

Agreement No. _____

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SURVEYMONKEY

This Agreement is entered into this _____ day of _____, 20____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and SurveyMonkey, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing online survey software products and support.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Exhibit C – Business Associate Agreement Requirements

Attachment H – HIPAA

Attachment IP – Intellectual Property

1A. The Services, Licensing, and Intellectual Property.

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement, including any Order Forms and any applicable Service Specific Terms found at https://www.surveymonkey.com/mp/legal/which-terms-apply/?ut_source=legal&ut_source2=gsa&ut_source3=inline, and in Exhibits A, B and C.

Where Services are sold to County as a subscription, Contractor grants County a non-exclusive, non-transferable worldwide right to access and use the Services during the subscription term, subject to the terms of this Agreement.

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

- (a) County grants Contractor and its affiliates a worldwide, royalty-free, non-exclusive, limited license to use, host, copy, transmit, modify, display, and distribute County Data only for the limited purposes of providing the Services to County and improving the

Services subject to the use of privacy minimization techniques such as de-identification and pseudonymization where possible and appropriate.

- (b) If County provides Contractor with feedback about the Services, Contractor may use that feedback and incorporate it into its products and services without any obligation to County.

As between the parties, Contractor retains ownership of the Services and all related Intellectual Property Rights. No licenses or rights are granted to County by Contractor other than as expressly provided for in this Agreement. This Agreement does not grant the County any right to use Contractor's trademarks or other brand elements except as may be otherwise agreed in writing between the parties.

For the purposes of this Agreement:

- (i) "County Data" or "Customer Data" means all data that is provided to Contractor by, or on behalf of, County through County's use of the Services, and any data that third parties submit to County via use of the Services;
- (ii) "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, design rights, trademark, trade secrets, domain names and other similar rights, whether registered or unregistered.

Contractor may limit or suspend the Services to (i) perform scheduled maintenance or (ii) to stop a violation of Section 8 of this Agreement, or (iii) to prevent material harm to Contractor or its customers or (iv) as required by applicable law. Contractor will use reasonable endeavors to give County reasonable advance notice of any limitation or suspension. There may be some situations, such as security emergencies, where it is not practicable for Contractor to give such advance notice. Contractor 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.

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

2. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. Except as otherwise specified in this Agreement or prohibited by applicable law, payment obligations are non-cancelable, and fees paid are not refundable. In no event shall County's total fiscal obligation under this Agreement exceed Five Hundred Forty-Nine Thousand, Nine Hundred Thirty-Four Dollars and Seventy-Seven Cents (\$549,934.77). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by

the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement.

Payment terms shall be specified in each 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.

Taxes. All amounts payable by County 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 Contractor's income, property, or employees) ("Taxes") that may arise in connection with County's purchases under this Agreement. If any such Taxes arise, County will pay such Taxes in addition to all other amounts payable under this Agreement, unless County provides Contractor with a valid tax exemption certificate or other documentary proof, issued by an appropriate taxing authority, that no tax should be charged. If County is required by law to withhold any Taxes from its payments to Contractor for a Contractor tax liability, County must provide Contractor with an official tax receipt or other appropriate documentation to support such payments. If there is a Contractor tax liability or related Contractor tax penalty that is supported through an official tax receipt or other appropriate documentation provided by County to Contractor, then Contractor may gross-up County's invoice amount by the amount of the Contractor tax liability or related tax penalty.

If any good faith, undisputed amount owed by County is overdue by thirty (30) days or more, Contractor may limit functionality or suspend provision of Services to County until such amounts are paid in full.

Overage Fees. During the term of any active Order Form, Contractor may review the number of seats and/or responses utilized and discuss with the County options for purchasing additional units. County agrees to pay for either: (i) the additional seat units which will be at the per unit overages pricing as specified on the Order Form for the underlying subscription (or, absent such specification, at the same per unit overages pricing as the underlying subscription pricing), or (ii) the additional response bundles applicable based on usage.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 1, 2023, through September 30, 2028.

4. Termination

This Agreement may be terminated by Contractor or by the County of San Mateo's Information Services Department Director/Chief Information Officer or their designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement. The parties acknowledge that Contractor's provision and performance of the Services entails providing County with access to

use the Services, subject to the subscription package limits stated in Exhibit B of this Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above..

Contractor may terminate this Agreement for cause. In order to terminate for cause, Contractor must first give County notice of the alleged breach. County shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If County fails to cure the breach within this period, Contractor may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above.

