

**PREVIEW VERSION ONLY**

*This Business Associate Agreement (BAA) is made available for preview purposes only. It is indicative of the BAA that will be presented through the online user interface for acceptance by the covered entity. This document is not for execution and should not be used other than for reference purposes.*

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is made between SurveyMonkey Inc., a Delaware corporation (“**SurveyMonkey**”) and [NAME OF COVERED ENTITY] (“**CE**”), the registered holder of the Account (defined below). This BAA is effective as of [DATE] (“**Effective Date**”), which is the date CE indicated its acceptance of this BAA electronically.

If the SurveyMonkey account through which you are accessing this webpage is an account that belongs to an Enterprise subscription, CE for the purposes of this BAA is an “**Enterprise Subscriber**” and “**Account**” refers to that Enterprise subscription and all the end user accounts contained in the Enterprise group represented by that subscription. Otherwise, “**Account**” means the individual SurveyMonkey account through which you are accessing this webpage.

The username of the account accessing this webpage is [USERNAME]. [That account also belongs to the Enterprise group named “[NAME OF GROUP]”.]

This BAA was electronically signed by [NAME OF SIGNER], [TITLE OF SIGNER] on behalf of CE on the Effective Date.

**RECITALS**

- A. CE is a “covered entity” 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 so-called “business associate” contracts with certain contractors 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. The Terms of Use prohibit CE from collecting PHI (defined below) through the Account without the prior written consent of SurveyMonkey.
- D. 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.
- E. 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.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, CE and SurveyMonkey agree as follows:

## AGREEMENT

### 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:

“**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.

“**Data Aggregation**” has the meaning given to such term under 45 C.F.R. § 164.501.

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

“**Electronic Protected Health Information**” or “**EPHI**” means Protected Health Information that is maintained in or transmitted by electronic media.

“**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 Health Information includes Electronic Protected Health Information.

“**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.

“**Suspended HIPAA Account**” refers to the Account when it has been suspended pursuant to Section 4.2 (Suspension Events).

“**Suspension Period**” means the minimum period of time for which SurveyMonkey will maintain a Suspended HIPAA Account before closing it, given a specific reason for the suspension. Suspension Periods exist to provide CE with an opportunity to export or back up its Account data before the closure of the Account.

“**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 enterprise 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.** SurveyMonkey shall:

- (a) use best efforts to not permit the unauthorized or unlawful access of Protected Information;
- (b) 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; and
- (c) be permitted to use Protected Information 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.

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

- (d) to perform its services as specified in the Terms of Use; and
- (e) for the proper administration 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.

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

- (f) 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
- (g) 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 under HITECH.** Notwithstanding any other provision in this BAA, SurveyMonkey shall comply with the following requirements:

- (a) SurveyMonkey shall not use or disclose Protected Information for fundraising or marketing purposes, except as provided under the Terms of Use and consistent with the requirements of 42 U.S.C. § 17936;
- (b) SurveyMonkey shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates, 42 U.S.C. § 17935(a). CE expressly agrees that if a patient has requested the above special restriction, CE will not provide such patient’s Protected Information to SurveyMonkey; and

- (c) SurveyMonkey shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2); however, this prohibition shall not affect payment by CE to SurveyMonkey for services provided pursuant to the Terms of Use.

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 EPHI. 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) Generally. 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. SurveyMonkey shall take: (i) prompt corrective action to cure any deficiencies in its policies and procedures that may have led to the incident; and (ii) any action pertaining to such unauthorized access, use, or disclosure required of SurveyMonkey by applicable federal and state laws and regulations.
- (b) Breaches of Unsecured PHI. Without limiting the generality of the reporting requirements set forth in Section 2.4(a), SurveyMonkey also 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. The notice shall include the following information if known (or can be reasonably obtained) by SurveyMonkey: (i) contact information for the individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery (as defined in 42 U.S.C. § 17932(c)); (iii) a description of the types of Unsecured PHI involved in the Breach (e.g., names, social security numbers, date of birth, addresses, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); and (iv) a brief description of what the SurveyMonkey has done or is doing to investigate the Breach and to mitigate harm to the individuals impacted by the Breach.
- (c) Mitigation. SurveyMonkey shall establish and maintain safeguards to mitigate, to the extent practicable, any deleterious effects known to SurveyMonkey of any unauthorized or unlawful access or use or disclosure of Protected Information not authorized by the Terms of Use, this BAA, or applicable federal or state laws or regulations; provided, however, that unless otherwise agreed in writing by the parties or required by applicable federal or state laws or regulations, such mitigation efforts by SurveyMonkey shall not require SurveyMonkey to bear the costs of notifying individuals impacted by such unauthorized or unlawful access, use, or disclosure of Protected Information; provided, further, however, that SurveyMonkey shall remain fully responsible for all aspects of its reporting duties to CE under Section 2.4(a) and Section 2.4(b).

