



## MASTER SERVICES AGREEMENT

AGREEMENT ID: \_\_\_\_\_

This Master Services Agreement (“**Agreement**”) is entered into between the following entities and is effective as of the date of the last signature below (“**Effective Date**”).

### Customer

Full entity name: **[insert full legal entity name plus jurisdiction of organization (e.g. XYZ Inc., a Delaware corporation)]**

Address: **[insert]**

**Business contact** for this document:

Contact name: **[insert]**

Contact title: **[insert]**

Contact email: **[insert]**

Contact phone: **[insert]**

*If legal notices should be provided to someone other than the primary account administrator, complete the following section:*

Notices to: \_\_\_\_\_

### SurveyMonkey

Full entity name: **See Section 14**

Address: **See Section 14**

**Business contact** for this document:

Name: **[insert]**

Email: **[insert]**

Phone: **650-543-8400**

Notices to: **By certified mail or courier to the address above**

**Attn: Legal Department, with a copy to your SurveyMonkey business contact by email**

### Signatures

By signing below, the parties agree to be bound by the terms of this Agreement as of the Effective Date.

#### CUSTOMER

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

#### SURVEYMONKEY

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

1 DEFINITIONS.

"Affiliate" means any entity which directly or indirectly controls, is controlled by or is under common control with an entity. "Control" for purposes of the preceding sentence means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Article 28" means article 28 of the General Data Protection Regulation (Regulation (EU) 2016/679).

"Customer" or "you" means the customer accepting this Agreement and identified on the cover page of this Agreement.

"Customer Data" means all data (including Personal Data and End User data) that is provided to SurveyMonkey by, or on behalf of, Customer through Customer's use of the Services, and any data that third parties submit to Customer through the Services.

"Data Protection Impact Assessment" means a data protection impact assessment as referred to in article 35 of the General Data Protection Regulation (Regulation (EU) 2016/679).

"End Users" means Customer's employees, agents, independent contractors, and other individuals authorized by Customer to access and use the Services, unless otherwise defined in a specific Order Form or SST.

"Intellectual Property Rights" means current and future worldwide rights under patent, copyright, design rights, trade secret, trademark, moral rights, and other similar rights, whether registered or unregistered.

"Order Form" means an order form, sales order, sales quote, or similar document referencing and made under this Agreement and signed by the parties.

"Personal Data" means information relating to a living individual who is, or can be, reasonably identified from information, either alone or in conjunction with other information, within Customer's control and which is stored, collected or processed within one of Customer's SurveyMonkey End User accounts.

"Services" means the services ordered by Customer on an Order Form, which are described at [https://www.surveymonkey.com/what-is-surveymonkey/?ut\\_source=megamenu](https://www.surveymonkey.com/what-is-surveymonkey/?ut_source=megamenu) or other link that SurveyMonkey may provide on an Order Form.

"SSTs" means service-specific terms that apply to specific Services located at <https://www.surveymonkey.com/mp/legal/which-terms-apply/> and that are incorporated into and form a part of this Agreement.

"Subcontractor" means any entity to whom SurveyMonkey subcontracts any of its obligations under this Agreement.

"SurveyMonkey" means the SurveyMonkey entity defined in Section 14 (Contracting Entity).

"SurveyMonkey Background IP" means Intellectual Property Rights: (a) owned by or licensed to SurveyMonkey as of the Effective Date; (b) developed or acquired by SurveyMonkey after the Effective Date but independent of, and unrelated to, SurveyMonkey's performance of the Services for Customer; or (c) relating to standard products or services offered or provided by SurveyMonkey (including any improvements to those products and services).

2 SERVICES.

2.1 Provision of Services. SurveyMonkey will provide the Services to Customer in accordance with this Agreement, including any Order Forms and any applicable SSTs.

