JOTFORM HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is made between the Company or other entity whose name appears in the signature block at the end of this BAA (“Customer” or “Covered Entity” as used herein) and Jotform Inc. (“Jotform” or “Business Associate” as used herein). This BAA is effective as of the date on which Covered Entity signs this BAA or otherwise accepts this BAA electronically. Customer / Covered Entity and Jotform / Business Associate are each referred to herein as a Party, and together as the Parties.

This BAA is being entered into by the Parties, and the terms “Covered Entity” and “Business Associate” are used herein, based on the premise that Customer is in fact a Covered Entity under the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d-6 and 1320d-9 (“HIPAA”). Customer has represented to Jotform that it is a Covered Entity. The Parties expressly agree that this BAA shall be null and void and of no legal effect if Customer is not in fact a Covered Entity.

In accordance with this BAA, Covered Entity may disclose to Business Associate certain "Protected Health Information" (“PHI”) subject to HIPAA and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 Subparts A and E (“Privacy Rules”), the federal security standards contained in 45 C.F.R. Part 160 and 164 Subparts A and C (“Security Rules”), and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) contained in Section 13402 of Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”) (all are collectively referred to herein as the “The Regulations”).
The Parties hereby agree to the terms and conditions of this BAA in compliance with the “The Regulations”.

1. Definitions

1.1. The terms of this BAA are incorporated herein by reference as part of the Agreement in order to comply with the “The Regulations”.

1.2. “Required by law” shall have the same meaning as in the term “required by law” in 45 CFR § 164.103.

1.3. “Security Rule” shall mean the Security Standards for the protection of Electronic Protected Health Information, located at 45 CFR Part 160 and Subparts A and C of Part 164.

1.4. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.5. Unless otherwise specified, all terms used in this BAA have the meaning set forth in the Privacy Rules and Security Rules.

1.6. “Platform” means the Jotform form-building platform, in and through which Covered Entity may collect user data including PHI data, which data will be stored by Business Associate or its data storage subprocessor(s).
1.7. “Agreement” means the Master Subscription Agreement or other written agreement through which Customer obtains a subscription to use the Form Hosting Services.

2. Business Associate Obligations

2.1. Permitted Uses and Disclosures. Business Associate shall not, and shall ensure that its directors, officers, admin users, employees, contractors do not, use or disclose PHI created, received, maintained, or transmitted for the Covered Entity in any manner that would violate HIPAA. Business Associate acknowledges and agrees that it will not use or disclose PHI other than as permitted or required by this BAA or as required by law. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, for the sole purpose of the proper management and administration of the Platform for or on behalf of the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by Covered Entity.

2.2. Use/Disclosure for Administrative Activities. Notwithstanding Section 2.1, Business Associate may use and/or disclose PHI for management and administrative activities of Business Associate or to comply with the legal responsibilities of Business Associate; provided, however, that with respect to any such disclosure: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurances from the third party that receives the PHI that the third party will treat the PHI confidentially and will only use or further disclose the PHI in a manner consistent with the purposes that the PHI was provided by Business Associate, and contact support any breach of the confidentiality of the PHI to Business Associate.

2.3. Use of PHI for Data Aggregation. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity consistent with 45 C.F.R. §164.504(e)(2)(i)(B).

2.4. Safeguards. Business Associate shall implement appropriate safeguards which includes Data Encryption and Encryption In-Transit services and, with respect to Electronic PHI, comply with the applicable provisions of 45 C.F.R Part 164, Subpart C, to prevent any use or disclosure of PHI other than as provided for by this BAA.

2.5. Subcontractors of Business Associate. Business Associate acknowledges and agrees to enter into written contracts with any agent or independent contractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate with regards to services provided by Business Associate to Covered Entity pursuant to the Agreement (collectively, "Subcontractors"). Such contracts shall obligate Subcontractor to abide by

substantially the same terms and conditions as are required of Business Associate hereunder and to agree to implement reasonable and appropriate safeguards to protect PHI.

