacy laws, as such laws may be amended from time to time.
- D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (each defined below) require CE to enter into a contract with SurveyMonkey containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, s 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**C.F.R.**”) and contained in this BAA.

Terms

1 Definitions.

Capitalized terms not otherwise defined in this BAA shall have the meanings assigned to such terms under HIPAA, the HITECH Act, and the HIPAA Regulations, as applicable. The following terms shall have the following meanings in this BAA:

“**Account**” means: (a) if CE is an Enterprise Subscriber, that Enterprise subscription and all the end user accounts contained in the Enterprise team specified in the Details section (or any successor team name, provided that CE notifies SurveyMonkey in writing if CE changes such team name); or (b) if CE is not an Enterprise Subscriber, the SurveyMonkey account with the username specified in the Details section (or any successor username, provided that CE notifies SurveyMonkey in writing if CE changes such username).

“**Breach**” has the meaning given to such term under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

“**Business Associate**” has the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.

“**Covered Entity**” has the meaning given to such term under 45 C.F.R. § 160.103.

“**Designated Record Set**” has the meaning given to such term 45 C.F.R. § 164.501.

“**Electronic Health Record**” has the meaning given to such term under 42 U.S.C. § 17921(5).

“**Health Care Operations**” has the meaning given to such term under 45 C.F.R. § 164.501.

“**HIPAA Regulations**” means, collectively, the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164.

“**Privacy Rule**” means the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” means any information, whether oral or recorded in any form or medium: (a) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (b) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under 45 C.F.R. § 160.103.

“**Protected Information**” means PHI provided by CE to SurveyMonkey or created or received by SurveyMonkey on CE’s behalf in connection with the Account provided by SurveyMonkey pursuant to the Terms of Use.

“**Security Rule**” means the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

“**Terms of Use**” means the Terms of Use located on SurveyMonkey’s website at <http://www.surveymonkey.com/mp/policy/terms-of-use> or, if CE is an Enterprise Subscriber, that certain master services agreement that governs CE’s applicable Enterprise subscription.

“**Unsecured PHI**” has the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”).

2 Obligations of Business Associate.

2.1 Permitted Access, Use or Disclosure. Except as otherwise limited in the Terms of Use or this BAA, SurveyMonkey may access, use, or disclose Protected Information:

- (a) to perform its services as specified in the Terms of Use, provided such use or disclosure would not violate HIPAA if done by CE; and
- (b) for the proper management and administration of SurveyMonkey’s business and to carry out the legal responsibilities of SurveyMonkey, provided that such access, use, or disclosure would not violate HIPAA, the HITECH Act, the HIPAA Regulations, or applicable state law if done or maintained by CE; and
- (c) to de-identify such information in accordance with 45 CFR 164.514(a)-(c), and shall be permitted to use such de-identified information as permitted by applicable law.

If SurveyMonkey discloses Protected Information to a third party, other than at the instruction or direction of the CE, SurveyMonkey must obtain, prior to making any such disclosure:

- (d) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by applicable law or for the purposes for which it was disclosed to such third party, and
- (e) agreement from such third party to promptly notify SurveyMonkey of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach.

2.2 Prohibited Uses and Disclosures. SurveyMonkey shall not use or disclose, Protected Information other than as permitted or required by the Terms of Use, this BAA or as permitted or required by applicable law.

2.3 Appropriate Safeguards. SurveyMonkey shall implement appropriate safeguards designed to prevent the access, use or disclosure of Protected Information other than as permitted by the Terms of Use or this BAA. SurveyMonkey shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI. SurveyMonkey shall comply with each of its obligations under the applicable requirements of 45 C.F.R. §§ 164.308, 164.310, and 164.312 and the policies and procedures and documentation requirements of the HIPAA Security Rule set forth in 45 C.F.R. § 164.316.

2.4 Reporting of Improper Access, Use or Disclosure.

- (a) General Breach. SurveyMonkey shall promptly notify CE of any Breach of security, intrusion or unauthorized access, use, or disclosure of Protected Information of which SurveyMonkey becomes aware and/or any access, use, or disclosure of Protected Information in violation of the Terms of Use, this BAA, or any applicable federal or state laws or regulations of which it becomes aware. This Section 2.4(a) shall serve as notice to CE that SurveyMonkey periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of SurveyMonkey’s information systems and services and even if such events are defined as a Security Incident under HIPAA, SurveyMonkey will not provide any further notice regarding such unsuccessful attempts.
- (b) Breaches of Unsecured PHI. SurveyMonkey shall, to the extent permitted by applicable law following the discovery of any Breach of Unsecured PHI that is Protected Information, notify CE in writing of such Breach without unreasonable delay and in no case later than 60 days after discovery. CE shall be solely responsible for determining whether to notify impacted Individuals, determining if regulatory bodies, such as the

Secretary of the Department of U.S. Health and Human Services, or other enforcement commissions applicable to CE need to be notified, and for providing any such notices.