2.2 Order Forms. The parties may enter into Order Forms under this Agreement. SurveyMonkey and Customer may agree that Customer's Affiliates may enter into Order Forms under this Agreement. Any such Order Form may be signed by SurveyMonkey or a SurveyMonkey Affiliate pursuant to the requirements for under Section 14. Any reference in the Agreement to "Customer" will refer to the Customer entity signing the Order Form and any reference in the Agreement to "SurveyMonkey" will refer to the SurveyMonkey contracting entity signing the Order Form. Each Order Form will incorporate the terms and conditions of this Agreement and will be a separate contract between the entities entering into the Order Form

2.3 Third Party Services. If Customer integrates the Services with any non-SurveyMonkey-provided third party service (such as a third party's service that uses an application programming interface (API)), Customer acknowledges that such third party service might access or use Customer Data and Customer permits the third party service provider to access Customer Data as required for the interoperation of that third party service with the Services. Customer is solely responsible for the use of such third party services and any data loss or other losses it may suffer as a result of using any such services.

3 SaaS SERVICES.

- 3.1
- (a) License. Subject to the terms and conditions of this Agreement, SurveyMonkey grants Customer a non-exclusive, non-transferable worldwide right to access and use the Services during the subscription term.
  - (b) Subscription Term. The initial term of each subscription is specified on the Order Form. Subscriptions will automatically renew at the end of each subscription term for additional periods equal to one year, unless either party gives the other written notice of non-renewal at least 30 days before the end of the then-current subscription term.
  - (c) Subscription Units Added Mid-subscription Term. An Order Form may be used to add more subscription units (e.g. seats or packages) to a subscription during a subscription term. The per unit pricing for those additional subscription units will be as specified on the Order Form of the underlying subscription (or, absent such specification, at the same per unit pricing as the

underlying subscription pricing), prorated for the portion of that subscription term remaining at the time the subscription units are added. Any such additional subscription units will renew or terminate on the same date as the underlying subscription. Subscription units relating to a Service cannot be decreased during a subscription term for that Service.

- (d) Default Type. Each Service is purchased as a subscription unless otherwise specified in an Order Form or indicated given the nature of the Service.

#### 4 SERVICE FEATURES.

- 4.1 Changes to Services. SurveyMonkey continually changes and improves the Services. SurveyMonkey will provide Customer with prior written notice if SurveyMonkey makes a change to the Service(s) resulting in a material decrease in core functionality used by SurveyMonkey's general customer base. In such event, the parties agree to work together to minimize the impact of such change to Customer.

#### 5 FEES.

- 5.1 Fees. Customer will pay to SurveyMonkey all applicable fees for the Services specified in each Order Form. Except as otherwise specified in this Agreement or prohibited by applicable law, payment obligations are non-cancelable and fees paid are not refundable; provided, however, that refunds may be provided to Customer in the event this Agreement is terminated in accordance with Section 13.5(b).
- 5.2 Invoicing and Payment Terms. Payment terms shall be specified in each Order Form. Unless otherwise specified in the Order Form, an invoice will be issued upon execution of the Order Form. Multi-year orders and renewals will be invoiced on an annual basis.
- 5.3 Taxes. All amounts payable by Customer under this Agreement are exclusive of any applicable taxes, levies, duties, or similar governmental assessments of any nature (including value-added, sales, and use taxes, but excluding withholding taxes and taxes based on SurveyMonkey's income, property, or employees) ("**Taxes**") that may arise in connection with Customer's purchases under this Agreement. If any such Taxes arise, Customer will pay such Taxes in addition to all other amounts payable under this Agreement, unless Customer provides SurveyMonkey with a valid tax exemption certificate or other documentary proof, issued by an appropriate taxing authority, that no tax should be charged. If Customer is required by law to withhold any Taxes from its payments to SurveyMonkey, Customer must provide SurveyMonkey with an official tax receipt or other appropriate documentation to support such payments.
- 5.4 Currency. All monetary amounts in this Agreement are denominated in the currency stated on the Order Form. Fee payments by Customer must be received by SurveyMonkey in the same currency as such fees were billed.
- 5.5 Overdue Payments. SurveyMonkey may charge Customer interest on overdue payments at the rate of 1.5% per month (or the highest rate permitted by law, if less) on the amount overdue. If any amount owed by Customer is overdue by 30 days or more, SurveyMonkey may limit functionality or suspend provision of Services to Customer until such amounts are paid in full.
- 5.6 Overage Fees. Unless otherwise stated, any overage fees incurred by Customer will be billed in arrears at the rate listed on the Order Form. The additional units will be charged at the per unit pricing for those additional units as specified on the Order Form for the underlying subscription (or, absent such specification, at the same per unit pricing as the underlying subscription pricing), prorated for the portion of that subscription term remaining at the time the subscription units are added.