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 EPHI 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 EPHI.

- 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 implement a process that allows for an accounting to be collected and maintained by SurveyMonkey and its agents or subcontractors for at least 6 years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only 3 years prior to the request, and only to the extent SurveyMonkey maintains an Electronic Health Record and is subject to this requirement. At a minimum, the information collected and maintained shall include, to the extent known to SurveyMonkey (and, if only known to the CE, then to the extent that the CE provides such information to SurveyMonkey): (a) the date of the disclosure; (b) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (c) a brief description of the Protected Information disclosed; and (d) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any 12 month period. For subsequent accountings within a 12 month period, SurveyMonkey may charge the individual or party requesting the accounting a reasonable fee based upon SurveyMonkey's labor costs in responding to the request and a cost-based fee for the production of non-electronic media copies, so long as SurveyMonkey informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. SurveyMonkey shall notify CE within 5 business days of receipt of any request by an individual or other requesting party for an accounting of disclosures. The provisions of this Section 2.8 shall survive the termination of this BAA.
- 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.
- 2.10 Minimum Necessary. To the extent feasible in the performance of services under the Terms of Use, SurveyMonkey (and its agents or subcontractors) shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Because the definition of "minimum necessary" is in flux, SurveyMonkey shall

keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.” Notwithstanding the foregoing, the parties agree that based on the nature of the services provided to CE by SurveyMonkey under the Terms of Use, SurveyMonkey may be unable to determine what constitutes “minimum necessary” under HIPAA, and thus SurveyMonkey shall be entitled to rely on CE’s direction as to what constitutes “minimum necessary” with respect to the access, use, or disclosure of CE’s Protected Information in the possession or under the control of SurveyMonkey.

- 2.11 Permissible Requests by Covered Entity. 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.
- 2.12 Breach Pattern or Practice. Pursuant to 42 U.S.C. § 17934(b), if either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of such other party’s obligations under this BAA, the first party must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the first party must terminate the Terms of Use if feasible, or if termination is not feasible, report the problem to the Secretary of the Department of Health and Human Services.

### **3 Obligations of CE.**

- 3.1 Acceptable Collection Methods. The Account shall be classified as a “HIPAA-enabled” account. CE acknowledges that once the Account becomes a HIPAA-enabled account, that classification is irreversible. SurveyMonkey permits CE to collect PHI only through HIPAA-enabled accounts.
- 3.2 Covered Entity. The obligations with regard to the treatment and handling of Protected Information in this BAA only apply while CE is a Covered Entity.
- 3.3 Subscription Plan. Only certain SurveyMonkey subscription plans support HIPAA-enabled accounts (“**HIPAA Subscription Plans**”), and this BAA may only be entered into if the Account is under a HIPAA Subscription Plan. For example, if CE is not an Enterprise Subscriber, this BAA may only be entered into if the applicable account is under a SurveyMonkey PLATINUM subscription plan (or any equivalent highest-tier successor plan). CE will maintain the Account under a HIPAA Subscription Plan and may not downgrade or otherwise change the Account to a subscription plan that is not a HIPAA Subscription Plan. SurveyMonkey will not remove support for HIPAA-enabled accounts from a HIPAA Subscription Plan during the Term.
- 3.4 Conversion to Enterprise Subscriber. If, during the Term, CE converts or upgrades the Account from an individual SurveyMonkey account to an Enterprise subscription, CE will be considered to be an Enterprise Subscriber under this BAA as of the date of such conversion or upgrade, and the Account shall refer to the Enterprise subscription and all the end user accounts contained in the Enterprise group represented by that subscription.

### **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 Suspension Events.
  - (a) Lapsed Account. The Account is provided to CE by SurveyMonkey on a paid subscription basis, which means that the Account must be periodically renewed in accordance with the Terms of Use if CE wishes to continue receiving services from SurveyMonkey in connection with the Account. If the Account is not renewed, or if CE fails to pay any fees due in relation to the Account (such as renewal fees), SurveyMonkey may suspend the Account for a

Suspension Period of 6 months. In such case, CE may reinstate its Account by renewing it, or paying any overdue fees due in relation to it (as the case may be), before the end of the Suspension Period.

- (b) Breach by CE. If CE materially breaches this BAA and the breach is not cured by CE within 15 days of receiving written notice of such breach, SurveyMonkey may suspend the Account for a Suspension Period of 30 days. In such case, the Account may only be reinstated at the discretion of SurveyMonkey and only if the breach is cured.