If an Order Form or this Agreement is terminated by Contractor due to County's material breach, or where County terminates for convenience under the first paragraph of Section 4, County will remain liable to pay the full fees outstanding on the effective date of termination of that Order Form or this Agreement. In such cases, Contractor will invoice, and County will pay, any accrued but unbilled fees and any unpaid fees covering the remainder of the term of that Order Form or this Agreement had it not been terminated.

5. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. **Hold Harmless**

a. **General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any real property of any kind whatsoever and to whomsoever belonging;

However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. **Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor represents that as of the effective date of this Agreement that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further

that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent. If Contractor does not believe that the foregoing options are commercially reasonable, then Contractor may suspend or terminate County's use of the impacted Services and provide a pro rata refund of any fees prepaid by County applicable to the period following the termination of such Services.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) or in combination with software, technologies, products, or devices not provided by Contractor or intended as part of the use of the Services, in such a way as to cause, or materially contribute to, the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement; and/or (c) any content or data provided by County, County's end users of the services, or third parties.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. County Obligations.

(1). Account Security. County is responsible for (a) ensuring its end users comply with this Agreement and (b) maintaining the confidentiality of its own passwords and any other credentials used by it and its end users to access the Services. County will use commercially reasonable efforts to prevent unauthorized use of the Services and will terminate any unauthorized use of which it becomes aware. County will notify Contractor promptly if County becomes aware of any unauthorized access to its accounts.

(2). Account Sharing. County's end user accounts and passwords may not be shared and may only be used by one individual per account.

(3). Acceptable Uses. County agrees to comply with the Acceptable Uses Policy as 'Customer' as located at <https://www.surveymonkey.com/mp/legal/acceptable-uses-policy/>.

(4). County represents and warrants that it is not barred by any applicable laws from being supplied with the Services and that Services will not be used in any country that is subject to an embargo by the United States or European Union.

9. Limitation of Liability.

(A). TO THE EXTENT PERMITTED BY CALIFORNIA 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.

(B). TO THE EXTENT PERMITTED BY CALIFORNIA 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 (THE "LIABILITY CAP"). NOTWITHSTANDING THE FOREGOING IN THIS SECTION 9(B), THE LIABILITY CAP SHALL NOT APPLY TO CLAIMS RELATED TO: (I) FRAUD OR WILFUL MISCONDUCT, (II) DEATH OR PERSONAL INJURY, OR (III) INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to directly provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice. However, notwithstanding the foregoing, the sale of substantially all of the assets of Contractor (or any of its subsidiaries) or its acquisition by or merger into another company, shall not be deemed an assignment of this Agreement by Contractor.

11. Insurance**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained. Contractor shall furnish County with certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability.....\$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Employers' Liability..... \$1,000,000
- (d) Workers' Compensation.....\$1,000,000
- (e) Cyber Liability.....\$5,000,000

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the

Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

County agrees that it will comply with all applicable law in its use of the services.

13. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall also report to the County the filing by any person in any court any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations of discrimination within seventy-five (75) days of such filing, provided that within such seventy-five (75) days such entity has not notified contractor that such charges are dismissed or otherwise unfounded. Such notification to County shall include a general description of the allegations and the nature of specific claims being asserted. Contractor shall provide County with a statement regarding how it responded to the allegations within sixty (60) days of its response and shall update County regarding the nature of the final resolution of such allegations.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to,

paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

14. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

15. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In

the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. Controlling Law; Venue

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 either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

Name/Title: Michael Wentworth, CIO, ISD
 Address: 455 County Center, FL 3, Redwood City, CA 94603
 Telephone: (650) 363-4548
 Email: mwentworth@smcgov.org

In the case of County, notices to County may be sent to the email address associated with County'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 County. County has provided contact details for legal notices above, any Non-Routine Legal Notices will be provided to such contact instead, with a copy to the email address associated with County's Primary Admin:

Name/Title: Kim Pijma, Division Manager, Applications
 Address: 455 County Center, FL 3, Redwood City, CA 94603
 Telephone: (650) 363-4548
 Email: ISD-Vendor_invoices@smcgov.org

In the case of Contractor, to SurveyMonkey Inc., One Curiosity Way, San Mateo, CA 94403, USA, marked to the attention of the Legal Department, with a copy to legalnotices@surveymonkey.com. Email is insufficient for providing non-routine legal

notices (including indemnification claims, breach notices, and termination notices) (“Non-Routine Legal Notices”) to Contractor.

19. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County’s Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

20. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor’s own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

21. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

- a. Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.
- b. Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.
- c. Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when services were provided to the County. Contractor must substantiate in writing to the County the actual services rendered and the specific dates. The County will reimburse for travel at 75% of the maximum reimbursement amount for the actual costs of meals and incidental expenses on the day preceding and/or the day following days when services were provided to the County, provided that such reimbursement is reasonable, in light of travel time and other relevant factors, and is approved in writing by authorized County personnel.
- d. Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. “Local Travel” means travel entirely within a fifty-mile radius of the Contractor’s office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor’s use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.