#### 6 CUSTOMER OBLIGATIONS.

- 6.1 Customer Responsibilities.
- (a) Account Security. Customer is responsible for maintaining the confidentiality of its own passwords and any other credentials used by it and its End Users to access the Services. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and will terminate any unauthorized use of which it becomes aware. Customer will notify SurveyMonkey promptly if Customer becomes aware of any unauthorized access to its accounts.
- (b) End User Activities. Customer is responsible for ensuring that its End Users comply with this Agreement. Customer is responsible for the acts of its End Users and any activity occurring in its End User accounts (other than activity that SurveyMonkey is directly responsible for which is not performed in accordance with Customer's instructions).
- (c) One Individual per Account. End User accounts and passwords may not be shared and may only be used by one individual per account.
- 6.2 Acceptable Uses by Customer. Customer agrees to comply with the Acceptable Uses Policy located at <https://www.surveymonkey.com/mp/legal/acceptable-uses-policy/>.
- 6.3 Third Party Requests. The parties may from time to time receive a request from a third party for records related to Customer's use of the Services, including information in a Customer End User account or identifying information about a Customer End User ("**Third Party Request**"). Third Party Requests include search warrants, subpoenas, and other forms of legal process.

Customer is responsible for responding to Third Party Requests via its own access to the information, and will only contact SurveyMonkey if Customer is unable to obtain such information after diligent efforts. If SurveyMonkey receives a valid Third Party Request then, to the extent permitted by law, SurveyMonkey:

- (a) may inform the third party issuing such request that it should pursue the request directly with Customer; and
- (b) will: (i) promptly notify Customer of the Third Party Request; (ii) cooperate, at Customer's expense, with Customer's reasonable requests regarding Customer's efforts to oppose a Third Party Request; and (iii) after providing Customer with an opportunity to respond to or oppose the Third Party Request, SurveyMonkey may fulfill that request if SurveyMonkey determines that it is required or permitted by law to do so.

- 6.4 Embargoes. Customer represents and warrants that it is not barred by any applicable laws from being supplied with the Services. The Services may not be used in any country that is subject to an embargo by the United States or European Union applicable to the Services. Customer will ensure that: (a) its End Users do not use the Services in violation of any export restriction or embargo by the United States; and (b) it does not provide access to the Services to persons on the U.S. Department of Commerce's Denied Persons List or Entity List, or the U.S. Treasury Department's list of Specially Designated Nationals.
- 6.5 Suspension of Services. SurveyMonkey may limit or suspend the Services from time to time to perform scheduled maintenance or to stop a violation of Section 6.2 (Acceptable Uses by Customer), to prevent material harm to SurveyMonkey or its customers or as required by applicable law. SurveyMonkey will use reasonable endeavors to give Customer reasonable advance notice of any limitation or suspension so that Customer can plan around it, or address the issue that has prompted SurveyMonkey to take such action. There may be some situations, such as security emergencies, where it is not practicable for SurveyMonkey to give such advance notice. SurveyMonkey will use commercially reasonable efforts to narrow the scope and duration of the limitation or suspension as is needed to resolve the issue that prompted such action.

