



CONTRACT MODIFICATION

Date: May 13, 2020
Contract #: UCPJMU5662
Service: Web Survey Application
Modification #: One
Issued By: James Madison University
 Colleen Johnson, Buyer Specialist
Contractor: QuestionPro Inc
 Attn: Harshad Deshpande
 9450 SW Gemini Dr #62790
 Beaverton, OR 97008-7105
Contract Administrator: Tina Grace, Information Technology

Description of Modification Notice:

The attached *HIPAA - Business Associate Agreement* is hereby added to UCPJMU5662.

Except as provided herein, all terms and conditions of Contract Number UCPJMU5662 remain unchanged and in full force and effect.

QuestionPro Inc *HS Deshpande*
By: _____
 Harshad Deshpande

Name (print)
 Business Director

Title *Date Signed*

James Madison University
By: *Colleen Johnson*

 Colleen Johnson,

Name (print)
 Buyer Specialist *5/13/2020*

Title *Date Signed*

QuestionPro Inc.

HIPAA - Business Associate Agreement

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into effective by and between QuestionPro INC ("Business Associate") and James Madison University, a Virginia public institution of higher education and agency of the Commonwealth of Virginia located in Harrisonburg, Virginia ("Covered Entity").

On behalf of Covered Entity, Business Associate may perform certain functions or activities involving the use, disclosure, creation, transmission, and/or maintenance of protected health information ("PHI") **[Optional: for the following purpose(s) Web Survey Application Services.]** Therefore, Business Associate agrees to the following terms and conditions set forth in this HIPAA Business Associate Agreement.

- 1. Definitions.** For purposes of this Agreement, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments thereto or implementing regulations thereunder, (collectively "HIPAA Rules"). In addition, the use of the term Affiliates in this Agreement shall mean natural persons or legal entities that, through ownership of voting interests, contract rights or otherwise, directly or indirectly control, are controlled by or are under common control with other natural persons or legal entities. A subsidiary is included in this definition of Affiliates.
- 2. Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective dates, Business Associate shall comply with its obligations under this Agreement and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place.
- 3. Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI (a) as required by law, and (b) as necessary to carry out its duties to Covered Entity pursuant to (i) the terms of this Agreement and (ii) any services agreement or other written arrangement under which Business Associate performs functions or activities on Covered Entity's behalf. **[Optional: Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.]**

4. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by this Agreement or that would violate Subpart E of 45 CFR 164 ("Privacy Rule") if done by Covered Entity including not using or disclosing genetic information for underwriting purposes as set forth in 45 CFR 164.502(a)(5)(i). Business Associate is not authorized to create de-identified information from PHI. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule and consistent with Covered Entity's minimum necessary policies and procedures.
5. **Required Safeguards To Protect PHI.** Business Associate shall develop, implement, maintain and use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than as provided for by the terms and conditions of this Agreement. Furthermore, with respect to electronic PHI, Business Associate shall encrypt such electronic PHI prior to saving it on portable media, and in other circumstances shall encrypt electronic PHI whenever reasonably practicable.
6. **Reporting to Covered Entity.** Business Associate shall immediately report to Covered Entity: (a) any use or disclosure of PHI not permitted or required by this Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 CFR Subpart D of 45 CFR 164 ("Breach Notification Rule"); and (c) with respect to any incident not subject to reporting under (a) and (b) above, Business Associate shall report to Covered Entity any successful unauthorized access, use, disclosure, modification, or destruction of Covered Entity's electronic PHI or unauthorized interference with system operations in Covered Entity's information system, of which Business Associate becomes aware. Business Associate shall cooperate with Covered Entity's investigation, analysis, notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.
7. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the HIPAA Rules.
8. **Agreements by Third Parties.** Business Associate shall enter into a written agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same restrictions, conditions, and requirements that apply to Business Associate under this Agreement with respect to such PHI.
9. **Access to PHI.** Within five (5) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such

PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 CFR 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.