- e. The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/portal/content/104877> or by searching www.gsa.gov for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current CONUS rate; for work being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.
- f. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride-shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.
- g. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.
- h. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.

22. Prevailing Wage

When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2- Wages, Chapter 1, Part 7, Division 2, Section 1770 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at www.dir.ca.gov/DLSR or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

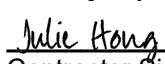
Additionally,

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations

* * *

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

For Contractor: SurveyMonkey Inc.

DocuSigned by:			
	August 31, 2023	Julie Hong	
Contractor's Signature	Date	Contractor Name (please print)	

DS
TR

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Access to online and mobile survey tools related to the creation, deployment, analysis, and administration of surveys as listed below as part of the included Enterprise Platform features listed below.

Survey Creation**Survey Builder**

Questions per survey (Unlimited)
Languages supported (57 Languages)
Multilingual surveys
Pagination
Labeling, titles & numbering
Question & page randomization
Quizzes (Scoring)
Response quotas
Question and page skip logic
Advanced survey logic
Block randomization
Question and answer piping
Carry forward responses
Expert, pre-written survey templates (180+ templates)
Question Bank approved questions
Custom Question Bank

Question Types

Multiple choice
Checkboxes
Star Rating
Dropdown
Matrix / Rating Scale
File Upload
Net Promoter Score
Image choice
Comment Box
Single Textbox
Slider
Ranking
Payment (Stripe)
Matrix of Dropdown menus

Multiple textboxes
Date/Time
Contact Information
Text
Image
Text A/B Test
Image A/B Test

Collaboration

Additional user accounts
Advanced permissions
Build surveys together
Analyze results together
Shared templates
Shared themes
Shared library
Role and Permission-based Workgroups

User Administration & Management

Team Ownership
Add and re-assign users
Consolidated Billing
Admin Dashboard
Usage Metrics
Account Control
Activity Tracking (Available add-on)
Custom Terms of Use (Available add-on)

Global Settings

SurveyMonkey Audience Management (Available add-on)
Collectors settings (Available add-on)
Personally Identifiable Information settings (Available add-on)
Survey Response Management (Available add-on)

Security & Compliance

Password-protected surveys
Enable IP blocking
SSL/TLS encryption
SSAE-16 and SOC II compliant data centers

User Authentication
Single sign-on
HIPAA-compliant features (Available add-on)
GDPR Compliance
Fully accessible, 508 compliant surveys

Customization & Branding

Progress bar
Text formatting
Add your logo
Pre-made themes
Custom themes, colors and more
Custom variables
Survey completion redirect
Display a 'thank you' page
Display disqualification page
Custom HTML email invitations
Remove SurveyMonkey footer
White label surveys
Custom Survey URL
Custom Subdomain (Available add-on)

Survey Distribution

Recurring surveys
Collector Types
Web Link
Email Invitation
Social Media
Facebook Messenger
Website embed
Online pop-up surveys
Manual Data Entry
Field Surveys, Kiosk Mode (Available add-on)
Field Surveys, Offline Mode (Available add-on)

Market Research

Global Response Panel - SurveyMonkey Audience (Available add-on)
Audience Credit Manager (Available add-on)

SurveyMonkey Global Benchmarks

SurveyMonkey Industry Benchmarks

Response Management

Number of responses (Unlimited)

Response tracking

Response validation

Respondent Authentication (Available add-on)
--

Anonymous Responses (Available add-on)
--

Require answer completion

Randomize answer choices

Set survey end date

View respondent's IP address

Record respondent email address

Set max response count

Data Analysis & Reporting

Real-time results

Data trends

Share survey data

Filter & cross tabulate responses

Custom Charts & Reports

Print reports

Export results to CSV, XLS, PDF or PPT
--

Word Cloud

Text Analysis

Statistical significance

Export to SPSS

Mobile

Standalone Mobile app (Android and iOs)

Mobile SDK (Available add-on)

Offline Surveys & Kiosk Mode app (Available add-on)

Integrations & APIs

Over 100 free integrations

Enterprise-only integrations (Available add-on)

Direct API Access

Unlimited API Access (Available add-on)

Customer Support & Success

24/7 email support
Expedited email support
Prioritized email support
Phone support
Dedicated Customer Success Manager

Tier 1 and Tier 3 users have access to all features listed above.

Tier 1 Starter Seat subscription users are able to collect up to 100 responses in a year.