2.6. Restrictions. Business Associate acknowledges and agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. §164.522 and of which Business Associate has been notified by Covered Entity.

2.7. HIPAA Enabled Account Usage. Covered Entity acknowledges and agrees that PHI shall only be collected, managed, and made available to Business Associate using the Covered Entity's HIPAA Enabled Account. Likewise, Covered Entity shall not disable HIPAA-enablement features in its account while or in connection with collecting PHI through the Platform.

2.7.1. Forms. Covered Entity acknowledges and agrees that, if it copies or otherwise transfers forms containing PHI from its account to other Jotform account(s), such accounts must be HIPAA-enabled at the time of such copying or transfer. Covered Entity agrees to label all form fields that collect PHI as PHI fields.

2.7.2. Data Export. Covered Entity acknowledges and agrees that Business Associate shall not be responsible for PHI after It is sent, exported or downloaded out of or outside of Jotform by Covered Entity.

2.7.3. Data Sharing. Covered Entity acknowledges and agrees that it shall at all times comply with the Regulations in its collection and handling of PHI in and through the Platform.

2.7.4. Third Party Integrations. Covered Entity acknowledges and agrees to only use Third Party Integrations if Covered Entity has a BAA or equivalent agreement in place with the Third Party Third Party Integration provider.

2.8. Performance of Covered Entity's Obligations. If and to the extent Business Associate has agreed to carry out one or more of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations. The Parties agree and acknowledge that Business Associate has not at the time of entering into this BAA agreed to carry out any of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E.

2.9. Access and Amendment. Business Associate shall notify the Covered Entity of receipt of a request received by Business Associate for access to, or amendment of, PHI, if Business Associate intends to produce or disclose the subject PHI. The Covered Entity shall be responsible for responding or objecting to such requests.

2.9.1. Access. Upon request, Business Associate acknowledges and agrees to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated

Record Set in the time and manner designated by Covered Entity to enable Covered Entity to respond to an individual request for access to PHI under 45 C.F.R. § 164.524.

2.9.2. Amendment. Upon written request and instruction from Covered Entity, Business Associate shall make available PHI for amendment and incorporate any amendments to such PHI in accordance with 45 C.F.R. §164.526 and related laws and regulations.

2.10. Accounting. Business Associate acknowledges and agrees to document disclosures 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 and if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance; and provide to Covered Entity information collected in accordance with this Section. In the event an individual delivers the initial request for an accounting directly to Business Associate, Business Associate shall forward such request to Covered Entity.

2.11. Security Obligations. Business Associate shall implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable Business Associate to comply with the requirements set forth in Sections 164.308, 164.310, and 164.312.

2.12. Access by Secretary of U.S. Department of Health and Human Services. Business Associate agrees to allow the Secretary of the U.S. Department of Health and Human Services (the "Secretary") access to its books, records, and internal practices with respect to the disclosure of PHI for the purposes of determining the Covered Entity's or Business Associate’s compliance with HIPAA.

3. Notification Obligations

3.1. Unauthorized Use or Disclosure of PHI. Business Associate shall report to Covered Entity in writing, within ten business days, any use or disclosure of PHI not provided for by this BAA of which Business Associate becomes aware.

3.2. Security Incident. Business Associate shall report to Covered Entity in writing, within ten business days, any Security Incident affecting Electronic PHI of Covered Entity of which Business Associate becomes aware. No notice to Covered Entity shall be required in the case of attempted but Unsuccessful Security Incidents. “Unsuccessful Security Incidents” includes but is not limited to: (a) “pings” on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Electronic PHI.

3.3. Breach of Unsecured PHI. Business Associate will notify Covered Entity of any Breach of Unsecured PHI in accordance with 45 C.F.R. §164.410. The notice required by this Section will be written in plain language and will include, to the extent possible or available, the following:

3.3.1. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;

3.3.2. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;

3.3.3. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3.3.4. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

3.3.5. A brief description of what is being done to investigate the Breach, mitigate the harm, and protect against future Breaches; and

3.3.6. Contact procedures for Individuals to ask questions or learn additional information which may include a toll-free number, an e-mail address, website, or postal address, if Covered Entity specifically requests Business Associate to establish such contact procedures.