4.3 Suspended HIPAA Account. If SurveyMonkey suspends the Account, SurveyMonkey will preserve all data contained in the Suspended HIPAA Account for the Suspension Period, but functionality for the Account will be disabled (except for certain billing and account administration functions) and the Protected Information will no longer be directly accessible to CE through the Account's online interface. All Protected Information contained in the Suspended HIPAA Account will continue to be subject to this Agreement. SurveyMonkey will close the Suspended HIPAA Account after the end of the Suspension Period unless it is reinstated earlier. During the Suspension Period, CE may:

- (a) access the Suspended HIPAA Account to retrieve billing details and make account payments;
- (b) submit a written request to SurveyMonkey for an export of CE's data contained in the Suspended HIPAA Account. SurveyMonkey will use commercially reasonable efforts to fulfill such request promptly; and
- (c) close its Suspended HIPAA Account by submitting a written notice to SurveyMonkey. SurveyMonkey will fulfill such closure request promptly upon receiving the notice.

4.4 Effect of Account Closure. This BAA will terminate upon the closure of the Account (including of a Suspended HIPAA Account). If CE requests SurveyMonkey to close the Account, CE is solely responsible for ensuring that such closure will not cause CE or SurveyMonkey to violate any applicable laws.

4.5 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. In such case, CE will be entitled to receive a pro rata refund of any fees prepaid by the Customer applicable to the Account for the period following the closure of the Account.

4.6 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 Compliance with State Law.**

Nothing in this BAA shall be construed to require SurveyMonkey to use or disclose Protected Information without a written authorization from an individual who is a subject of the Protected Information, or without written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

## **6 Amendments to Comply with Law.**

Because state and federal laws relating to data security and privacy are rapidly evolving, amendment of the Terms of Use or this BAA may be required to provide for procedures to ensure compliance with such developments. SurveyMonkey and CE shall take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and other applicable laws relating to the security or confidentiality of PHI. Upon the request of either party, the other party shall promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, or other applicable laws. If such negotiations are unsuccessful, either party may terminate this BAA and close the Account upon 30 days' written notice to the other party.

## **7 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.

## **8 Indemnification.**

Each party (an "**Indemnifier**") shall indemnify and hold harmless the other party (the "**Indemnified**") from and against any and all fines, losses, liabilities, expenses, damages or injuries that the Indemnified sustains as a result of, or arises out of, a third party claim that: (a) the Indemnifier has violated an applicable law or regulation (including the HIPAA Regulations) in connection with this BAA, or (b) arises out of a breach of this BAA by the Indemnifier or its agents or subcontractors (including the unauthorized use or disclosure of any Protected Information).

## **9 Limitation of Liability.**

- 9.1 **DIRECT DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING IN CONNECTION WITH THIS BAA (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, BUT NOT LIMITED TO DATA LOSS, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, EXCEPT IN THE CASE OF AN INDEMNIFICATION CLAIM MADE BY SURVEYMONKEY UNDER SECTION 8 (INDEMNIFICATION), A BREACH OF SECTION 10 (CONFIDENTIALITY) OR CLAIMS BASED ON GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 9.2 **LIABILITY CAP.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS BAA, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE GREATER OF:



- (a) THE TOTAL AMOUNTS PAID BY CE UNDER THE TERMS OF USE IN THE 12 MONTHS PRECEDING THE INCIDENT CAUSING THE LIABILITY; AND
- (b) \$5,000 (IF CE IS NOT AN ENTERPRISE SUBSCRIBER) OR \$25,000 (IF CE IS AN ENTERPRISE SUBSCRIBER).

THE FOREGOING LIMITATION DOES NOT APPLY IN THE CASE OF AN INDEMNIFICATION CLAIM MADE BY SURVEYMONKEY UNDER SECTION 8 (INDEMNIFICATION), A BREACH OF SECTION 10 (CONFIDENTIALITY) OR CLAIMS BASED ON GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING SHALL NOT AFFECT THE LIABILITY OF EITHER PARTY UNDER THE TERMS OF USE.