Tier 3 Professional Seat subscription users are able to collect over 100 responses in a year.

Service Level Agreements

- I. Definitions.
 - a. "Available" means that the Services are capable of being accessed via the internet.
 - b. "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was unavailable. Monthly Uptime Percentage shall not include the aggregate amount of time during which the Services are not Available due to:
 - i. Scheduled maintenance, provided that such scheduled maintenance occurs during scheduled maintenance windows, currently between the hours of Friday 10:00 pm and Sunday 4:00 pm, Eastern US Time, or during national holidays (the "Scheduled Maintenance Windows");
 - ii. Emergency Maintenance – SurveyMonkey may perform any reasonably required, emergency maintenance work outside of the Scheduled Maintenance Window;
 - iii. Interruptions in third party networks that prevent Internet users from accessing the Services, provided that the Services are served by redundant connections to the internet from multiple internet service providers;
 - iv. Interruptions in utility service, provided that the Services are served by redundant utility connections entering the building in different locations and from different directions;
 - v. Interruption in service caused by failure or malfunction of equipment or systems not belonging to or controlled by the Contractor;
 - vi. Acts outside of the Contractor's control, including, but not limited to, (i) other changes resulting from government, political, or other regulatory actions or court orders, and (ii) Force Majeure events (as defined in the Governing Services Agreement), provided that the Contractor has taken

commercially reasonable precautions to minimize the potential impact of such Force Majeure events;

- vii. downtime that results from any actions or inactions by the County; or
- viii. downtime arising from the Contractor's suspension and termination of the County's right to use the Services in accordance with the Governing Services Agreement.

II. Service Level Agreement ("SLA"). The Contractor will use commercially reasonable efforts to make the Services Available with a Monthly Uptime Percentage of at least 99.9%, in each case during any monthly billing cycle (the "Uptime Service Commitment"). In the event the Contractor does not meet the Uptime Service Commitment for two consecutive months, as the County's sole remedy and the Contractor's exclusive liability, the County will be eligible to receive a credit for an additional month of the specific SurveyMonkey Service that was impacted by the Contractor's failure to meet the Uptime Service Commitment.

III. Severity Levels.

- a. Severity Level 1 - Services are not Available to multiple County users, or functionality is severely degraded for more than two hours.
- b. Severity Level 2 - Services are Available but have incorrect results or consistent failure of common functionality.
- c. Severity Level 3 - Services are Available but the County user needs support.

IV. Procedure.

- a. Severity Level 1 - If the County notifies the Contractor of a Severity Level 1 event of which the Contractor is not already aware, the Contractor will acknowledge receipt of notification within thirty (30) minutes to the County. Within 4 hours of confirmation by the Contractor of a Severity 1 issue, the Contractor will provide the County with an estimated remedy time.
- b. Severity Level 2 - If the County notifies the Contractor of a Severity Level 2 event of which the Contractor is not already aware, the Contractor will acknowledge receipt of notification within four (4) hours to the the County. Within one (1) business day of confirmation by the Contractor of a Severity 2 issue, the Contractor will provide the County with an estimated remedy time.
- c. Severity Level 3 - If the County notifies the Contractor of a Severity Level 3 event of which the Contractor is not already aware, the Contractor will acknowledge receipt of notification within three (3) business days to the County. Within four (4) business days of confirmation by the Contractor of a Severity 3 issue, the Contractor will provide the County with an estimated remedy time.

V. Communications. The Contractor provides updates on Severity Level 1 issues via the Contractor's social media feeds, online at our Services status page located at https://help.surveymonkey.com/articles/en_US/kb/site-status-information, and through the Services.

VI. Customer Support. Customer Support is currently available for SurveyMonkey Enterprise as follows:

Technical Support for Enterprise team members to assist with technical issues, feature requests, best practices, and general questions. Any user inquiries should be directed towards our Support team. If the account team, your Customer Success Manager and Account Executive, need to be looped into the discussion, Support will escalate the request.

Our Technical Support team can be reached through this link here: <https://help.surveymonkey.com/en/contact/>. We suggest sharing this resource internally on your SurveyMonkey Help Wiki page. Users can go through this link and select "Contact Support" via the automated chat bot. A case will be created. Below are the Support team hours and response times (subject to change):

Category	Component	Measurement Factor	Performance Requirement
Support (Phone 3:00 a.m. – 8:00 p.m. ET Monday through Friday) (Email 24/7/365 in English)	Availability	Support business hours: 5 Business Days a week, 3:00am – 8:00pm Eastern Time. Support during the national holidays will be from 7:00am – 11:00am Eastern Time with voice and email reply only, with two (2) hour response time.	4:00am – 7:00pm Eastern Time, Monday- Friday
	Call Answering for Peak Hours (4:00AM – 7:00PM Eastern Time Monday and Friday)	Amount of time to answer a call during business hours above	< 30 sec. 90% of calls, measured monthly
	Call Answering for Peak Hours (4:00AM – 7:00PM Eastern Time Monday and Friday)	Calls abandoned before answering during business hours above	< 1% of total calls, measured monthly
	Call Return Time	Amount of time to return voice messages during business hours above	< 1 hour 90% of calls, measured monthly

Customer Success Manager

Assists with account organization, integrations, and renewal. Point of contact for the Primary Admin or management team of the SurveyMonkey tool.

