

GENERAL TERMS AND CONDITIONS FOR QUALTRICS CLOUD SERVICES ("GTC")

Between

**Qualtrics, LLC
(an SAP America Inc. company)
333 W. River Park Drive
Provo, Utah 84604
("Qualtrics")**

And

**The County of San Mateo
(San Mateo County Health – Public Health, Policy and
Planning), 225 37th Avenue, San Mateo, CA 94403
("County" or "Customer")**

1. DEFINITIONS

Capitalized terms used in this document are defined in the Glossary.

2. USAGE RIGHTS AND RESTRICTIONS

2.1 Grant of Rights.

Qualtrics grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials (as applicable) and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

2.2 Authorized Users.

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

2.3 Acceptable Use Policy.

With respect to the Cloud Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights,
or
- (c) circumvent or endanger its operation or security.

2.4 Verification of Use.

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. Qualtrics may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.5 Suspension of Cloud Service.

Qualtrics may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. Qualtrics will promptly notify Customer of the suspension or limitation. Qualtrics will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.6 Third Party Web Services.

The Cloud Service may include integrations with web services made available by third parties (other than Qualtrics' Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.

2.7 Mobile Access to Cloud Service.

If applicable, Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

3. QUALTRICS RESPONSIBILITIES

3.1 Provisioning.

Qualtrics provides access to the Cloud Service as described in the Agreement.

3.2 Support.

Qualtrics provides support for the Cloud Service as referenced in the Order Form.

3.3 Security.

Qualtrics will implement and maintain appropriate technical and organizational measures to protect the personal data processed by Qualtrics as part of the Cloud Service as described in the Data Processing Agreement attached hereto as **Exhibit A ("DPA")** for Cloud Services incorporated into the Order Form in compliance with applicable data protection law.

3.4 Modifications.

- (a) The Cloud Service and Qualtrics Policies may be modified by Qualtrics. Qualtrics will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to Qualtrics within thirty days after receipt of Qualtrics' informational notice.

3.5 Analyses.

Qualtrics or Qualtrics' Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("**Analyses**"). Analyses will anonymize and aggregate information and will be treated as Cloud Materials.

Unless otherwise agreed, personal data contained in Customer Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:

- a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new Qualtrics products and services,
- b) improving resource allocation and support,
- c) internal demand planning,
- d) training and developing machine learning algorithms,
- e) improving product performance,
- f) verification of security and data integrity
- g) identification of industry trends and developments, creation of indices and anonymous benchmarking

4. CUSTOMER AND PERSONAL DATA

4.1 Customer Data.

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to Qualtrics (including Qualtrics' Affiliates and subcontractors) a nonexclusive right to process Customer Data solely to provide and support the Cloud Service. Customer Data may be processed outside of the data center region selected by the County: (i) for certain technical support e.g. if a user calls outside of their main data center region's timezone, or where

technical support agents expertise are required from other regions; (ii) where Authorised Users are accessing the Cloud Services or respondents are completing surveys from a location outside of the data center region; (iii) for ensuring that the Cloud Service can be made available globally to Customer, its Authorised Users, respondents, website visitors, and mobile application visitors and to improve latency; (iv) where incident response or resolution is required from Qualtrics engineering offices in different data center regions; or (v) where the use of subprocessors results in processing outside the data center region. Qualtrics list of available subprocessors can be found at www.qualtrics.com/subprocessor-list.

4.2 Personal Data.

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.3 Security.

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from Qualtrics.

4.4 Access to Customer Data.

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Customer Data.
- (b) Before the Subscription Term expires, if available, Customer may use Qualtrics' self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service. Alternatively, Customer may request data export through support ticket.
- (c) At the end of the Agreement, Qualtrics will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (d) In the event of third party legal proceedings relating to the Customer Data, Qualtrics will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES

5.1 Fees and Payment.

Customer will pay fees as stated in the Order Form. After prior written notice, Qualtrics may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

5.2 Taxes.

Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than Qualtrics' income and payroll taxes. Customer must provide to Qualtrics any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If Qualtrics is required to pay taxes (other than its income and payroll taxes), Customer will reimburse Qualtrics for those amounts and indemnify Qualtrics for any taxes and related costs paid or payable by Qualtrics attributable to those taxes.

6. TERM AND TERMINATION

6.1 Term.

The Subscription Term is as stated in the Order Form.

6.2 Termination.

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty day period,

- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.

Customer's payment obligation for each contract year of the Agreement is conditioned upon the availability and appropriation of funds. If funds are not appropriated to support continuation of performance in a subsequent fiscal year period, Customer shall have the right to terminate the Agreement at the end of the then-current contract year with prior written notice to Qualtrics at least 30 days prior to the start of the next contract year (a "Non-Appropriation Termination"). In the event of a Non-Appropriation Termination, Customer will not be entitled to any refund of any prepaid fees and shall be responsible for payment of amounts incurred up to the date of such termination.

6.3 Refund and Payments.

For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4 Effect of Expiration or Termination.

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Cloud Service and all Qualtrics Confidential Information will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5 Survival.

