



Business Associate Agreement

This Business Associate Agreement (“**BAA**”), effective on the date signed by the last party to sign (“**Effective Date**”), is entered into by and between Qualtrics, LLC (“**Qualtrics**”), and the covered entities of The Board of Trustees of Western Michigan University listed in Schedule 1 below (“**Customer**”, and each of Qualtrics and Customer, a “**Party**” and together, the “**Parties**”).

Recitals

- A.** The Parties entered into an agreement providing for services (the “**Services**”) to be performed by Qualtrics for or on behalf of the Customer (the “**Services Agreement**”).
- B.** Customer is a Covered Entity or Business Associate under the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act and otherwise, and its implementing regulations at 45 CFR Parts 160, 162, and 164 (collectively, “**HIPAA**”).
- C.** Qualtrics may create, receive, maintain, or transmit Protected Health Information (“**PHI**”) (as defined herein) in its performance of the services described in the Services Agreement.
- D.** HIPAA requires Customer to obtain certain satisfactory assurances from Qualtrics regarding the safeguarding of such PHI.
- E.** The Parties intend for this BAA to constitute such satisfactory assurances.
- F.** Customer acknowledges that Qualtrics neither declares nor classifies any data entered into its Services (“**Data**”) since the Customer's users control all aspects of the data input.

Agreement

THEREFORE, in consideration of the Parties’ continuing obligations under the Services Agreement, the Parties agree to the provisions of this BAA in order to address the HIPAA requirements.

SECTION 1 PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

Section 1.1 Delivery of Services. Qualtrics may use or disclose PHI as necessary to provide the Services in the Services Agreement or as otherwise agreed to in writing by the Parties, except that Qualtrics may not use or disclose any PHI in a manner that would violate HIPAA if done by Customer.

Section 1.2 Proper Management and Administration. Qualtrics may (a) use PHI to the extent necessary for Qualtrics’ proper management and administration or to carry out Qualtrics’ legal responsibilities; and (b) disclose PHI to the extent necessary for Qualtrics’ proper management and administration or to carry out Qualtrics’ legal responsibilities, on the condition that: (1) the disclosure is Required by Law or (2) (i) Qualtrics has received from the third party written assurances regarding its confidential handling of such PHI and that its use and further disclosure will only be as Required by Law or for the purpose for which it was disclosed, and (ii) the third party agrees in writing to notify Qualtrics if it becomes aware that the confidentiality of the information has been breached.

Section 1.3 Minimum Necessary. Qualtrics shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of any use, disclosure, or request. Because Qualtrics’ need, if any, to access or interact with any PHI is incidental to the primary services provided by Qualtrics, Customer shall make reasonable efforts to withhold or minimize Qualtrics’ access to any PHI.

SECTION 2 RESPONSIBILITY OF QUALTRICS WITH RESPECT TO PHI

Section 2.1 Qualtrics shall not use or further disclose the PHI other than as permitted or required by this BAA or as Required by Law.

Section 2.2 Qualtrics shall, without undue delay after discovery thereof, provide written notice to the Customer of any Security Incident or unauthorized use or disclosure of PHI of which it becomes aware, except that this Section hereby serves as notice, and no additional reporting is required, of the regular

CONFIDENTIAL

Business Associate Agreement

occurrence of unsuccessful attempts at unauthorized access, use, disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system that involves PHI. If a Security Incident or an unauthorized use or disclosure of PHI constitutes a Breach of Unsecured PHI, Qualtrics will supplement its initial report with the information required by 45 CFR Section 164.410 within 30 days after discovery of the Breach. Qualtrics shall reasonably cooperate with Customer to provide any information in its possession needed by Customer to conduct a Breach risk assessment or to respond to Individuals' inquiries regarding a successful Security Incident or an unauthorized use or disclosure of PHI.

Section 2.3 Qualtrics shall establish procedures for mitigating, to the extent practicable, any known deleterious effects from any unauthorized use or disclosure of PHI that Qualtrics reports to the Customer.

Section 2.4 Qualtrics shall use appropriate administrative, technical and physical safeguards to maintain the privacy and security of the PHI and to prevent the unauthorized use or disclosure of such PHI. Qualtrics shall comply, and shall ensure that any Subcontractor that creates, receives, maintains or transmits Electronic PHI on behalf of Qualtrics agrees to comply, with the applicable requirements of the Security Standards for Protection of Electronic Protected Health Information at 45 CFR Part 164 Subpart C.

Section 2.5 Qualtrics shall require all of its Subcontractors that create, receive, maintain, or transmit PHI on Qualtrics' behalf to agree to the same restrictions and conditions that apply to Qualtrics pursuant to this BAA.

Section 2.6 Qualtrics shall, in accordance with United States laws, make available all internal practices, records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Secretary of Health and Human Services for purposes of determining the Customer's and Qualtrics' compliance with HIPAA.

Section 2.7 Within 30 days after receiving a written request from Customer therefor, Qualtrics shall provide to Customer an accounting of each disclosure of PHI made by Qualtrics or its employees, agents, representatives, or subcontractors that is subject to 45 CFR Section 164.528. Qualtrics shall implement a process that allows for an accounting to be collected and maintained for any disclosure of PHI for which Customer is required to maintain such an accounting. Qualtrics shall include in the accounting, to the extent known to Qualtrics: (a) the date of the disclosure; (b) the name, and address if known, of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of the disclosure. For each disclosure that requires an accounting under this section, Qualtrics shall document the information specified in the preceding sentence and shall securely retain this documentation for the period of time necessary for the Customer to be able to comply with 45 CFR Section 164.528.

Section 2.8 Qualtrics shall forward to Customer any Individual's request for access, amendment, or an accounting of disclosures if the Individual identifies that the request relates to Customer.