Available via email or scheduled call Mon - Fri between 9am - 5pm CST

Account Executive

Assists with contract and add on services. Point of contact for the Primary Admin or management team of the SurveyMonkey tool.

Available via email or scheduled call Mon - Fri between 9am - 5pm EST

- VII. Modifications. - As our business evolves, the Contractor may change this Service Level Agreement, including the provision of customer support. Customers can review the most current version of the SLA at any time by visiting this page:
<https://www.surveymonkey.com/mp/legal/SLA>.
- VIII. Termination for Material Breach. - In the event of two (2) Severity Level 1 occurrences in 3 consecutive months, the County may terminate their Order Form, Statement of Work or Governing Services Agreement for material breach pursuant to the terms of the Governing Services Agreement. With respect to any failure of the Contractor to meet the Monthly Uptime Percentage, this SLA states the Contractor's sole and entire liability to the County and the County's sole remedy.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Product	Product Description	QTY	Start Date	End Date	Total Product Price
Year 1					
SurveyMonkey Enterprise - Tier 3 Advanced Seat (1)	Annual subscription to a single Advanced seat with unlimited responses and access to all platform features including Advanced Branching, Piping and Multilingual Support	100	10/1/2023	9/30/2024	70,000.00
SurveyMonkey Enterprise - Tier 1 Starter Seats (50)	Annual subscription to a bundle of 50 Starter seats with up to 100 responses per seat and access to all platform features including Advanced Branching, Piping and Multilingual Support	6	10/1/2023	9/30/2024	12,000.00
SurveyMonkey Enterprise - Multi-tier HIPAA Compliance Add-on	Global HIPAA compliance add-on covers all seats in the organization under the SurveyMonkey Enterprise plan. HIPAA compliance features enables covered entities to collect and manage PHI through surveys in a manner compliant with HIPAA	1	10/1/2023	9/30/2024	13,000.00
Year 2					
SurveyMonkey Enterprise - Tier 3 Advanced Seat (1)	Annual subscription to a single Advanced seat with unlimited responses and access to all platform features including Advanced Branching, Piping and Multilingual Support	100	10/1/2024	9/30/2025	73,500.00
SurveyMonkey Enterprise - Tier 1 Starter Seats (50)	Annual subscription to a bundle of 50 Starter seats with up to 100 responses per seat and access to all platform features including Advanced Branching, Piping and Multilingual Support	6	10/1/2024	9/30/2025	12,600.00
SurveyMonkey Enterprise - Multi-tier HIPAA Compliance Add-on	Global HIPAA compliance add-on covers all seats in the organization under the SurveyMonkey Enterprise plan. HIPAA compliance features enables covered entities to collect and manage PHI through surveys in a manner compliant with HIPAA	1	10/1/2024	9/30/2025	13,650.00
Year 3					
SurveyMonkey Enterprise - Tier 3 Advanced Seat (1)	Annual subscription to a single Advanced seat with unlimited responses and access to all platform features including Advanced Branching, Piping and Multilingual Support	100	10/1/2025	9/30/2026	77,175.00
SurveyMonkey Enterprise - Tier 1 Starter Seats (50)	Annual subscription to a bundle of 50 Starter seats with up to 100 responses per seat and access to all platform features including Advanced Branching, Piping and Multilingual Support	6	10/1/2025	9/30/2026	13,230.00
SurveyMonkey Enterprise - Multi-tier HIPAA Compliance Add-on	Global HIPAA compliance add-on covers all seats in the organization under the SurveyMonkey Enterprise plan. HIPAA compliance features enables covered entities to collect and manage PHI through surveys in a manner compliant with HIPAA	1	10/1/2025	9/30/2026	14,332.50