## 7 SECURITY AND PRIVACY.

- 7.1 Security. SurveyMonkey has, considering the state of the art, cost of implementation, the nature, scope, context and purposes of the Services, and the level of risk, implemented appropriate technical and organizational measures to enable a level of security appropriate to the risk of unauthorized or unlawful processing, accidental loss of and/or damage to Customer Data. At reasonable intervals, SurveyMonkey tests and evaluates the effectiveness of these technical and organizational measures for enabling the security of the processing.
- 7.2 Data Protection. Where SurveyMonkey is processing Personal Data for Customer, SurveyMonkey will:
- (a) only do so on documented Customer instructions and in accordance with applicable law, including with regard to transfers of personal data to a third country or an international organization, and the parties agree that this Agreement constitutes such documented instructions of the Customer to SurveyMonkey to process Customer Data;
  - (b) To the extent applicable, SurveyMonkey Europe UC relies upon (i) SurveyMonkey Inc.'s Privacy Shield certification and/or standard contractual clauses and/or consent for data transfer to the United States to SurveyMonkey Inc., and (ii) standard contractual clauses for data transfers to countries outside the European Economic Area, other than the United States, that do not have adequate levels of data protection as determined by the European Commission. Customer appoints SurveyMonkey Europe UC (and, to the extent required, SurveyMonkey Inc.) as its agent solely for the purpose of entering into standard contractual clauses (as approved by the European Commission) to provide the services to Customer, as provided for under this Agreement;
  - (c) ensure that all SurveyMonkey personnel involved in the processing of Personal Data are party to confidentiality obligations in respect of the Personal Data;
  - (d) make available (at Customer's expense) information necessary for Customer to demonstrate compliance with its Article 28 obligations (if applicable to the Customer) where such information is held by SurveyMonkey and is not otherwise available to Customer through its account and user areas or on SurveyMonkey websites, provided that Customer provides SurveyMonkey with at least 14 days' written notice of such an information request;
  - (e) cooperate as reasonably requested by Customer (at Customer's expense) to enable Customer to comply with any exercise of rights by a data subject under the General Data Protection Regulation (EU) 2016/679 in respect of personal data processed by SurveyMonkey in providing the Services;
  - (f) promptly notify Customer of all requests received directly from a data subject of any of the Personal Data in respect of that data subject's Personal Data submitted through the Services;
  - (g) cooperate with the Office of the Data Protection Commissioner or any replacement or successor body from time to time (or, to the extent required by the Customer, any other data protection or privacy regulator) in the performance of such regulator's tasks where required;
  - (h) not store Personal Data (in a format that permits identification of relevant data subjects) for longer than is necessary for the purposes for which the data is processed save to the extent such retention is required for legitimate business purposes (with respect to, for example, security and billing), in order to comply with applicable laws and regulations and as may otherwise be kept in routine backup copies made for disaster recovery and business continuity purposes; and
  - (i) assist Customer as reasonably required (at Customer's expense) where Customer conducts a Data Protection Impact Assessment involving the Services.
- 7.3 Sub-processing. Customer provides a general authorization to SurveyMonkey to engage onward sub-processors, subject to compliance with the requirements in this Section 7.
- 7.4 Sub-processor List. SurveyMonkey will, subject to any confidentiality provisions under this Agreement or otherwise imposed by SurveyMonkey:
- (a) make available to Customer a list of the SurveyMonkey subcontractors ("**Sub-processors**") who are involved in processing or sub-processing Personal Data in connection with the provision of the Services, together with a description of the nature of services provided by each Sub-processor ("**Sub-processor List**"). A copy of this Sub-processor List may be requested [here](#);
  - (b) ensure that all Sub-processors on the Sub-processor List are bound by contractual terms that are in all material respects no less onerous than those contained in this Agreement; and

- (c) be liable for the acts and omissions of its Sub-processors to the same extent SurveyMonkey would be liable if performing the services of each of those Sub-processors directly under the terms of this Agreement, except as otherwise set forth in this Agreement;

7.5 New / Replacement Sub-processors.

SurveyMonkey will provide Customer with written notice of the addition of any new Sub-processor or replacement of an existing Sub-processor at any time during the term of the Agreement ("**New Sub-processor Notice**"), provided that Customer signs up to a mailing list made available by SurveyMonkey through which such notices will be delivered by e-mail. If Customer has a reasonable basis to object to SurveyMonkey's use of a new or replacement Sub-processor, Customer will notify SurveyMonkey promptly in writing and in any event within 30 days after receipt of a New Sub-processor Notice. In the event of such reasonable objection, either Customer or SurveyMonkey may terminate the portion of any Agreement relating to the Services that cannot be reasonably provided without the objected-to new Sub-processor (which may involve termination of the entire Agreement) with immediate effect by providing written notice to the other party.