Section 2.9 Qualtrics does not maintain any PHI in a Designated Record Set.

Section 2.10 To the extent Qualtrics is to carry out one or more of Customer's obligations under Subpart E of 45 CFR Part 164, Qualtrics shall comply with the requirements of Subpart E that apply to the Customer in the performance of such obligations.

SECTION 3 RESPONSIBILITIES OF THE CUSTOMER WITH RESPECT TO PHI

Section 3.1 Customer shall delete, de-identify or anonymize all PHI data in Qualtrics' Services when such data are no longer needed.

Section 3.2 Customer shall provide Qualtrics with any changes in, or revocation of, permission to use or disclose PHI, to the extent it may affect Qualtrics' permitted or required uses or disclosures. To the extent that it may affect Qualtrics' permitted use or disclosure of PHI, Customer shall notify Qualtrics of any restriction on the use or disclosure of PHI that Customer has agreed to in accordance with 45 CFR Section 164.522.

Business Associate Agreement

Section 3.3 Customer shall not request or cause Qualtrics to make use of or disclosure of PHI that would violate HIPAA if performed by Customer.

SECTION 4 TERM AND TERMINATION

Section 4.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect until Qualtrics is no longer a “Business Associate” (as defined in HIPAA) of Customer, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this BAA shall survive its expiration or other termination in accordance with Section 4.3 herein.

Section 4.2 Termination by Customer. As provided under 45 CFR Section 164.504(e)(2)(iii), the Customer may immediately terminate this BAA, the Services Agreement, and any related agreements if the Customer makes the determination that Qualtrics has breached a material term of this BAA. Alternatively, the Customer may choose, in its discretion, to: (a) provide Qualtrics with 30 days written notice of the existence of an alleged material breach of this Agreement; and (b) afford Qualtrics an opportunity to cure such alleged material breach upon mutually agreeable terms. Customer may immediately terminate this Agreement, the Services Agreement, and any related agreements if Qualtrics fails to cure such material breach in such period.

Section 4.3 Effect of Termination. Following termination of Customer’s access to the applicable Service, Qualtrics shall return or destroy the applicable PHI to the extent feasible. If it is infeasible for Qualtrics to return or destroy such PHI, including PHI retained in backup tapes and PHI that Customer fails to download and delete, then Qualtrics shall extend any and all protections, limitations, and restrictions contained in this BAA to Qualtrics’ use or disclosure of any PHI retained after the termination of this BAA, and limit any further uses or disclosures to the purposes that make the return or destruction of the PHI not feasible.

SECTION 5 MISCELLANEOUS

Section 5.1 Amendments; Waiver. This BAA may be modified solely in writing signed by both Parties. A waiver of any breach of this BAA is not deemed a waiver of any other breach.

Section 5.2 No Third-Party Beneficiaries. Nothing herein confers upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Section 5.3 Counterparts; Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

Section 5.4 Regulatory References. A reference in this BAA to a section in HIPAA means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

Section 5.5 Conformity with the Services Agreement. Each Party’s liability to the other Party in connection with this BAA shall be subject to the same limitations and exclusions of liability as apply under the Services Agreement as if the liability arose under the Services Agreement.

Section 5.6 Miscellaneous. The terms of this BAA are hereby incorporated into the Services Agreement. Any ambiguity in this BAA shall be resolved to permit Customer to comply with HIPAA. The terms of this BAA govern in the event of any conflict or inconsistency between this BAA and any other agreement (including the Services Agreement) to the extent relating to the use or disclosure of PHI. This BAA shall be governed by, and construed in accordance with, the laws of the Delaware, exclusive of conflict of law rules. Each party to this BAA hereby agrees and consents that any legal action or proceeding with respect to this BAA shall only be brought in the federal or state courts in Wilmington, Delaware. This BAA constitutes the entire agreement between the parties with respect to the subject matter hereof, and this BAA supersedes

Business Associate Agreement

and replaces any former Qualtrics agreement or addendum entered into by the parties with respect to the subject matter hereof.

SECTION 6 DEFINITIONS

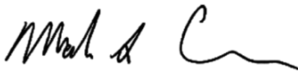
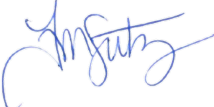
Section 6.1 "Electronic PHI" has the meaning set out in its definition in 45 CFR Section 160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised, as limited to the information that Qualtrics creates, receives, uses, maintains, or transmits from or on behalf of Customer.

Section 6.2 "Individual" has the same meaning as set forth in 45 CFR Section 160.103, except that it shall also include a personal representative of the individual pursuant to 45 CFR Section 164.502(g).

Section 6.3 "PHI" has the same meaning as "protected health information" as set forth in 45 CFR Section 160.103, but limited to the information that Qualtrics receives, uses, maintains, or transmits on behalf of Customer.

Section 6.4 **Other terms.** All other capitalized terms used, but not otherwise defined, in this BAA have the same meanings given to those terms by HIPAA as in effect or as amended from time to time.

The Parties have executed this Business Associate Agreement as of the Effective Date.

Qualtrics	Customer
By: 	By: 
Name: Mark Creer	Name: Jessica M. Swartz
Title: Director	Title: Deputy General Counsel
Date: 01.22.2021	Date: 1.21.2021
Address: Qualtrics, LLC Attn: Legal Department 333 W River Park Dr. Provo, UT 84604 United States	Address: Western Michigan University 1903 W. Michigan Avenue Seibert Administration Building Kalamazoo, MI 49008

Business Associate Agreement

Schedule 1

Sindecuse Health Center

Unified Clinics

Kalamazoo Autism Center

Department of Human Resources

University Athletics