## 10 Confidential Information.

- 10.1 Confidentiality. SurveyMonkey shall use the Protected Information only to exercise its rights and fulfill its obligations under this BAA or the Terms of Use. SurveyMonkey will not disclose the Protected Information, except to its affiliates, officers, employees, directors, agents, contractors, legal counsel, financial advisors, and other similar professionals who need to know it (“**Representatives**”) and who have agreed to treat the Protected Information in accordance with the confidentiality provisions in this BAA. SurveyMonkey will be responsible for any actions of its Representatives in violation of this Section 10.1. SurveyMonkey may disclose the Protected Information when required by law, regulation, legal process, or court order.
- 10.2 Exceptions. For the purposes of Section 10.1 (Confidentiality) only, the confidentiality obligations therein do not cover Protected Information that: (a) SurveyMonkey already lawfully knew at the time of receipt from CE; (b) becomes public through no fault of SurveyMonkey; (c) was independently developed by SurveyMonkey without reference to the Protected Information; or (d) was rightfully and lawfully given to SurveyMonkey by a third party who did not acquire that information through a breach of confidence.

## 11 Notices.

All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, by overnight courier or, in the case of notices to CE, by email, addressed as follows:

- (a) To CE:

By email to the Account's registered email address (as may be updated by CE from time to time). If CE is an Enterprise Subscriber, the relevant registered email address will be that of the Primary Admin account associated with the applicable Enterprise subscription.

- (b) To SurveyMonkey:

285 Hamilton Avenue, Suite 500  
Palo Alto, CA 94301  
Attn: Legal Department

With a copy by email to [legal@surveymonkey.com](mailto:legal@surveymonkey.com) or by fax to (650) 289-0335

or to such other persons or places as SurveyMonkey may from time to time designate by written notice to CE.

## 12 General.

- 12.1 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. This BAA and the Terms of Use shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HITECH Act. 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.
- 12.2 Entire Agreement. This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties with respect to the Account and any Additional Accounts (defined below) and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Each party to this BAA acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.
- 12.3 Regulatory References. A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.
- 12.4 Amendments. SurveyMonkey may propose amendments to this BAA by written notice to CE (including by email to the email address associated with the Account). If CE does not object to such amendments in writing within 30 days of such notice, the amendments will become effective on the day following the end of the notice period, or such later date as may be stated in the amendments. If CE objects to such amendments in writing within the aforementioned notice period, and SurveyMonkey has not revoked the proposed amendments before the end of such period, CE may terminate this BAA immediately, or at the end of the notice period, by written notice to SurveyMonkey.
- 12.5 Governing Law and Jurisdiction. This BAA is governed by the laws of the State of California, without regard to its conflict of law rules. Each party submits to the exclusive jurisdiction of the state courts located in Santa Clara county and the federal courts located in the Northern District of California with respect to the subject matter of this BAA.
- 12.6 Assignment. Neither party may assign this BAA or the Terms of Use without the consent of the other party (such consent not to be unreasonably withheld). Notwithstanding the foregoing, SurveyMonkey may assign this BAA to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization, or the sale of all or substantially all of SurveyMonkey's assets, provided that the assignee agrees to be bound by the terms of this BAA. In such case, SurveyMonkey may also assign the Terms of Use to the third party to which the BAA was assigned.

## 13 Additional Covered Accounts.

- 13.1 CE may, from time to time, enter into additional agreements (each, a "**Services Agreement**") with SurveyMonkey under which SurveyMonkey supplies CE with services via an online account ("**Additional Account**"). If a Services Agreement expressly states that this BAA applies to the Additional Account under that Services Agreement, then this BAA will so apply, except that references to "Terms of Use" and "Account" in this BAA will be read as references to the applicable Services Agreement and Additional Account, respectively.

## **14 Provisions Specific to Enterprise Subscriptions.**

14.1 Applicability of Section. This Section 14 applies only if CE is an Enterprise Subscriber. In this Section 14, capitalized terms which are otherwise undefined in this BAA have the meanings given to them by the Terms of Use.

14.2 Additional Consequences of Suspension.

- (a) If the Account is suspended pursuant to Section 4.2 (Suspension Events), all End User accounts contained in the Account will be suspended pursuant to Section 4.3 (Suspended HIPAA Account).
- (b) The actions listed under paragraphs (a) to (c) of Section 4.3 (Suspended HIPAA Account) may be taken by: (i) any End User with respect to that End User's own account; (ii) any Admin with respect to any End User account over which that Admin has administrative rights; and (iii) the Primary Admin with respect to the entire Account.

14.3 Termination of Enterprise Subscription. Section 4.6 (Effect of Termination) supersedes and replaces any provisions in the Terms of Use relating to a Downgrade occurring upon termination of the Terms of Use. For clarity, this means that End User accounts contained in the Account will not be converted to personal accounts if the Terms of Use terminate, but will instead be closed pursuant to Section 4.6 (Effect of Termination).

BAA version 2 (December 3, 2013).

**[Preview version only – not for execution]**