7.6 Security Incident. If SurveyMonkey becomes aware of any unauthorized or unlawful access to, or acquisition, alteration, use, disclosure, or destruction of, Personal Data ("**Security Incident**"), SurveyMonkey will promptly, and in any event, as soon as reasonably practicable, notify Customer without undue delay. SurveyMonkey will also reasonably cooperate with Customer with respect to any investigations relating to a Security Incident with preparing any required notices, and provide any information reasonably requested by Customer in relation to any Security Incident.

7.7 Audits. Customer will provide SurveyMonkey with at least one month's prior written notice of any audit, which may be conducted by Customer or an independent auditor appointed by Customer (provided that no person conducting the audit shall be, or shall act on behalf of, a competitor of SurveyMonkey) ("**Auditor**"). The scope of an audit will be as follows:

- (a) Customer will only be entitled to conduct an audit once per year (during the course of a 12 month subscription) unless otherwise legally compelled or required by a regulator with established authority over the Customer to perform or facilitate the performance of more than 1 audit in that same year.
- (b) SurveyMonkey agrees, subject to any appropriate and reasonable confidentiality restrictions, to provide evidence of any certifications and compliance standards it maintains and will, on request, make available to Customer an executive summary of SurveyMonkey's most recent annual penetration tests, which summary shall include remedial actions taken by SurveyMonkey resulting from such penetration tests.
- (c) The scope of an audit will be limited to SurveyMonkey systems, processes, and documentation relevant to the processing and protection of Personal Data, and Auditors will conduct audits subject to any appropriate and reasonable confidentiality restrictions requested by SurveyMonkey.
- (d) Customer will promptly notify and provide SurveyMonkey with full details regarding any perceived non-compliance or security concerns discovered during the course of an audit.
- (e) SurveyMonkey will inform Customer if it comes to its attention that any instructions received in respect of this Section 7.7 infringe the provisions of the General Data Protection Regulation or other applicable EU or EU Member State data protection law. Notwithstanding the foregoing, SurveyMonkey shall have no obligation to review the lawfulness of any instruction received from the Customer.

The parties agree that, except as otherwise required by order or other binding decree of a regulator with authority over the Customer, this Section 7.7 sets out the entire scope of the Customer's audit rights as against SurveyMonkey.

7.8 Customer Privacy Obligations. Customer shall ensure and hereby warrants and represents that it is entitled to transfer the Customer Data to SurveyMonkey so that SurveyMonkey may on behalf of Customer, lawfully process and transfer the Personal Data in accordance with this Agreement. Customer shall ensure that relevant data subjects have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

## 8 INTELLECTUAL PROPERTY.

8.1 Customer IP. As between the parties, the Customer retains ownership of all Intellectual Property Rights in the Customer Data. This Agreement does not grant SurveyMonkey any licenses or rights to the Customer Data except for the following:

- (a) Customer grants SurveyMonkey and its affiliates a worldwide, royalty-free, non-exclusive, limited license to use, host, copy, transmit, modify, display, and distribute Customer Data only for the limited purposes of providing the Services to Customer and improving the Services.
- (b) If Customer provides SurveyMonkey with feedback about the Services, SurveyMonkey may use that feedback and incorporate it into its products and services without any obligation to Customer.

8.2 SurveyMonkey IP. As between the parties, SurveyMonkey retains ownership of the Services and all related Intellectual Property Rights. No licenses or rights are granted to Customer by SurveyMonkey other than as expressly provided for in this Agreement. Except as permitted by SurveyMonkey's brand and trademark use policies, this Agreement does not grant the Customer any right to use SurveyMonkey's trademarks or other brand elements.

8.3 Customer Lists. SurveyMonkey may identify Customer by name and logo as a SurveyMonkey customer on SurveyMonkey's website and on other promotional materials. Any goodwill arising from the use of Customer's name and logo will inure to the benefit of Customer.