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

7. WARRANTIES

7.1 Compliance with Law.

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of Qualtrics, the operation of Qualtrics' business as it relates to the Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

7.2 Good Industry Practices.

Qualtrics warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

7.3 Remedy.

Customer's sole and exclusive remedies and Qualtrics' entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient Cloud Service, and
- (b) if Qualtrics fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of Qualtrics' failure to re-perform.

7.4 System Availability.

- (a) Qualtrics warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement or Supplement ("SLA").
- (b) Customer's sole and exclusive remedy for Qualtrics' breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow Qualtrics' posted credit claim procedure. When the validity of the service credit is confirmed by Qualtrics in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.
- (c) In the event Qualtrics fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Qualtrics with written notice within thirty days after the failure.

7.5 Warranty Exclusions.

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by Qualtrics, or
- (c) the Cloud Service was provided for no fee.

7.6 Disclaimer.

Except as expressly provided in the Agreement, neither Qualtrics nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Qualtrics or product roadmaps in obtaining subscriptions for any Cloud Service.

8. THIRD PARTY CLAIMS

8.1 Claims Brought Against Customer.

- (a) Qualtrics will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. Qualtrics will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Qualtrics enters into) with respect to these claims.
- (b) Qualtrics' obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by Qualtrics, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, Qualtrics may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, Qualtrics or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

8.2 Claims Brought Against Qualtrics.

Customer will defend Qualtrics against claims brought against Qualtrics and its Affiliates and subcontractors by any third party related to Customer Data.

Customer will indemnify Qualtrics against all damages finally awarded against Qualtrics and its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3 Third Party Claim Procedure.

- (a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.
- (b) The party that is obligated to defend a claim will have the right to fully control the defense.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

8.4 Exclusive Remedy.

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

9. LIMITATION OF LIABILITY

9.1 Unlimited Liability.

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's gross negligence or willful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

9.2 Liability Cap.

Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or Qualtrics' subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3 Exclusion of Damages.

Subject to Section 9.1:

- (a) neither party (nor its respective Affiliates or Qualtrics' subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
- (b) Qualtrics will not be liable for any damages caused by any Cloud Service provided for no fee.

9.4 Risk Allocation.

The Agreement allocates the risks between Qualtrics and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 QUALTRICS Ownership.

Qualtrics, Qualtrics' Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to Qualtrics and its licensors.

10.2 Customer Ownership.

Customer retains all rights in and related to the Customer Data. Qualtrics may use Customer-provided trademarks solely to provide and support the Cloud Service.

10.3 Non-Assertion of Rights.

Customer covenants, on behalf of itself and its successors and assigns, not to assert against Qualtrics and its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

11. CONFIDENTIALITY

11.1 Use of Confidential Information.

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

11.2 Exceptions.

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

11.3 Publicity.

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that Qualtrics may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of Qualtrics' marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Customer agrees that Qualtrics may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with Qualtrics.

12. MISCELLANEOUS

12.1 Severability.

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

12.2 No Waiver.

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

12.3 Electronic Signature.

Electronic signatures that comply with applicable law are deemed original signatures.

12.4 Regulatory Matters.

Qualtrics Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany. Customer will not submit Qualtrics Confidential Information to any government agency for licensing consideration or other

regulatory approval, and will not export Qualtrics Confidential Information to countries, persons or entities if prohibited by export laws.

12.5 Notices.

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by Qualtrics relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

12.6 Assignment.

Without Qualtrics' prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. Qualtrics may assign the Agreement to Qualtrics Affiliates.

12.7 Subcontracting.

Qualtrics may subcontract parts of the Cloud Service or Consulting Services to third parties. Qualtrics is responsible for breaches of the Agreement caused by its subcontractors.

12.8 Relationship of the Parties.

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.9 Force Majeure.

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.10 Governing Law.

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued in the United States District Court for the Northern District of California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

12.11 Entire Agreement.

The Agreement constitutes the complete and exclusive statement of the agreement between Qualtrics and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Qualtrics accepts or does not otherwise reject the purchase order.

12.12 Data Processing Agreement.

Where Customer is processing personal data using the Services, the DPA shall govern the processing of such personal data.

Glossary

- 1.1 "Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2 "Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 "Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of
- (a) Customer,
 - (b) Customer's Affiliates, and/or
 - (c) Customer's and Customer's Affiliates' Business Partners.
- 1.4 "Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
- 1.5 "Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by Qualtrics under an Order Form.
- 1.6 "Cloud Materials"** mean any materials provided or developed by Qualtrics (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.7 "Confidential Information"** means
- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
 - (b) with respect to Qualtrics: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding Qualtrics research and development, product offerings, pricing and availability.
 - (c) Confidential Information of either Qualtrics or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.8 "Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by Qualtrics' employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.9 "Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include Qualtrics' Confidential Information.
- 1.10 "Documentation"** means Qualtrics' then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 "Order Form"** means the ordering document for a Cloud Service that references the GTC.

- 1.12 "Qualtrics Policies"** means the operational guidelines and policies applied by Qualtrics to provide and support the Cloud Service as incorporated in an Order Form.
- 1.13 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.
- 1.14 "Supplement"** means as applicable, the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.15 "Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

THE PARTIES ENTER INTO THIS AGREEMENT AS OF THE LAST SIGNATURE DATE BELOW ("GTC EFFECTIVE DATE").