4. Covered Entity's Obligations

4.1. Notice of Privacy Practices. Covered Entity shall, upon request, provide Business Associate with its current notice of privacy practices adopted in accordance with HIPAA.

4.2. Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

4.3. Restrictions or Changes in Authorization. Covered Entity shall not agree to any non-mandatory restrictions on the use or disclosure of Protected Health Information if such restriction could affect Business Associate’s permitted or required uses and disclosures of PHI hereunder except upon Business Associate’s express, written consent. Covered Entity shall notify Business Associate of any changes, revocations or restrictions of the use or disclosure of PHI if such changes, revocations or restrictions affect Business Associate’s permitted or required uses and disclosures of PHI hereunder including, without limitation, any revocation of any authorization for the use or disclosure of PHI.

4.4. Requests for Use and Disclosure. Covered Entity shall not request that Business Associate collect, access, use, maintain or disclose PHI, or act in any manner, contrary to or in violation or breach of the Regulations or this BAA.

4.5. Appropriate Use. Covered Entity acknowledges that Business Associate maintains the Platform and that Business Associate is not and does not maintain an electronic health record or other medical record system and that no aspect of the Platform should be used to maintain a Designated Record Set or relied upon directly to provide patient care. Information collected via Business Associate must be transferred by Covered Entity into an appropriate system of record (for example, an electronic health record) in accordance with appropriate processes to assure confidentiality, accuracy and availability before being used for patient care.

4.6. Communications External to Business Associate. Covered Entity acknowledges and agrees that communications of PHI by Business Associate outside of Business Associate pursuant to a request by Covered Entity presents heightened privacy and security risks. Covered Entity further acknowledges and agrees that it is Covered Entity's sole responsibility to determine, as part of its HIPAA Risk Analysis, whether to such communications are permitted under HIPAA and the Regulations, and to implement appropriate safeguards (including policies, procedures and training of all authorized users) to manage these risks to a reasonable and appropriate level consistent with HIPAA.

5. Termination

5.1. This BAA shall be effective from the Effective Date and for as long as Business Associate is in possession or control of PHI on Covered Entity's behalf (the "Term").

5.2. Material Breach. Each Party shall immediately notify the other Party if the notifying Party becomes aware of a breach of this BAA. If such a breach has occurred and cannot be or is not cured within ten (10) business days of the notification, the notified Party may immediately terminate this BAA.

5.3. Return or Destruction of PHI. Upon termination of this BAA, Business Associate will return to Covered Entity all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity which Business Associate maintains in any form or format. Business Associate shall not thereafter maintain or keep in any form or format any portion of such PHI. Alternatively, Business Associate may destroy all such PHI and provide written documentation of such destruction.

5.4. Alternative Measures. If the return or destruction of PHI is not feasible at the time of the termination of this BAA, Business Associate shall continue to protect PHI pursuant to its obligations hereunder until such time as the PHI can be returned to Covered Entity or destroyed.

6. Third Party Beneficiaries

6.1. No Third-Party Beneficiary Rights. Nothing expressed or implied in this BAA is intended or shall be interpreted to create or confer any rights, remedies, obligations, or liabilities whatsoever in any third party.

7. Miscellaneous

7.1. Survival. Covered Entity and Business Associate's respective rights and obligations under this BAA shall survive the termination of the Agreement.

7.2. Interpretation. Any ambiguity in the Business Associate Terms shall be resolved to permit Covered Entity to comply with HIPAA and the Privacy Rule.

8. Signature

The Parties agree that this BAA shall become effective, and shall be binding upon both Parties, upon Covered Entity signing this BAA. No signature of Business Associate shall be necessary.

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