## 9 CONFIDENTIALITY.

- 9.1 **Definition.** “**Confidential Information**” means information disclosed by a party (“**Discloser**”) to the other party (“**Recipient**”) in connection with the use or provision of the Services that is either marked as confidential or would reasonably be considered as confidential under the circumstances. Customer’s Confidential Information includes Customer Data. SurveyMonkey’s Confidential Information includes the terms of this Agreement and any security information about the Services. Despite the foregoing, Confidential Information does not include information that: (a) is or becomes public through no fault of the Recipient; (b) the Recipient already lawfully knew; (c) was rightfully given to the Recipient by an unaffiliated third party without restriction on disclosure; or (d) was independently developed by the Recipient without reference to the Discloser’s Confidential Information.
- 9.2 **Confidentiality.** The Recipient will: (a) protect the Discloser’s Confidential Information using commercially reasonable efforts; (b) use the Discloser’s Confidential Information only as permitted by this Agreement, including to exercise the Recipient’s rights and fulfill the Recipient’s obligations under this Agreement; and (c) not disclose the Discloser’s Confidential Information without the Discloser’s prior consent, except to affiliates, contractors, agents, and professional advisors who need to know it and have agreed in writing (or, in the case of professional advisors, are otherwise bound) to keep it confidential on terms comparable to those under this Section. The Recipient may disclose the Discloser’s Confidential Information when and to the extent required by law or legal process, but only after the Recipient, if permitted by law, uses reasonable efforts to notify the other party.
- 9.3 **Return or Destruction of Confidential Information.** Upon the termination or expiration of the Agreement and all Order Forms under the Agreement, each party will promptly return to the other party or destroy all Confidential Information of the other party in its possession or control within a reasonable amount of time in accordance with the Recipient’s data destruction practices.

## 10 WARRANTIES.

- 10.1 **Warranties.** Each party represents and warrants that: (a) it has full power and authority to enter into this Agreement; and (b) it will comply with all laws and regulations applicable to its provision or use of the Services.
- 10.2 **Disclaimers.** SURVEYMONKEY MAKES NO REPRESENTATION OR WARRANTY ABOUT THE SERVICES. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, SURVEYMONKEY DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTY, INCLUDING ANY WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 11 INDEMNITIES.

- 11.1 **By SurveyMonkey.** SurveyMonkey will indemnify, defend, and hold harmless (collectively defined as “indemnity”, “indemnification”, or some variation thereof) Customer from and against all liabilities, damages, expenses, and costs (including settlement costs and reasonable attorneys’ fees) (collectively “**Loss**”) arising out of a third party claim that the SurveyMonkey technology used to provide the Services to Customer infringes any copyright, U.S. patent, trademark or trade secrets of such third party. However, in no event will SurveyMonkey have any obligation or liability under this Section arising from: (a) use of any Services in a modified form or in combination with software, technologies, products, or devices not provided by SurveyMonkey; or (b) any content or data provided by Customer, End Users, or third parties.
- 11.2 **By Customer.** Customer will indemnify, hold harmless and (if required by SurveyMonkey in writing) defend (collectively defined as “indemnity”, “indemnification”, or some variation thereof) SurveyMonkey from and against all Loss arising out of a third party claim (including in relation to any claim made or investigation conducted by a data protection or privacy regulator) regarding or in connection with: (a) Customer Data (including claims that Customer Data infringes or misappropriates a third party’s Intellectual Property Rights or violates applicable law); or (b) Customer’s use of the Services in violation of the SurveyMonkey Acceptable Use Policy.
- 11.3 **Potential Infringement.** If SurveyMonkey believes the technology used to provide the Services may infringe or may be alleged to infringe a third party’s Intellectual Property Rights, then SurveyMonkey may: (a) obtain the right for Customer, at SurveyMonkey’s expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe. If SurveyMonkey does not believe that the foregoing options are commercially reasonable, then SurveyMonkey may suspend or terminate Customer’s use of the impacted Services and provide a pro rata refund of any fees prepaid by Customer applicable to the period following the termination of such Services.
- 11.4 **Indemnity Procedures.** A party seeking indemnification under this Agreement will promptly notify the other party of the claim and reasonably cooperate with the other party (to the extent applicable) in defending the claim. If permitted by applicable law, the indemnifying party will have full control and authority over the defense, except that: (a) any settlement requiring the indemnified party to admit liability, perform any act or to pay any money will require that indemnified party’s prior written consent (such consent not to be unreasonably withheld or delayed) and (b) the indemnified party may join in the defense with its own counsel at its own expense.