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Qualtrics, LLC



Contractor Signature

04-January-2022
Date

Trevor McDougal
Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A
Data Processing Agreement

PERSONAL DATA PROCESSING AGREEMENT FOR QUALTRICS CLOUD SERVICES

This Data Processing Addendum ("DPA") is entered into

BETWEEN

(1) San Mateo County Health

(2) Qualtrics.

1. BACKGROUND

- 1.1 Purpose and Application.** This document is incorporated into the Agreement and forms part of a written (including in electronic form) contract between Qualtrics and Customer. This DPA applies to Personal Data processed by Qualtrics and its Subprocessors in connection with its provision of the Cloud Service. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by Qualtrics, and Customer shall not store Personal Data in such environments.
- 1.2 Structure.** Appendices 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects and the applicable technical and organizational measures.
- 1.3 GDPR.** Qualtrics and Customer agree that it is each party's responsibility to review and adopt requirements imposed on Controllers and Processors by the General Data Protection Regulation 2016/679 ("**GDPR**"), in particular with regards to Articles 28 and 32 to 36 of the GDPR, if and to the extent applicable to Personal Data of Customer/Controllers that is processed under the DPA.
- 1.4 Governance.** Qualtrics acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA. Customer acts as a single point of contact and is solely responsible for obtaining any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use Qualtrics as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud Service. Where Qualtrics informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service and it is Customer's responsibility to forward such information and notices to the relevant Controllers.

2. SECURITY OF PROCESSING

- 2.1 Appropriate Technical and Organizational Measures.** Qualtrics has implemented and will apply the technical and organizational measures set forth in [Appendix 2](#). Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.
- 2.2 Changes.** Qualtrics applies the technical and organizational measures set forth in Appendix 2 to Qualtrics' entire customer base hosted out of the same Data Center and receiving the same Cloud Service. Qualtrics may change the measures set out in Appendix 2 at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

3. QUALTRICS OBLIGATIONS

- 3.1 Instructions from Customer.** Qualtrics will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. Qualtrics will use reasonable efforts to follow any other Customer instructions, as

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long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or Qualtrics otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, Qualtrics will immediately notify Customer (email permitted).

- 3.2 Processing on Legal Requirement.** Qualtrics may also process Personal Data where required to do so by applicable law. In such a case, Qualtrics shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.
- 3.3 Personnel.** To process Personal Data, Qualtrics and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. Qualtrics and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.
- 3.4 Cooperation.** At Customer's request, Qualtrics will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding Qualtrics' processing of Personal Data or any Personal Data Breach. Qualtrics shall notify the Customer as soon as reasonably practical about any request it has received from a Data Subject in relation to the Personal Data processing, without itself responding to such request without Customer's further instructions, if applicable. Qualtrics shall provide functionality that supports Customer's ability to correct or remove Personal Data from the Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, Qualtrics will correct or remove any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.
- 3.5 Personal Data Breach Notification.** Qualtrics will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. Qualtrics may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by Qualtrics.
- 3.6 Data Protection Impact Assessment.** If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, Qualtrics will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, audit reports or certifications). Any additional assistance shall be mutually agreed between the Parties.

4. DATA EXPORT AND DELETION

- 4.1 Export and Retrieval by Customer.** During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Qualtrics and Customer will find a reasonable method to allow Customer access to Personal Data.
- 4.2 Deletion.** Before the Subscription Term expires, Customer is required to use Qualtrics' self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs Qualtrics to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed six months) unless applicable law requires retention.

5. CERTIFICATIONS AND AUDITS

- 5.1 Customer Audit.** Customer or its independent third party auditor reasonably acceptable to Qualtrics (which shall not include any third party auditors who are either a competitor of Qualtrics or not suitably qualified or independent) may audit Qualtrics' control environment and security practices relevant to Personal Data processed by Qualtrics only if:
- (a) Qualtrics has not provided sufficient evidence of its compliance with the technical and organizational measures that protect the production systems of the Cloud Service through providing either: (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 and/or ISAE3000 or other SOC1-3 attestation report. Upon Customer's request audit reports or ISO certifications are available through the third party auditor or Qualtrics;
 - (b) A Personal Data Breach has occurred;

- (c) An audit is formally requested by Customer's data protection authority; or
- (d) Mandatory Data Protection Law provides Customer with a direct audit right and provided that Customer shall only audit once in any twelve month period unless mandatory Data Protection Law requires more frequent audits.

5.2 Other Controller Audit. Any other Controller may audit Qualtrics' control environment and security practices relevant to Personal Data processed by Qualtrics in line with Section 5.1 only if any of the cases set out in Section 5.1 applies to such other Controller. Such audit must be undertaken through and by Customer as set out in Section 5.1 unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by Qualtrics on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

5.3 Scope of Audit. Customer shall provide at least sixty days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited in time to a maximum of three business days. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to Qualtrics.

5.4 Cost of Audits. Customer shall bear the costs of any audit unless such audit reveals a material breach by Qualtrics of this DPA, then Qualtrics shall bear its own expenses of an audit. If an audit determines that Qualtrics has breached its obligations under the DPA, Qualtrics will promptly remedy the breach at its own cost.

