FORMSTACK, LLC

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement" or "BAA") is entered by and between Customer (hereinafter, "Covered Entity"), and Formstack (hereinafter, "Formstack" or "Business Associate"). The Covered Entity and Business Associate may each be referred to as a "party" and collectively, as the "parties". This Agreement shall become effective upon signature and execution of both parties hereto (the "Effective Date"). This Agreement is incorporated into and forms part of the Software Services Agreement (as defined below). In the event of any conflict between this Agreement and the Software Services Agreement, the terms of this Agreement shall control with regard to the HIPAA Rules (as defined below).

HOW TO EXECUTE THIS BAA

This BAA has been pre-signed by Formstack. To complete this BAA, Covered Entity must:

● Complete the information in Section 8(j) and the signature block for Covered Entity; and

● Accept the BAA via executable link OR sign and send the executed BAA by email to legal@formstack.com; in either case, expressly indicating the name of the Covered Entity signing this Agreement.

Upon receipt by Formstack of a validly complete BAA, and provided that Covered Entity has met all requirements as set out herein, this BAA will become legally binding and shall supersede any previous BAAs between the parties.

RECITALS

WHEREAS, Covered Entity and Business Associate have entered into the underlying Formstack Software Services Agreement (as defined below) under which Business Associate provides certain services to Covered Entity; and

WHEREAS, in connection with the services provided by Business Associate pursuant to the Software Services Agreement, Covered Entity has purchased a Healthcare Account(s) (as defined below) from Business Associate and will be providing Formstack with access to certain PHI (as defined below);

WHEREAS, to comply with the requirements of the privacy, security, breach notification and enforcement regulations under the Health Insurance Portability and Accountability Act of 1996,

as amended (the "HIPAA Rules"), Covered Entity and Business Associate desire to enter into this Agreement documenting the permitted uses and disclosures of PHI by Business Associate and other rights and obligations of each of the parties;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. <u>Definitions</u>. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules or in the Software Services Agreement, as applicable.

"<u>Breach</u>" shall have the same meaning as the term "breach" in 45 C.F.R. §164.402, limited to breaches of PHI not rendered unusable, unreadable or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of Health and Human Services (the "Secretary") in guidance issued under Section 13402(h) of Public Law 111-5.

"<u>Breach Notification Rule</u>" shall mean the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Part 164, Subpart D.

"<u>ePHI</u>" shall mean a subset of PHI that is maintained or transmitted in electronic media.

"<u>Healthcare Account(s)</u>" shall mean account(s) purchased by Covered Entity under the Software Services Agreement that (a) is designated by Formstack as a Healthcare Solution and (b) specifically is processing PHI through the Healthcare Solution as permitted by Formstack pursuant to the Software Services Agreement.

"<u>Individual</u>" shall have the same meaning as the term "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

"<u>PHI</u>" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity pursuant to this Agreement.

"<u>Privacy Rule</u>" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

"<u>Security Rule</u>" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.

"<u>Software Services Agreement</u>" shall mean the underlying and then current <u>Software Services Agreement</u> between Business Associate and Covered Entity under which Business Associate may have access to certain PHI. If Covered Entity and Business Associate have multiple written

agreements under which PHI is shared by Covered Entity, this Agreement shall apply to each such agreement as if a separate Business Associate Agreement has been executed for each such agreement between Business Associate and Covered Entity.

"Unsuccessful Security Incidents" means unsuccessful attempts at unauthorized access or system interference.

2. Applicability. This Agreement applies only to Healthcare Accounts. Covered Entity is solely responsible for: (i) selecting the appropriate type of account based on its particular data privacy and security compliance obligations; (ii) implementing appropriate privacy and security features within the Services and relevant Salesforce environment where the products and Services are deployed, if applicable; and (iii) assessing whether its type, manner and usage of the Services are appropriate for the security, storage or control of, or access to PHI.

3. Obligations and Activities of Business Associate.

(a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) Business Associate agrees to comply with the provisions of the HIPAA Rules concerning minimum necessary uses, disclosures, and requests for PHI. Business Associate shall use its professional judgment in making minimum necessary determinations.