- 2.5 Business Associate's Subcontractors and Agents. SurveyMonkey shall ensure that any agents or subcontractors to whom it provides Protected Information agree to restrictions and conditions comparable to those that apply to SurveyMonkey with respect to such Protected Information. To the extent that SurveyMonkey creates, maintains, receives or transmits PHI on behalf of the CE, SurveyMonkey shall ensure that any of SurveyMonkey's agents or subcontractors to whom it provides Protected Information agree to implement the safeguards required by Section 2.3 (Appropriate Safeguards) with respect to such PHI.
- 2.6 Access to Protected Information. To the extent SurveyMonkey maintains a Designated Record Set on behalf of the CE, SurveyMonkey shall make Protected Information maintained by SurveyMonkey or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within 10 days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524. If SurveyMonkey maintains an Electronic Health Record, SurveyMonkey shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. § 17935(e). To the extent that a patient makes a request to SurveyMonkey for a Designated Record Set or Electronic Health Record that SurveyMonkey maintains on behalf of the CE, SurveyMonkey shall forward such request to the CE within 10 calendar days of receipt and advise the patient that the CE will respond to the request. CE agrees that it, and not SurveyMonkey, is responsible for responding to the patient to fulfill its obligations under the HIPAA Regulations.
- 2.7 Amendment of PHI. To the extent SurveyMonkey maintains a Designated Record Set on behalf of CE, within 10 days of receipt of a request from the CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, SurveyMonkey or its agents or subcontractors shall make Protected Information available to CE so that CE may make any amendments that CE directs or agrees to in accordance with the Privacy Rule.
- 2.8 Accounting Rights. Within 10 days of notice by CE of a request for an accounting of disclosures of Protected Information, SurveyMonkey and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule and the HITECH Act. SurveyMonkey shall notify CE within 5 business days of receipt of any request by an individual for an accounting of disclosures so CE may fulfill its obligation to respond to such requests under the Privacy Rule and the HITECH Act.
- 2.9 Governmental Access to Records. SurveyMonkey shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary for purposes of determining CE's compliance with the Privacy Rule.

3 Obligations of CE.

- 3.1 Permissible Requests by CE. CE shall not request SurveyMonkey to access, use, or disclose Protected Information, nor to otherwise act, in any manner that would not be permissible under HIPAA or the HITECH Act if done by CE.
- 3.2 Safeguards. CE shall implement appropriate privacy and security safeguards to prevent against unauthorized access, use or disclosure of Protected Information.

4 Term and Termination.

- 4.1 Term. This BAA shall be effective as of the Effective Date and shall continue until terminated (the "**Term**").
- 4.2 Termination. This BAA may be terminated:
- (a) by CE upon written notice if SurveyMonkey materially breaches this BAA and the breach is not cured by SurveyMonkey within 30 business days of receiving written notice of such breach; or
 - (b) by SurveyMonkey for any reason upon 90 days' prior written notice, provided that SurveyMonkey shall provide reasonable assistance to CE to destroy or return any of CE's Protected Information before the effective date of termination.
- 4.3 Effect of Termination. Upon termination of this BAA:

- (a) the Account will be closed by SurveyMonkey and the Terms of Use will terminate with respect to the Account; and
- (b) SurveyMonkey shall, if feasible, return or destroy all Protected Information that SurveyMonkey or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, SurveyMonkey shall continue to extend the protections of this BAA to such information, and limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible. CE acknowledges that it is CE's responsibility to export or backup any PHI that it wishes to retain before any termination is effected and SurveyMonkey shall have no responsibility for any liability that may arise from any data loss caused as a result of that termination.

5 No Third-Party Beneficiaries.

Nothing express or implied in the Terms of Use or this BAA is intended to confer, nor shall anything herein confer upon any person other than CE, SurveyMonkey and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

6 General.

- 6.1 Interpretation; Precedence. The provisions of this BAA shall prevail over any provisions in the Terms of Use that conflict or appear inconsistent with any provision in this BAA. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HITECH Act. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Terms of Use shall remain in force and effect.
- 6.2 Entire Agreement. This BAA supersedes any and all prior and contemporaneous business associate agreements or agreements between the parties relating to PHI and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof.

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