6. SUBPROCESSORS

6.1 Permitted Use. Qualtrics is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- (a) Qualtrics shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. Qualtrics shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;
- (b) Qualtrics will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- (c) Qualtrics' list of Subprocessors in place on the effective date of the Agreement is published by Qualtrics or Qualtrics will make it available to Customer, upon request including the name, address and role of each Subprocessor Qualtrics uses to provide the Cloud Service.

6.2 New Subprocessors. Qualtrics' use of Subprocessors is at its discretion, provided that:

- (a) Qualtrics will inform Customer in advance (by email or by posting within the Cloud Service) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- (b) Customer may object to such changes as set out in Section 6.3.

6.3 Objections to New Subprocessors.

- (a) If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to Qualtrics. Such termination shall take effect at the time determined by the Customer which shall be no later than thirty days from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this thirty day period, Customer is deemed to have accepted the new Subprocessor.
- (b) Within the thirty day period from the date of Qualtrics' notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties come together in good faith to discuss a resolution to the objection. Such discussions shall not extend the period for termination and do not affect Qualtrics' right to use the new Subprocessor(s) after the thirty day period.
- (c) Any termination under this Section 6.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

6.4 Emergency Replacement. Qualtrics may replace a Subprocessor without advance notice where the reason for the change is outside of Qualtrics' reasonable control and prompt replacement is required for security or other urgent reasons. In this case, Qualtrics will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 6.3 applies accordingly.

7. INTERNATIONAL PROCESSING

7.1 Conditions for International Processing. Qualtrics shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law. Customer Data may be processed outside of the data center region selected by the County: (i) for certain technical support e.g. if a user calls outside of their main data center region's timezone, or where technical support agents expertise are required from other regions; (ii) where Authorised Users are accessing the Cloud Services or respondents are completing surveys from a location outside of the data center region; (iii) for ensuring that the Cloud Service can be made available globally to Customer, its Authorised Users, respondents, website visitors, and mobile application visitors and to improve latency; (iv) where incident response or resolution is required from Qualtrics engineering offices in different data center regions; or (v) where the use of subprocessors results in processing outside the data center region. Qualtrics list of available subprocessors can be found at www.qualtrics.com/subprocessor-list.

7.2 Standard Contractual Clauses. Where (i) Personal Data of an EEA or Swiss based Controller is processed in a country outside the EEA, Switzerland and any country, organization or territory acknowledged by the European Union as a safe country with an adequate level of data protection under Art. 45 GDPR, or where (ii) Personal Data of another Controller is processed internationally and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses, then:

- (a) Qualtrics and Customer enter into the Standard Contractual Clauses;
- (b) Customer enters into the Standard Contractual Clauses with each relevant Subprocessor as follows, either (i) Customer joins the Standard Contractual Clauses entered into by Qualtrics and the Subprocessor as an independent owner of rights and obligations ("Accession Model") or, (ii) the Subprocessor (represented by Qualtrics) enters into the Standard Contractual Clauses with Customer ("Power of Attorney Model"). The Power of Attorney Model shall apply if and when Qualtrics has expressly confirmed that a Subprocessor is eligible for it through the Subprocessor list provided under Section 6.1(c), or a notice to Customer; and/or
- (c) Other Controllers whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into Standard Contractual Clauses with Qualtrics and/or the relevant Subprocessors in the same manner as Customer in accordance with Sections 7.2 (a) and (b) above. In such case, Customer will enter into the Standard Contractual Clauses on behalf of the other Controllers.

7.3 Relation of the Standard Contractual Clauses to the Agreement. Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and subprocessor rules in sections 5 and 6, such specifications also apply in relation to the Standard Contractual Clauses.

7.4 Governing Law of the Standard Contractual Clauses. The Standard Contractual Clauses shall be governed by the law of the country in which the relevant Controller is incorporated.

8. DOCUMENTATION; RECORDS OF PROCESSING

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

9. DEFINITIONS

Capitalized terms not defined herein will have the meanings given to them in the Agreement.

- 9.1 "Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to Qualtrics be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 9.2 "Data Center"** means the location where the production instance of the Cloud Service is hosted for the Customer in the region agreed in an Order Form.
- 9.3 "Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement (and includes, as far as it concerns the relationship between the parties regarding the processing of Personal Data by Qualtrics on behalf of Customer, the GDPR as a minimum standard, irrespective of whether the Personal Data is subject to GDPR or not).
- 9.4 "Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 9.5 "EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 9.6 "Personal Data"** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is (i) entered by Customer or its Authorized Users into or derived from their use of the Cloud Service, or (ii) supplied to or accessed by Qualtrics or its Subprocessors in order to provide support under the Agreement. Personal Data is a sub-set of Customer Data (as defined under the Agreement).
- 9.7 "Personal Data Breach"** means a confirmed (1) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data or (2) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 9.8 "Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 9.9 "Standard Contractual Clauses"** or sometimes also referred to the "EU Model Clauses" means the (Standard Contractual Clauses (processors)) or any subsequent version thereof published by the European Commission (which will automatically apply).
- 9.10 "Subprocessor"** means Qualtrics affiliates and third parties engaged by Qualtrics in connection with the Cloud Service and which process Personal Data in accordance with this DPA.