Year 4					
SurveyMonkey Enterprise - Tier 3 Advanced Seat (1)	Annual subscription to a single Advanced seat with unlimited responses and access to all platform features including Advanced Branching, Piping and Multilingual Support	100	10/1/2026	9/30/2027	81,034.00
SurveyMonkey Enterprise - Tier 1 Starter Seats (50)	Annual subscription to a bundle of 50 Starter seats with up to 100 responses per seat and access to all platform features including Advanced Branching, Piping and Multilingual Support	6	10/1/2026	9/30/2027	13,891.50
SurveyMonkey Enterprise - Multi-tier HIPAA Compliance Add-on	Global HIPAA compliance add-on covers all seats in the organization under the SurveyMonkey Enterprise plan. HIPAA compliance features enables covered entities to collect and manage PHI through surveys in a manner compliant with HIPAA	1	10/1/2026	9/30/2027	15,049.13
Year 5					
SurveyMonkey Enterprise - Tier 3 Advanced Seat (1)	Annual subscription to a single Advanced seat with unlimited responses and access to all platform features including Advanced Branching, Piping and Multilingual Support	100	10/1/2027	9/30/2028	85,085.00
SurveyMonkey Enterprise - Tier 1 Starter Seats (50)	Annual subscription to a bundle of 50 Starter seats with up to 100 responses per seat and access to all platform features including Advanced Branching, Piping and Multilingual Support	6	10/1/2027	9/30/2028	14,586.06
SurveyMonkey Enterprise - Multi-tier HIPAA Compliance Add-on	Global HIPAA compliance add-on covers all seats in the organization under the SurveyMonkey Enterprise plan. HIPAA compliance features enables covered entities to collect and manage PHI through surveys in a manner compliant with HIPAA	1	10/1/2027	9/30/2028	15,801.58

Year 1 Subtotal:	USD 95,000.00
Year 2 Subtotal:	USD 99,750.00
Year 3 Subtotal:	USD 104,737.50
Year 4 Subtotal:	USD 109,974.63
Year 5 Subtotal:	USD 115,472.64
Estimated Tax:	USD 0.00
Total:	USD 524,934.77

During the contract term, the County may purchase any of the following optional Enterprise add-ons via a contract amendment for the fixed rates outlined below.

- Add'l Starter Seats (50) = \$2,000 per bundle
- Add'l Advanced Seat (1) = \$700 per seat
- Power BI integration = \$5,000
- Custom Domain bundle = \$8,000
- Offline Mode = \$2,000 for 10 devices or \$20,000 for 25 devices
- SMS Collector = \$5,000 for 10,000 credits

Fees for each renewal term will increase by five percent (5%) over the immediately preceding term (exclusive of sales tax).

Invoicing Procedure

The County shall pay Contractor, upon receipt of an invoice, for services rendered. Each invoice submitted must include the following, at a minimum:

- Agreement Number or PO Number
- Time period
- Detailed statement of services/work completed for the invoice period
- Breakdown of labor, materials, and taxes if applicable

Invoices will be submitted via email to ISD-Vendor-Invoices@smcgov.org.

Exhibit C**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into between the following entities and is effective as of the date of the last signature below (“Effective Date”). Together with the Agreement, this BAA will govern each party’s respective obligations regarding Protected Health Information.

“Covered Entity” or “CE” or “Business Associate” or “County”

Entity name: **COUNTY OF SAN MATEO**

Address: 455 County Center, Fl 3, Redwood City, CA 94063

Business contact for this document:

Contact name: Michael Wentworth

Contact title: County of San Mateo’s Information Services Department’s Chief Information Officer

Contact email: mwentworth@smcgov.org

Contact phone: (650) 363-4548

If notices should be provided to someone or someplace other than above, complete the following section:

Notices to:

“SurveyMonkey” or “Contractor”

Entity name: **SurveyMonkey Inc.**, a Delaware corporation

Address: 1 Curiosity Way

San Mateo, CA 94403

Business contact for this document:

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.

COVERED ENTITY

Signed:

Print name:

Title:

Date signed:

SURVEYMONKEY INC.

Signed:

Print name:

Title:

Date signed:

DocuSigned by:

Julie Hong

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Julie Hong

Manager, Revenue Accounting

August 31, 2023


Recitals

- A. CE is either (i) a “covered entity” or (ii) a “business associate” to one or more “covered entities under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and 45 CFR Part 160.103 and, as such, must enter into “business associate” contracts with certain contractors or subcontractors that may have access to certain health-related personal information regulated by HIPAA.
- B. Pursuant to the Governing Services Agreement, SurveyMonkey provides certain services to CE, including the provision of the Account and the services accessible with that Account. To facilitate SurveyMonkey's provision of

such services, CE wishes to disclose certain information to SurveyMonkey, some of which may constitute Protected Health Information (defined below).