10. **Amendment of PHI.** Within five (5) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.
11. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures 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 CFR 164.528 and HITECH. Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of such disclosure that includes an explanation of the basis for such disclosure.
12. **Accounting of Disclosures.** Within five (5) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 CFR 164.528 and HITECH.
13. **Other Obligations.** To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to Covered Entity in the performance of such delegated obligations.
14. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
15. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Covered Entity, or at the request of Covered Entity to the Secretary of the Department of Health and Human Services, in a time and manner designated by Covered Entity or the Secretary, as applicable, for purposes of determining compliance with the HIPAA Rules.

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16. **Breach of Contract by Business Associate.** In addition to any other rights Covered Entity may have by operation of law or in equity, Covered Entity may (a) immediately terminate the Agreement if Covered Entity determines that Business Associate has violated a material term of this Agreement; or (b) at Covered Entity's option, permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's option to have cured a breach of this Agreement shall not be construed as a waiver of any other rights Covered Entity has in this Agreement or by operation of law or in equity.
17. **Effect of Termination of Agreement.** Upon the termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, at Covered Entity's direction, destroy all PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form, recorded on any medium, or stored in any storage system. If such return or destruction is not feasible, Business Associate shall extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Agreement, even after termination of this Agreement, until such time as all PHI has been returned or otherwise destroyed as provided in this Section.
18. **Injunctive Relief.** Business Associate stipulates that its use or disclosure of PHI not authorized by this Agreement would cause immediate and irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain injunctive relief, and to recover from Business Associate the damages and costs, including reasonable attorneys' fees, incurred by Covered Entity arising out of or relating to the breach of the Agreement
19. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all losses, claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from Business Associate's breach of its obligations under this Agreement, the HIPAA Rules, or relating to its use, disclosure, creation, maintenance, transmission or safeguarding of PHI.
20. **Exclusion from Limitation of Liability.** To the extent that Business Associate has limited its liability under the terms of any services agreement or other written arrangement between Business Associate and Covered Entity, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any and all losses and damages to Covered Entity arising from Business Associate's breach of its obligations under this Agreement, the HIPAA Rules, or relating to its use, disclosure, creation, maintenance, transmission or safeguarding of PHI.

21. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of Covered Entity.
22. **Right to Audit.** To allow Covered Entity to certify compliance with the HIPAA Rules, Business Associate will permit Covered Entity to audit Business Associate's systems and services, with specific emphasis on Business Associate's compliance with the provisions of this Agreement. Such audit, which may be conducted by Covered Entity's personnel under obligations of confidentiality or by an independent auditing firm, will not interfere unreasonably with Business Associate's legitimate business activities, and will be conducted no more than once per calendar year, unless the Covered Entity has received a request from the Secretary, or unless Covered Entity has reason to believe that this Agreement has been breached. Covered Entity will use information received during an audit solely for the purposes of the Agreement and will otherwise maintain the confidentiality of such information.
23. **Third Party Rights.** The terms of this Agreement do not grant any rights to any parties other than Business Associate and Covered Entity.
24. **Independent Contractor Status.** For the purposes of this Agreement, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.
25. **Electronic Transactions.** If Business Associate conducts in whole or part a HIPAA transaction as defined in 45 CFR 160.103 of the HIPAA standards for electronic transactions, Business Associate shall comply, and shall require any subcontractor involved with the conduct of such HIPAA transaction to comply with each applicable requirement of 45 CFR Part 162.
26. **Changes in the Law.** The parties shall amend this Agreement to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, GDPR and the HIPAA Rules.
27. **Interpretation.** Any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH, GDPR and the HIPAA Rules.

QuestionPro:

HS Deshpande

By:

Name: Harshad Deshpande

Title: Business Director, Sales

Date: April 15, 2020

By: Colleen Johnson

Name: Colleen Johnson

Title: Buyer Specialist

Date: 5/13/2020