(c) Business Associate agrees to use appropriate safeguards and to comply with the Security Rule with respect to ePHI designed to prevent the use or disclosure of PHI other than as provided for by this Agreement.

(d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is or becomes known to Business Associate or Covered Entity of a use or disclosure of PHI by Business Associate or any of its employees, agents, contractors, or subcontractors in violation of the requirements of this Agreement or in violation of the HIPAA Rules.

(e) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including, but not limited to, any Breach and any Security Incident of which it becomes aware, and such notification must be furnished to Covered Entity without unreasonable delay and no later than sixty (60) days from the discovery of the same, provided, however, that if a delay is requested by a law enforcement official in accordance with 45 C.F.R. §164.412, Business Associate may delay notifying Covered Entity for the applicable time period.

(f) Business Associate agrees to implement and use appropriate policies and procedures for the identification and notification of a Breach. In the event of a Breach, Business Associate shall provide Covered Entity with the following information, upon prior written request, to the extent known and possible: (i) a brief description of what happened, including the date of the Breach

and the date of discovery of the Breach; (ii) a description of the types of PHI involved in the Breach; (iii) the identity of each individual whose PHI was, or is reasonably believed to have been, involved in the Breach; (iv) the steps Business Associate has taken or will take to mitigate any harmful effect of such use or disclosure; and (v) the corrective actions Business Associate has taken or will take to prevent future, similar unauthorized use, disclosure or Breach.

(g) In accordance with 45 C.F.R. §164.308(b)(2) and §164.502(e)(1)(ii), Business Associate agrees to enter into a written contract with subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate. Such contract shall require that the subcontractor agree to substantially similar restrictions and conditions that apply to Business Associate with respect to PHI in this Agreement.

(h) To the extent that Business Associate has a Designated Record Set for an Individual that is not maintained by the Covered Entity, Business Associate agrees to provide access to the Individual's PHI in a Designated Record Set pursuant to 45 C.F.R. §164.524 upon prior written request from Covered Entity or the Individual. The Business Associate's response will be made to the Covered Entity. If the request for access relates to PHI that is maintained electronically in a Designated Record Set in the Business Associate's control or custody, Business Associate shall provide an electronic copy in the form and format specified in the request if it is readily producible in such format. If the electronic copy is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 C.F.R. §164.524.

(i) To the extent that Business Associate has a Designated Record Set for an Individual that is not maintained by the Covered Entity, Business Associate agrees to respond to requests for amendment(s) to PHI in a Designated Record Set pursuant to 45 C.F.R. §164.526 upon prior written request from the Covered Entity or the Individual. The Business Associate's response will be made to Covered Entity.

(j) Business Associate agrees to document certain disclosures of PHI and information related to such disclosures and agrees to provide an accounting of such information pursuant to 45 C.F.R. §164.528 upon prior written request from Covered Entity or the Individual. The Business Associate's response will be made to Covered Entity.

(k) To the extent Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate agrees to utilize commercially reasonable efforts to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of these obligations. To the extent that Business Associate subcontracts one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall ensure in accordance with Section 3(g) that the subcontractor agrees to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of these obligations.

(l) Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(m) To the extent that Business Associate or any of its subcontractors conducts Standard Transaction(s) on behalf of Covered Entity, Business Associate and its subcontractors shall comply with the Administrative Requirements of, and reasonably assist Covered Entity in complying with any applicable certification and compliance requirements under, 45 C.F.R. Part 162 by the applicable compliance date(s).

4. <u>Obligations of Covered Entity.</u>

(a) Covered Entity shall be responsible for ensuring that any individual consent or authorization necessary for Access to, creation, maintenance, Use and Disclosure of PHI subject to this Agreement has been obtained and is in force as of the date of such Access to, creation, maintenance, Use and Disclosure of PHI.

(b) Covered Entity will notify Business Associate in writing of any restrictions to the Use or Disclosure of PHI which Covered Entity has accepted that apply to any access to, creation, maintenance, Use and Disclosure of PHI subject to this Agreement.

(c) Covered Entity shall promptly notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI that affects Business Associate's permitted or required Uses or Disclosures.