- C. CE and SurveyMonkey desire to protect the privacy, and provide for the security, of Protected Health Information provided to SurveyMonkey through the Account in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-005 (“**HITECH Act**”), and HIPAA Regulations (defined below) promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws, including without limitation state patient privacy laws, as such laws may be amended from time to time.
- D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (each defined below) require CE to enter into a contract with SurveyMonkey containing specific requirements prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, s 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**C.F.R.**”) and contained in this BAA.

Terms

1 Definitions.

Capitalized terms not otherwise defined in this BAA shall have the meanings assigned to such terms under HIPAA, the HITECH Act, and the HIPAA Regulations, as applicable. The following terms shall have the following meanings in this BAA:

“**Account**” means: (a) if CE is an Enterprise Subscriber, that Enterprise subscription and all the end user accounts contained in the Enterprise team specified in the Details section (or any successor team name, provided that CE notifies SurveyMonkey in writing if CE changes such team name); or (b) if CE is not an Enterprise Subscriber, the SurveyMonkey account with the username specified in the Details section (or any successor username, provided that CE notifies SurveyMonkey in writing if CE changes such username).

“**Breach**” has the meaning given to such term under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

“**Business Associate**” has the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.

“**Covered Entity**” has the meaning given to such term under 45 C.F.R. § 160.103.

“**Designated Record Set**” has the meaning given to such term 45 C.F.R. § 164.501.

“**Electronic Health Record**” has the meaning given to such term under 42 U.S.C. § 17921(5).

“**Health Care Operations**” has the meaning given to such term under 45 C.F.R. § 164.501.

“**HIPAA Regulations**” means, collectively, the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Parts 160 and 164.

“**Privacy Rule**” means the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” means any information, whether oral or recorded in any form or medium: (a) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (b) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under 45 C.F.R. § 160.103.

“**Security Rule**” means the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

“**Unsecured PHI**” has the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”).

2 Obligations of Business Associate.

2.1 Permitted Access, Use or Disclosure. Except as otherwise limited in the Governing Services Agreement or this BAA, SurveyMonkey may access, use, or disclose PHI:

- (a) to perform its services as specified in the Governing Services Agreement, provided such use or disclosure would not violate HIPAA if done by CE; and
- (b) for the proper management and administration of SurveyMonkey's business and to carry out the legal responsibilities of SurveyMonkey, provided that such access, use, or disclosure would not violate HIPAA, the HITECH Act, the HIPAA Regulations, or applicable state law if done or maintained by CE; and
- (c) to de-identify such information in accordance with 45 CFR 164.514(a)-(c), and shall be permitted to use such de-identified information as permitted by applicable law.

If SurveyMonkey discloses Protected Health Information to a third party, other than at the instruction or direction of the CE, SurveyMonkey must obtain, prior to making any such disclosure:

- (d) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this BAA and only disclosed as required by applicable law or for the purposes for which it was disclosed to such third party, and
- (e) agreement from such third party to promptly notify SurveyMonkey of any Breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such Breach.

2.2 Prohibited Uses and Disclosures. SurveyMonkey shall not use or disclose, PHI other than as permitted or required by the Governing Services Agreement, this BAA or as permitted or required by applicable law.

2.3 Appropriate Safeguards. SurveyMonkey shall implement appropriate safeguards designed to prevent the access, use or disclosure of PHI other than as permitted by the Governing Services Agreement or this BAA. SurveyMonkey shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI. SurveyMonkey shall comply with each of its obligations under the applicable requirements of 45 C.F.R. §§ 164.308, 164.310, and 164.312 and the policies and procedures and documentation requirements of the HIPAA Security Rule set forth in 45 C.F.R. § 164.316.

2.4 Reporting of Improper Access, Use or Disclosure.

- (a) General Breach. SurveyMonkey shall promptly notify CE of any Breach of security, intrusion or unauthorized access, use, or disclosure of PHI of which SurveyMonkey becomes aware and/or any access, use, or disclosure of PHI in violation of the Governing Services Agreement, this BAA, or any applicable federal or state laws or regulations of which it becomes aware. This Section 2.4(a) shall serve as notice to CE that SurveyMonkey periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of SurveyMonkey's information systems and services and even if such events are defined as a Security Incident under HIPAA, SurveyMonkey will not provide any further notice regarding such unsuccessful attempts.
- (b) Breaches of Unsecured PHI. SurveyMonkey shall, to the extent permitted by applicable law following the discovery of any Breach of Unsecured PHI that is PHI, notify CE in writing of such Breach without unreasonable delay and in no case later than thirty (30) days after discovery. CE shall be solely responsible for determining whether to notify impacted Individuals, determining if regulatory bodies, such as the Secretary of the Department of U.S. Health and Human Services, or other enforcement commissions applicable to CE need to be notified, and for providing any such notices.