Appendix 1 to the DPA and, if applicable, the Standard Contractual Clauses

Data Exporter

The Data Exporter is the Customer who subscribed to a Cloud Service that allows Authorized Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also Data Exporters.

Data Importer

Qualtrics and its Subprocessors provide the Cloud Service that includes the following support:

Qualtrics and its Affiliates support the Cloud Service data centers remotely from Qualtrics' locations specified in Qualtrics' Security White Paper (which is available upon request). Support includes:

- Monitoring the Cloud Service
- Backup & restoration of Customer Data stored in the Cloud Service
- Release and development of fixes and upgrades to the Cloud Service
- Monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database
- Security monitoring, network-based intrusion detection support, penetration testing

Qualtrics and its Affiliates provide support when a Customer requests support because the Cloud Service is not available or not working as expected for some or all Authorized Users. Qualtrics answers phones and performs basic troubleshooting, and handles support tickets in a tracking system that is separate from the production instance of the Cloud Service.

Data Subjects

The Data Exporter solely determines the categories of Data Subjects which may include: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service.

Data Categories

Customer solely determines the categories of data per Cloud Service subscribed. Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e- mail address, time zone, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data that Authorized Users enter into the Cloud Service.

Special Data Categories (if appropriate)

The transferred Personal Data concerns the following special categories of data: As set out in the Agreement (including the Order Form) if any.

Processing Operations / Purposes

The transferred Personal Data is subject to the following basic processing activities:

- use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical Support)
- provision of Services;
- communication to Authorized Users
- storage of Personal Data in dedicated Data Centers (multi-tenant architecture)
- upload any fixes or upgrades to the Cloud Service
- back up of Personal Data
- computer processing of Personal Data, including data transmission, data retrieval, data access
- network access to allow Personal Data transfer
- execution of instructions of Customer in accordance with the Agreement.

Appendix 2 to the DPA and, if applicable, the Standard Contractual Clauses – Technical and Organizational Measures

1. TECHNICAL AND ORGANIZATIONAL MEASURES

The following sections define Qualtrics' current technical and organizational measures. Qualtrics may change these at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

1.1 Physical Access Control. Unauthorized persons are prevented from gaining physical access to premises, buildings or rooms where data processing systems that process and/or use Personal Data are located.

Measures:

- Qualtrics protects its assets and facilities using the appropriate means based on the Qualtrics Security Policy
- In general, buildings are secured through access control systems (e.g., smart card access system).
- As a minimum requirement, the outermost entrance points of the building must be fitted with a certified key system including modern, active key management.
- Depending on the security classification, buildings, individual areas and surrounding premises may be further protected by additional measures. These include specific access profiles, video surveillance, intruder alarm systems and biometric access control systems.
- Access rights are granted to authorized persons on an individual basis according to the System and Data Access Control measures (see Section 1.2 and 1.3 below). This also applies to visitor access. Guests and visitors to Qualtrics buildings must register their names at reception and must be accompanied by authorized Qualtrics personnel.
- Qualtrics employees and external personnel must wear their ID cards at all Qualtrics locations.

Additional measures for Data Centers:

- All Data Centers adhere to strict security procedures enforced by guards, surveillance cameras, motion detectors, access control mechanisms and other measures to prevent equipment and Data Center facilities from being compromised. Only authorized representatives have access to systems and infrastructure within the Data Center facilities. To protect proper functionality, physical security equipment (e.g., motion sensors, cameras, etc.) undergo maintenance on a regular basis.
- Qualtrics and all third-party Data Center providers log the names and times of authorized personnel entering Qualtrics' private areas within the Data Centers.

1.2 System Access Control. Data processing systems used to provide the Cloud Service must be prevented from being used without authorization.

Measures:

- Multiple authorization levels are used when granting access to sensitive systems, including those storing and processing Personal Data. Authorizations are managed via defined processes according to the Qualtrics Security Policy
- All personnel access Qualtrics' systems with a unique identifier (user ID).
- Qualtrics has procedures in place so that requested authorization changes are implemented only in accordance with the Qualtrics Security Policy (for example, no rights are granted without authorization). In case personnel leaves the company, their access rights are revoked.
- Qualtrics has established a password policy that prohibits the sharing of passwords, governs responses to password disclosure, and requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In the case of domain passwords, the system forces a password change every six months in compliance with the requirements for complex passwords. Each computer has a password-protected screensaver.

- The company network is protected from the public network by firewalls.
- Qualtrics uses up-to-date antivirus software at access points to the company network (for e-mail accounts), as well as on all file servers and all workstations.
- Security patch management is implemented to provide regular and periodic deployment of relevant security updates. Full remote access to Qualtrics' corporate network and critical infrastructure is protected by strong authentication.

1.3 Data Access Control. Persons entitled to use data processing systems gain access only to the Personal Data that they have a right to access, and Personal Data must not be read, copied, modified or removed without authorization in the course of processing, use and storage.