## 12 LIABILITY.

- 12.1 **Exclusion of Certain Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR: (A) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, UNDER ANY THEORY OF LAW, INCLUDING TORT OR (B) LOSS OF OR DAMAGE TO: (i) DATA, (ii) BUSINESS, (iii) REVENUES, OR (iv) PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 12.2 **Liability Cap.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT FOR ALL CLAIMS OF ANY KIND WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO SURVEYMONKEY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY (“GENERAL CAP”). NOTWITHSTANDING THE FOREGOING, EACH PARTY’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT FOR ALL CLAIMS RELATED TO A PARTY’S BREACH OF ITS

OBLIGATIONS UNDER SECTION 7 ("SECURITY AND PRIVACY") AND SECTION 9 ("CONFIDENTIALITY") ABOVE SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY ("ENHANCED CAP"). THE GENERAL CAP AND ENHANCED CAP WILL NOT APPLY TO LIABILITY FOR (A) FRAUD OR WILFUL MISCONDUCT, (B) DEATH OR PERSONAL INJURY, (C) INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS OR (D) CUSTOMER'S OBLIGATION TO PAY ANY UNDISPUTED FEES, INVOICES OR COSTS UNDER THIS AGREEMENT.

**13 TERM AND TERMINATION.**

- 13.1 Term of Agreement. The term of this Agreement starts on the Effective Date and shall remain in effect until either party terminates upon 30 days' written notice to the other party, subject to Section 13.4 ("**Term**").
- 13.2 Term of Order Forms. The term of an Order Form starts on its effective date and terminates when all Services ordered under it are terminated or completed. For the term of Subscriptions ordered on an Order Form, see Section 3.1 (Subscriptions).
- 13.3 Termination for Cause. A party may terminate this Agreement and any Order Form for cause: (a) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (b) if the other party ceases its business operations or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, administration, liquidation, or assignment for the benefit of creditors.
- 13.4 Consequences of Termination of Agreement. If this Agreement terminates, any Order Forms in effect will remain in effect in accordance with their terms (including the terms of this Agreement that are incorporated by reference), but no new Order Forms may be entered into under this Agreement.
- 13.5 Consequences of Termination of Order Form.
  - (a) Upon termination of an Order Form (except for termination under Section 13.3), Customer will (i) remain liable to pay the full subscription fee, outstanding on the effective date of termination of that Order Form and (ii) no longer have access to the applicable Services.
  - (b) If an Order Form is terminated by Customer due to SurveyMonkey's material breach, SurveyMonkey will provide Customer with a pro rata refund of any fees prepaid by Customer applicable to the period following the effective date of termination of that Order Form; and
  - (c) If an Order Form is terminated by SurveyMonkey due to Customer's material breach, SurveyMonkey will invoice, and Customer will pay, any accrued but unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated.
- 13.6 Survival. The following Sections will survive termination of this Agreement: 5.3, 5.4, 5.5, and 10 to 15.

**14 CONTRACTING ENTITY.**

- 14.1 Contracting Entity Table. In the table below, "Customer Location" refers to where Customer is located (as determined by Customer's business address on the Order Form, if specified) and determines which table row applies to Customer:

Contracting Entity Table		
Customer Location	Contracting Entity	Governing Law
United States	<b>SurveyMonkey Inc.</b> , a Delaware corporation with Tax ID 37-1581003 located at One Curiosity Way, San Mateo, CA 94403, United States of America	California
Anywhere other than the United States	<b>SurveyMonkey Europe UC</b> , an Irish company with VAT number IE 3223102GH located at 2 Shelbourne Buildings, Second Floor, Shelbourne Rd, Dublin 4, Ireland	Ireland

- (a) Contracting Entity. References to "**SurveyMonkey**" are references to the applicable Contracting Entity specified in Contracting Entity Table. The Services are provided by that contracting entity.
- (b) Governing Law. This Agreement is governed by the laws of the applicable jurisdiction specified in the Contracting Entity Table, without giving effect to any of its conflicts of laws principles.

**15 GENERAL.**

- 15.1 Amendments. This Agreement may only be amended if authorized representatives of each party agree in a signed writing.
- 15.2 Assignment. Neither Customer nor SurveyMonkey may assign this Agreement without the other party's prior written consent (such consent not to be unreasonably withheld). However, either party may assign this Agreement without notice to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization or consolidation, or the sale of all or substantially all of such party's assets or of the SurveyMonkey business line to which the subject matter of this Agreement relates. Any other attempt to transfer or assign is void.
- 15.3 Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will comprise a single instrument.
- 15.4 Entire Agreement. This Agreement (including any documents incorporated herein by reference to a URL or otherwise, and any Order Form), constitutes the entire agreement between Customer and SurveyMonkey and it supersedes any other prior or contemporaneous agreements or terms and conditions, written or oral, concerning its subject matter. Any terms and conditions appearing on a purchase

order or similar document issued by Customer do not apply to the Services, do not override or form a part of this Agreement, and are void.

- 15.5 Force Majeure. Neither SurveyMonkey nor Customer will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, governmental action, or internet disturbance) that was beyond the party's reasonable control.
- 15.6 Independent Contractors. The relationship between SurveyMonkey and Customer is that of independent contractors, and not legal partners, employees, joint venturers, or agents of each other.
- 15.7 No Waiver. A party's failure or delay to enforce a provision under this Agreement is not a waiver of its right to do so later.
- 15.8 Notices.
- (a) Providing Notice. All notices must be in writing and will be deemed given when: (i) personally delivered, (ii) verified by written receipt, if sent by postal mail with verification of receipt service or courier, (iii) received, if sent by postal mail without verification of receipt, or (iv) verified by automated receipt or electronic logs if sent by email.
  - (b) Notices to SurveyMonkey. Notices to SurveyMonkey must be sent to SurveyMonkey, One Curiosity Way, San Mateo, CA 94403, USA, marked to the attention of the Legal Department. Email is insufficient for providing non-routine legal notices (including indemnification claims, breach notices, and termination notices) ("**Non-Routine Legal Notices**") to SurveyMonkey. Customer may grant approvals, permission, extensions, and consents by email.
  - (c) Notices to Customer. Notices to Customer may be sent to the email address associated with Customer's designated primary administrator for the relevant Service ("**Primary Admin**"). Billing-related notices (including notices of overdue payments) may be sent to the relevant billing contact designated by Customer. If Customer has provided contact details for legal notices on the cover page of this Agreement, any Non-Routine Legal Notices will be provided to such contact instead, with a copy to the email address associated with Customer's Primary Admin. Notices to End Users of the Services may be sent to the email address associated with that End User's account.
  - (d) Keep Contact Details Current. Customer and its End Users must keep the contact details associated with their user accounts and billing contacts current and accurate and notify SurveyMonkey in writing of any changes to such details.
- 15.9 Precedence. If any conflict exists among the following documents, the order of precedence will be: (1) the applicable Order Form, (2) this Agreement, and (3) the applicable SSTs. Any terms set forth under a "Special Terms" heading in any of the foregoing documents will take precedence over any other terms to the contrary in that document.
- 15.10 Severability. If any provision of this Agreement is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.
- 15.11 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Customer's End Users are not third party beneficiaries to Customer's rights under this Agreement.
- 15.12 Language. This Agreement was prepared and written in English. Any non-English translations of this Agreement which may be made available are provided for convenience only and are not valid or legally binding.

## 16 GOVERNMENT TERMS.

### 16.1 U.S. Government Terms.

- (a) Federal Government Agencies. If Customer is a United States Federal Government Agency, the Amendment located at <https://www.surveymonkey.com/mp/legal/terms-of-use-federal-government/> applies to Customer, except that references to the "Agreement" in that Amendment are to be read as references to this Agreement, and references to "Content" will refer to Customer Data.
- (b) Other U.S. Governmental Entities. If Customer is a different type of governmental entity in the United States, the Amendment located at <https://www.surveymonkey.com/mp/legal/terms-of-use-state-government/> applies to Customer, except that references to the "TOU" and "Terms" in that Amendment are to be read as references to this Agreement.

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