2.5 Business Associate's Subcontractors and Agents. SurveyMonkey shall ensure that any agents or subcontractors to whom it provides PHI agree to restrictions and conditions comparable to those that apply to SurveyMonkey with respect to such PHI. To the extent that SurveyMonkey creates, maintains, receives or transmits PHI on behalf of the CE, SurveyMonkey shall ensure that any of SurveyMonkey's agents or subcontractors to whom it provides PHI agree to implement the safeguards required by Section 2.3 (Appropriate Safeguards) with respect to such PHI.

2.6 Access to PHI. To the extent SurveyMonkey maintains a Designated Record Set on behalf of the CE, SurveyMonkey shall make PHI maintained by SurveyMonkey or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within 10 days of a request by CE to enable CE to fulfill its obligations under the

Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524. If SurveyMonkey maintains an Electronic Health Record, SurveyMonkey shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. § 17935(e). To the extent that a patient makes a request to SurveyMonkey for a Designated Record Set or Electronic Health Record that SurveyMonkey maintains on behalf of the CE, SurveyMonkey shall forward such request to the CE within 10 calendar days of receipt and advise the patient that the CE will respond to the request. CE agrees that it, and not SurveyMonkey, is responsible for responding to the patient to fulfill its obligations under the HIPAA Regulations.

- 2.7 Amendment of PHI. To the extent SurveyMonkey maintains a Designated Record Set on behalf of CE, within 10 days of receipt of a request from the CE for an amendment of PHI or a record about an individual contained in a Designated Record Set, SurveyMonkey or its agents or subcontractors shall make PHI available to CE so that CE may make any amendments that CE directs or agrees to in accordance with the Privacy Rule.
- 2.8 Accounting Rights. Within 10 days of notice by CE of a request for an accounting of disclosures of PHI, SurveyMonkey and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule and the HITECH Act. SurveyMonkey shall notify CE within five (5) business days of receipt of any request by an individual for an accounting of disclosures so CE may fulfill its obligation to respond to such requests under the Privacy Rule and the HITECH Act.
- 2.9 Governmental Access to Records. SurveyMonkey shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining CE's compliance with the Privacy Rule.

3 Obligations of CE.

- 3.1 Permissible Requests by CE. CE shall not request SurveyMonkey to access, use, or disclose PHI, nor to otherwise act, in any manner that would not be permissible under HIPAA or the HITECH Act if done by CE.
- 3.2 Safeguards. CE shall implement appropriate privacy and security safeguards to prevent against unauthorized access, use or disclosure of PHI.

4 Term and Termination.

- 4.1 Term. This BAA shall be effective as of the Effective Date and shall continue until terminated (the "Term").
- 4.2 Termination. This BAA may be terminated:
- (a) by CE upon written notice if SurveyMonkey materially breaches this BAA and the breach is not cured by SurveyMonkey within 30 business days of receiving written notice of such breach; or
 - (b) by SurveyMonkey for any reason upon ninety (90) days' prior written notice, provided that SurveyMonkey shall provide reasonable assistance to CE to destroy or return any of CE's PHI before the effective date of termination.
- 4.3 Effect of Termination. Upon termination of this BAA:
- (a) the Account will be closed by SurveyMonkey and the Governing Services Agreement will terminate with respect to the Account; and
 - (b) SurveyMonkey shall, if feasible, return or destroy all PHI that SurveyMonkey or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, SurveyMonkey shall continue to extend the protections of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. CE acknowledges that it is CE's responsibility to export or backup any PHI that it wishes to retain before any termination is effected and SurveyMonkey shall have no responsibility for any liability that may arise from any data loss caused as a result of that termination.

5 No Third-Party Beneficiaries.

Nothing express or implied in the Governing Services Agreement or this BAA is intended to confer, nor shall anything herein confer upon any person other than CE, SurveyMonkey and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

6 General.

- 6.1 Interpretation; Precedence. The provisions of this BAA shall prevail over any provisions in the Governing Services Agreement that conflict or appear inconsistent with any provision in this BAA. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HITECH Act. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Governing Services Agreement shall remain in force and effect.
- 6.2 Mitigation. In the event of a Breach resulting in the unauthorized use or disclosure of PHI in violation of this BAA, both parties will, to the extent practicable under the circumstances, make commercially reasonable efforts to mitigate the harmful effects resulting from such breach.
- 6.3 Entire Agreement. This BAA supersedes any and all prior and contemporaneous business associate agreements or agreements between the parties relating to PHI and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof.

* * * * *

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low

probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

Attachment IP

Intellectual Property Rights

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.