Measures:

- As part of the Qualtrics Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the Qualtrics Information Classification standard.
- Access to Personal Data is granted on a need-to-know basis. Personnel have access to the information that they require in order to fulfill their duty. Qualtrics uses authorization concepts that document grant processes and assigned roles per account (user ID). All Customer Data is protected in accordance with the Qualtrics Security Policy.
- All production servers are operated in the Data Centers or in secure server rooms. Security measures that protect applications processing Personal Data are regularly checked. To this end, Qualtrics conducts internal and external security checks and penetration tests on its IT systems.
- An Qualtrics security standard governs how data and data carriers are deleted or destroyed once they are no longer required.

1.4 Data Transmission Control. Except as necessary for the provision of the Cloud Services in accordance with the Agreement, Personal Data must not be read, copied, modified or removed without authorization during transfer. Where data carriers are physically transported, adequate measures are implemented at Qualtrics to provide the agreed-upon service levels (for example, encryption and lead-lined containers).

Measures:

- Personal Data in transfer over Qualtrics internal networks is protected according to Qualtrics Security Policy.
- When data is transferred between Qualtrics and its customers, the protection measures for the transferred Personal Data are mutually agreed upon and made part of the relevant agreement. This applies to both physical and network based data transfer. In any case, the Customer assumes responsibility for any data transfer once it is outside of Qualtrics-controlled systems (e.g. data being transmitted outside the firewall of the Qualtrics Data Center).

1.5 Data Input Control. It will be possible to retrospectively examine and establish whether and by whom Personal Data have been entered, modified or removed from Qualtrics data processing systems.

Measures:

- Qualtrics only allows authorized personnel to access Personal Data as required in the course of their duty.
- Qualtrics has implemented a logging system for input, modification and deletion, or blocking of Personal Data by Qualtrics or its subprocessors within the Cloud Service to the extent technically possible.

1.6 Job Control. Personal Data being processed on commission (i.e., Personal Data processed on a customer's behalf) is processed solely in accordance with the Agreement and related instructions of the customer.

Measures:

- Qualtrics uses controls and processes to monitor compliance with contracts between Qualtrics and its customers, subprocessors or other service providers.
- As part of the Qualtrics Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the Qualtrics Information Classification standard.

- All Qualtrics employees and contractual subprocessors or other service providers are contractually bound to respect the confidentiality of all sensitive information including trade secrets of Qualtrics customers and partners.

1.7 Availability Control. Personal Data will be protected against accidental or unauthorized destruction or loss.

Measures:

- Qualtrics employs regular backup processes to provide restoration of business-critical systems as and when necessary.
- Qualtrics uses uninterrupted power supplies (for example: UPS, batteries, generators, etc.) to protect power availability to the Data Centers.
- Qualtrics has defined business contingency plans for business-critical processes and may offer disaster recovery strategies for business critical Services as further set out in the Documentation or incorporated into the Order Form for the relevant Cloud Service.
- Emergency processes and systems are regularly tested.

1.8 Data Separation Control.

Measures:

- Qualtrics uses the technical capabilities of the deployed software (for example: multi-tenancy, system landscapes) to achieve data separation among Personal Data originating from multiple customers.
- Customer (including its Controllers) has access only to its own data.

1.9 Data Integrity Control. Personal Data will remain intact, complete and current during processing activities.

Measures:

Qualtrics has implemented a multi-layered defense strategy as a protection against unauthorized modifications.

In particular, Qualtrics uses the following to implement the control and measure sections described above:

- Firewalls;
- Security Monitoring Center;
- Antivirus software;
- Backup and recovery;
- External and internal penetration testing;
- Regular external audits to prove security measures.



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 San Mateo County Health ("**County**" or "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.

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

- 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.
- 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.
- 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.

2. RESPONSIBILITY OF QUALTRICS WITH RESPECT TO PHI

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

3. RESPONSIBILITIES OF THE CUSTOMER WITH RESPECT TO PHI

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

4. TERM AND TERMINATION

- 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.

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.

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.

5. MISCELLANEOUS

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.

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.

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.

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.

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.

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 Commonwealth of Pennsylvania, 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 Philadelphia, Pennsylvania. This BAA constitutes the entire agreement between the parties with respect to

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

6. DEFINITIONS

- 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.
- 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).
- 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.
- 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.

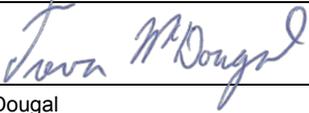
The Parties have executed this Business Associate Agreement as of the Effective Date.

Qualtrics	County
By: 	By: 
Name: Trevor McDougal	Name: Marc Meulman
Title: Corporate Counsel	Title: Director of Public Health, Policy and Planning
Date: 04-January-2022	Date: 05-January-2022
Address: Qualtrics, LLC Attn: Legal Department 333 W River Park Dr. Provo, UT 84604 United States	Address: San Mateo County Health 225 37 th Avenue, 1 st Floor, Room 178 San Mateo, CA 94003



Order Form

Parties:	Qualtrics, LLC 333 W. River Park Dr. Provo, UT 84604 United States ("Qualtrics")	County of San Mateo 400 County Center Redwood City, CA 94063 United States ("Customer")	
Effective Date:	The date signed by the last party to sign.		
Governing Document:	This Order Form is subject to the Qualtrics Terms of Service at https://www.qualtrics.com/terms-of-service/ (the "Agreement"). All capitalized terms used but not defined herein have the meanings given to them in the Agreement. If there is a conflict between the terms of the Agreement and this Order Form, this Order Form will control.		
Attachments:	<ul style="list-style-type: none"> - Service Level Exhibit - Fees Exhibit - Cloud Service Exhibit - Technical Account Manager Exhibit 		
Services:	As set forth in the exhibits attached hereto		
Term:	As set forth in the exhibits attached hereto		
Payment Terms:	As set forth in the exhibits attached hereto		
Additional Terms:	During the initial one-year term of this Order Form, Customer may purchase an additional 145,000 annual responses for an additional \$50,000 annual fee. The additional responses and fees will apply during the year of purchase and any renewals of this Order Form.		
To be completed by Customer			
Regional Data Center:	US	Purchase Order Number (if any):	
Email Address for Invoice Submission:	ewilliams@smcgov.org and jareyes@smcgov.org	Shipping Address:	
Invoicing Instructions (if applicable):		Billing Address for Invoice Submission:	Attn:
Invoicing Instructions (if applicable):		Billing Address for Invoice Submission:	Attn:

Qualtrics	Customer
By (signature): 	By (signature): 
Name: Trevor McDougal	Name: Marc Meulman
Title: Corporate Counsel	Title: Director of Public Health, Policy and Planning
Date: 04-January-2022	Date: 05-January-2022
Qualtrics Primary Contact:	Customer Primary Contact:
Name: Alex Craft	Name: Karen Pfister
Phone:	Phone: +1 650-573-2144
Email: acraft@qualtrics.com	Email: kpffister@smcgov.org



Order Form Service Level Exhibit

Service Levels

1. **Availability.** Qualtrics will use commercially reasonable efforts to ensure that the Cloud Service will be available at all times, excluding when the Cloud Service is unavailable due to (a) required system maintenance as determined by Qualtrics ("**Scheduled Maintenance**"); and (b) causes outside of the reasonable control of Qualtrics that could not have been avoided by its exercise of due care, including any outages caused by: (i) the Internet in general; (ii) a Customer-caused event; or (iii) any Force Majeure Event ("**Availability**").
2. **Scheduled Maintenance.** A minimum of five days' advance notice will be provided by email to Customer for all Scheduled Maintenance exceeding two hours. For Scheduled Maintenance lasting less than two hours, notice will be displayed on the login page.
3. **Downtime.** "**Downtime**" is defined as the Cloud Service having no Availability, expressed in minutes.
4. **Remedies for Downtime.** If Downtime exceeds a certain amount per month, Customer will be entitled, upon written request, to a credit ("**Fee Credit**") based on the formula: Fee Credit = Fee Credit Percentage set forth below * (1/12 current annual Fees paid for Software affected by Downtime). All times listed immediately below are per calendar month.
 1. If Downtime is 30 minutes or less, no Fee Credit Percentage is awarded.
 2. If Downtime is from 31 to 120 minutes, Customer is eligible for a Fee Credit Percentage of 5%.
 3. If Downtime is from 121 to 240 minutes, Customer is eligible for a Fee Credit Percentage of 7.5%.
 4. If Downtime is 241 minutes or greater, Customer is eligible for a Fee Credit Percentage of 10.0%



Order Form Fees Exhibit

License Details

Start Date	End Date	Term in Months
30-Jun-2021	29-Jun-2022	12

Cloud Service Details

Period	Services	Price	Estimated Invoice Date	Payment Terms from Invoice	License Configuration
30-Jun-21 to 29-Jun-22	Cloud – CX5 License (see page 5) Cloud – Technical Account Manager (see pages 6-7) Professional – Engineering Services Maintenance (HL7 Health Connect Integration)	\$121,000.00 \$50,000.00 \$77,700.00	Effective Date	Total annual fees due Net 30	Q-1546285
Total		USD \$248,700.00			

Prices shown do not include applicable taxes. Applicable taxes will be presented on the invoice.

Press Release

Notwithstanding anything to the contrary in the Agreement, upon mutual execution of this Order Form Customer grants Qualtrics the right to issue a press release naming Customer as a customer of Qualtrics and identifying the product purchased.

Cloud Service Exhibit

Cloud Service Renewal (not applicable to pilots or proofs of concept). Qualtrics sends renewal notices to customers at least 60 days before the end of the term. Upon expiration of each term, the Cloud Service may be renewed for a successive one-year term with a price increase of no more than 5% at such renewal by mutual written agreement of the parties.



Order Form

YEAR 1
Q-1546285

CLOUD SERVICE

CX5 State of the Art

Vanity URL
Branded URL
Health Connect (Enterprise) : 120k patients per year 1
SMS Text Reserve : 6666666
SMS
Advanced Security Management
Screen Out Reporting
Role-based Dashboards
Advanced Quotas
Predict iQ
Offline App
XM Directory - CX Basic
CX ExpertReview - Response Quality (Advanced)
Dashboard Users : Includes up to 5
Custom Theme
CRM Integration
CX Core : Responses up to 105000
Developer Tools
Advanced Question Types
Admin Users (Unlimited)

PROFESSIONAL SERVICES

CX Engineering Services Maintenance

Additional details and descriptions of license features may be found at <https://www.qualtrics.com/support/>.



Order Form

Technical Account Manager Exhibit

TAM Allocated Hours: TAM will be available to provide up to 5 hours of support and technical revision activities per week.

Term: TAM will co-term with the term of the Cloud Service.

Fees: USD \$50,000.00 per 12 months

Overview of Technical Account Manager Offering (“TAM Offering”)

The TAM will focus primarily on high value-add activities for Customer, including strategic technology thought partnership, formal program technology reviews, optimizing technology decisions, escalation management, training, and revision activities. The TAM will work in conjunction with other specialists to help diagnose, troubleshoot, and resolve technical support queries from the Customer.

The designated TAM will:

1. Be globally distributed and work in regional time zones during normal business hours and days (excluding local holidays and weekends and PTO).
 - 1.1. Outside of these hours, Customer requests will be handled by the Qualtrics general support team.
2. Be the primary point of contact for up to 10 program administrators designated by Customer to Qualtrics. Program inquiries from other Customer users (non administrators) should be routed to the designated program administrators who should, in turn, work with the TAM. General support inquiries from Customer users (administrators and non-administrators) should be directed to the Qualtrics general support team.
3. Be acquainted with the professional and engineering services work and customizations associated with Customer’s program. Troubleshooting and resolution of custom work will be performed by the professional and engineering services teams, respectively.
4. Provide up to five post-implementation program-specific trainings per year (one hour per training) to increase the product knowledge of the Customer program team. Additional training webinars may be arranged at Customer expense.
5. Provide one on-site visit/training (if desired) at Customer location to key stakeholders. The on-site training is not to exceed one business day. Additional on-sites may be scheduled with mutual agreement and at Customer expense at a rate of USD \$1,000.00/day.
6. Participate in internal Customer meetings and workshops where invited and available to optimize technology decisions for life of program.
7. Make technical modifications or revisions or do minor new builds relevant to the existing programs on an as-needed basis as agreed upon with Customer. The scope of these adjustments and minor new builds includes the following: (1) survey flow and setup; (2) dashboards; (3) distribution setup and (4) site intercepts. Customer and the TAM will prioritize tasks and determine owners based on Customer’s weekly hours allocation.
 - 7.1. Any technical modifications, revisions, or minor new builds must be within scope of TAM offering (see out of scope items below) and scoped by the TAM. Customer must provide a minimum of five business days for the designated TAM to complete project scoping. Once the project scoping is complete, the project delivery timeline is to be agreed upon by the TAM and Customer, giving consideration to scoped hours, quality assurance, user acceptance testing, and prioritized workload.
 - 7.2. Minor new build is defined as any new build that may be scoped and completed in less than the weekly allotted TAM hours. Any new build is held to the ‘Activities out of scope’ section hereof.
 - 7.3. TAMs may utilize a project management software to track tickets, modifications, revisions and minor new builds.
8. Provide visibility and updates for product issues or escalations, as communicated by the TAM.

TAM activities out of scope include:

9. Requests for TAM activities that require more than the TAM allocated hours per week (e.g., program modifications, revision activities, newly supported products, minor new build requests, product use, or other program growth) are subject to additional scoping, resources, and fees, to be agreed in a separate contract.
10. New project builds or program launch that requires a Program Architect and/or Solution Architect to be involved (e.g. implementation of non-standard or complex workflows, complex or novel automations and/or integrations).
11. Significant program growth requiring substantive new builds including new surveys, dashboards, hierarchies, analysis and visualization widgets and/or reports that would require re-scoping and architecture from a technical and business perspective and/or require more time than is available in the TAM allocated hours.
12. Product Engineering Services for custom feature requests.
13. Custom coding, including Javascript, HTML and CSS.

TAM Offering is subject to the following limitations:

14. TAM personnel will be assigned by Qualtrics. While Qualtrics intends to maintain continuity of account ownership, TAM personnel may be changed in Qualtrics' sole discretion, with reasonable notice and transfer timeline when possible.
15. TAM offering is provided in English only, unless otherwise agreed to.
16. TAM is intended to provide in depth program support to Customer core team and will not be available to provide support for survey respondents or general users (non-administrators).
17. The time allocated to program support and technology activities will be limited to the normal business hours available for the designated (shared) TAM.
18. The TAM is offered and purchased on a per Qualtrics license basis.
19. The TAM offering is a defined set of allocated hours per week, subject to program requirements. The allocated hours expire each week and do not accrue.
20. At any time during the term hereof, the allocated TAM hours may be increased on mutual agreement if Customer requires additional resourcing. Typically, options for allocated time include 10, 15, 20, and 30 designated hours per week.
21. With mutual agreement, Customer agrees that Qualtrics may use subcontractors to deliver certain portions of the offering. Qualtrics is responsible for breaches hereof caused by its subcontractors.
22. If the TAM is requested to make technical modifications, revisions or do minor new builds relevant to the existing programs, the Customer shall provide a TAM specific user account. The TAM is able to provide assistance as needed for the account setup.
23. Customer hereby permits the TAM and, where applicable, Qualtrics Customer Success and Qualtrics general support teams, to access Customer's Qualtrics accounts as necessary to provide the services and support related hereto to Customer, which access may include accessing and downloading Customer Data to the extent necessary to perform the offering set forth herein.