5. <u>Permitted Uses and Disclosures by Business Associate.</u>

(a) Except as otherwise limited by this Agreement or permitted by this Section, Business Associate may use or disclose PHI only to perform functions, activities or services for, or on behalf of, Covered Entity in accordance with the Software Services Agreement.

(b) Business Associate may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity.

(c) Business Associate may use or disclose PHI as Required by Law.

(d) Business Associate may use PHI to report violations of law to appropriate federal and state authorities.

(e) Business Associate may use PHI when necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI when necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom information is disclosed that (i) it will be held

confidentially and used or further disclosed only as Required by Law or for the purpose for which disclosed and (ii) such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

(f) If requested by Covered Entity in writing, Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity.

6. <u>Permissible Requests by Covered Entity</u>. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would be impermissible under the Privacy Rule if used or disclosed by Covered Entity.

7. <u>Term; Effect of Termination.</u>

(a) <u>Term</u>. This Agreement shall be effective as of the Effective Date and shall terminate upon the first to occur of the following: (i) the termination of the Software Services Agreement; or (ii) Covered Entity no longer processes PHI. The provisions of Sections 3(f) and 7(b) shall survive any termination of this Agreement.

(b) <u>Effect of Termination.</u>

(1) Except as provided in Subsection 7(b)(2) below, upon termination of this Agreement for any reason, if feasible, Business Associate shall return all PHI to Covered Entity or destroy all PHI to the extent Covered Entity does not request its return.

(2) In the event that Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains the PHI.

8. <u>Miscellaneous.</u>

(a) <u>Regulatory References</u>. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) <u>Status of Parties.</u> Business Associate is an independent contractor of Covered Entity. Nothing in this Agreement shall be construed to create a joint venture, partnership, or agency. No employee or agent of Business Associate shall be deemed to be an employee or agent of Covered Entity, and no employee or agent of Covered Entity shall be deemed to be an employee or agent of Business Associate.

(c) <u>Amendment</u>. The parties agree to take such action as is necessary to amend this Agreement from time to time as may be required for Covered Entity to comply with the requirements of the HIPAA Rules. This Agreement may only be amended in a writing signed by both parties.

(d) <u>Reporting.</u> For all reporting obligations under this Agreement, the parties acknowledge that,

due to encryption, Business Associate may not know the nature of the PHI contained in Covered Entity's files or accounts. As a result, Business Associate may not be able to identify the Individuals affected or describe the information subjected to a Security Incident, Impermissible Use or Disclosure, or Breach. Business Associate's reporting obligations shall be limited to the information it can readily see without decryption.

(e) <u>Unsuccessful Security Incidents.</u> The parties agree that Unsuccessful Security Incidents occur frequently and that there is no significant benefit for data security from requiring the documentation and reporting of such unsuccessful intrusion attempts. Consequently, Business Associate and Covered Entity agree that this Agreement shall constitute the documentation, notice and written report of such Unsuccessful Security Incidents as required by the Security Rule and that no further notice or report of such attempts will be required. An Unsuccessful Security Incident shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access to, or use or disclosure of, PHI.

(f) <u>Interpretation</u>. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

(g) <u>Governing Agreement</u>. The terms and conditions of this Agreement shall supersede all conflicting terms and conditions of all prior agreements, including the Software Services Agreement, with respect to the subject matter set forth herein.

(h) <u>Severability</u>. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(i) <u>Construction and Interpretation</u>. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(j) <u>Notices</u>. All notices and communications required by this Agreement shall be in writing to the following:

Covered Entity: _____

Address: _____

_____

Attn: _____

Email: _____

Business Associate: Formstack LLC

11671 Lantern Road, Ste. 300

Fishers, IN 46038

Attn: General Counsel

Email: legal@formstack.com

Notices and communications shall be given in one of the following forms: (i) delivery in person; (ii) by a nationally-recognized, next day courier service, (iii) by first class, registered or certified mail, postage pre-paid, or (iv) by electronic mail to the address listed above.

(k) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

FORMSTACK LLC	Customer/Covered Entity
Signature: *Matthew J. Gard*	Signature:
Name: Matthew Gard	Name:
Title: Vice President Accounting	Title:
Date:	Date: