



FLUIDREVIEW MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This FluidReview Master Subscription and Services Agreement (“**Agreement**”) is between SurveyMonkey and the Customer. This Agreement governs the Customer’s subscription to and use of FluidReview and its related services (the “**Services**” or “**FluidReview**”) and the provision of any professional services to the Customer.

You are the “**Customer**” under this Agreement if you are ordering the Services. As the Customer, you agree to this Agreement by clicking or tapping on a button indicating your acceptance of this Agreement, by executing a document that references this Agreement, or by using the Services. If you are an organization, the individual who agrees to this Agreement on your behalf must have the authority to bind you to this Agreement, and both you and such individual represent that to be the case.

1 Services.

- 1.1 Order Forms. The parties may execute order forms that describe specific Services to be provided by SurveyMonkey to the Customer and any associated Service fees (each an “**Order Form**”). Each Order Form will expressly refer to this Agreement, will form a part of this Agreement and will be subject to the terms and conditions contained in this Agreement. In the event of a conflict between an Order Form and this Agreement, the Order Form will prevail, but only with respect to matters relating to that Order Form.
- 1.2 Services. SurveyMonkey will provide the Customer with access to and use of the Services ordered on each Order Form.
- 1.3 Security. In the course of using the Services, the Customer may submit content to SurveyMonkey (including personal data and the personal data of others) or third parties may submit content to the Customer through the Services (“**Customer Data**”). SurveyMonkey will store and process Customer Data in a manner consistent with industry security standards. SurveyMonkey will maintain appropriate technical, organizational, and administrative systems, policies, and procedures designed to safeguard the security, integrity, and confidentiality of Customer Data and to mitigate the risk of unauthorized access to or use of Customer Data.
- 1.4 Changes to Services. SurveyMonkey continually changes and improves the Services. The Customer’s use of any new features and functionality added to the Services may be subject to additional or different terms relating to such new features and functionality. SurveyMonkey may alter or remove functionality from the Services at any time without prior notice. However, SurveyMonkey will endeavor to provide the Customer with prior notice if we make a change to the Services resulting in a material decrease in functionality.
- 1.5 Suspension of Services. SurveyMonkey may limit or suspend the Services from time to time at our discretion (for example, to perform scheduled maintenance). If SurveyMonkey limits or suspends the Services, we will endeavor to give the Customer reasonable advance notice so that the Customer can plan around it. However, there may be some situations, such as security emergencies, where it may not be practicable for SurveyMonkey to give advance notice. SurveyMonkey will use commercially reasonable efforts to narrow the scope and duration of the suspension or limitation as is needed to resolve the issue that prompted such action.
- 1.6 Third Party Services. If the Customer uses any third party service with the Services (including services which use any application programming interface (API) provided by SurveyMonkey), the Customer acknowledges that the service may access or use the Customer Data. SurveyMonkey will not be responsible for any act or omission of the third party, including such third party’s use of the Customer Data. SurveyMonkey does not warrant or support any such third party service, and the Customer should contact that third party for any issues arising from the Customer’s use of the third party service.

- 1.7 Customer Success. The Customer may be assigned a customer success manager (“**CSM**”) by SurveyMonkey. The CSM may review the Customer’s use of the Services and the Customer Data for the purpose of assisting the Customer to more effectively use the Services, including by providing reporting and usage insight.

2 Customer Obligations.

- 2.1 Acceptable Uses. The Customer is responsible for its conduct, Customer Data, and communications with others while using the Services. When using the Services, the Customer:
- (a) must use the Services in compliance with, and only as permitted by, applicable law.
 - (b) may not misuse our Services by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions that SurveyMonkey provides.
 - (c) may not circumvent or attempt to circumvent any limitations that SurveyMonkey imposes on the Customer’s account (such as by opening up a new account to conduct a survey that SurveyMonkey has closed for a violation of this Agreement).
 - (d) unless authorized by SurveyMonkey in writing, may not probe, scan, or test the vulnerability of any SurveyMonkey system or network.
 - (e) unless permitted by applicable law, may not deny others access to, or reverse engineer, the Services, or attempt to do so.
 - (f) may not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.
 - (g) may not engage in abusive or excessive usage of the Services, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of the Services for other users.
 - (h) may not use the Services to infringe the intellectual property rights of others, or to commit an unlawful activity.
 - (i) unless authorized by SurveyMonkey in writing, may not resell or lease the Services to third parties.

If the Customer’s use of the Services requires it to comply with industry-specific regulations applicable to such use, the Customer will be solely responsible for such compliance, unless SurveyMonkey has agreed with the Customer otherwise. The Customer may not use the Services in a way that would subject SurveyMonkey to those industry-specific regulations without obtaining SurveyMonkey’s prior written agreement. For example, the Customer may not use the Services to collect, protect, or otherwise handle “protected health information” (as defined in 45 C.F.R. §160.103 under United States federal regulations) without entering into a separate business associate agreement with SurveyMonkey that permits the Customer to do so.

- 2.2 Account Security. The Customer is responsible for maintaining the confidentiality of passwords and any other credentials used to access the end user accounts that provide its authorized users (“**End Users**”) with access to the Services (“**End User Accounts**”). The Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and will terminate any unauthorized use of which it becomes aware. The Customer, and not SurveyMonkey, is responsible for any activity occurring in its End User Accounts (other than activity that SurveyMonkey is directly responsible for which is not performed in accordance with the Customer’s instructions), whether or not authorized. The Customer will notify SurveyMonkey promptly if the Customer becomes aware of any unauthorized access to its End User Accounts. End User Accounts may not be shared and may only be used by one individual per account.

- 2.3 Privacy. The Customer consents to the use, disclosure, transfer, processing, and storage of Customer Data in accordance with this Agreement, the FluidReview Privacy Statement and any other applicable privacy policies or statements available on or through <http://www.fluidreview.com> (“**privacy policies**”).
- 2.4 Obligations Concerning End Users. The Customer will:
- (a) Ensure that its End Users are governed by, and comply with, this Agreement.
 - (b) Ensure that any activities that occur in connection with its End User Accounts comply with this Agreement.
 - (c) Not provide any End User Accounts, or access to the Services, to persons under the age of 13.
- 2.5 Third Party Requests. The parties may from time to time receive a request from a third party for records related to an End User’s use of the Services, including information in an End User Account or about an End User (“**Third Party Request**”). Third Party Requests include valid search warrants, subpoenas, court orders, other forms of valid legal process, and any request for records which the applicable End User has given written authorization to disclose.
- The Customer is responsible for responding to Third Party Requests via its own access to the information, and will only contact SurveyMonkey if the Customer is unable to obtain such information after diligent efforts. If SurveyMonkey receives a Third Party Request, then, to the extent permitted by law:
- (a) SurveyMonkey will inform the third party issuing such request that it should pursue the request directly with the Customer;
 - (b) SurveyMonkey will use commercially reasonable efforts to: (i) promptly notify the Customer of SurveyMonkey’s receipt of the Third Party Request; (ii) cooperate with the Customer’s commercially reasonable requests regarding the Customer’s efforts to oppose a Third Party Request; and (iii) provide the Customer with the information or tools requested for the Customer to respond to the Third Party Request (if the Customer is otherwise unable to obtain the information by itself); and
 - (c) if the Customer fails to promptly respond to any Third Party Request, SurveyMonkey may fulfill that request if we determine that we are required by law to do so.
- 2.6 Suspension of End Users. If an End User breaches this Agreement or uses the Services in a manner that SurveyMonkey reasonably believes will cause SurveyMonkey liability or disrupt others’ use of the Services, then SurveyMonkey may request that the Customer suspend or close the applicable End User Account until the breach has been cured or the use in such manner has stopped. If the Customer fails to comply with such request, then SurveyMonkey may suspend or close the applicable End User Account.
- 2.7 Backups. The Customer is responsible for maintaining, protecting, and making backups of the Customer Data. To the extent permitted by applicable law, SurveyMonkey will not be liable for any failure to store, or for loss or corruption of Customer Data.
- 2.8 Additional Terms. The Customer may be able to access or purchase additional FluidReview services (“**Additional Services**”) through use of the Services without entering into an Order Form. Additional Services may be subject to additional terms and policies (including rules, guidelines and other similarly named documents) presented online with those services (“**Additional Terms**”). Those Additional Terms are incorporated into this Agreement if you use or purchase those Additional Services.

3 Professional Services.

- 3.1 Statements of Work. The parties may execute statements of work that describe the specific professional services to be performed by SurveyMonkey, including any deliverable to be delivered by SurveyMonkey (each an “**SOW**” or “**Statement of Work**” when executed by the parties). Each SOW will expressly refer to this Agreement, will form a part of this Agreement and will be subject to the terms and conditions contained in this Agreement. In the event of a conflict between an SOW and this Agreement, the SOW will prevail, but only with respect to matters relating to that SOW.
- 3.2 Performance of Professional Services. SurveyMonkey will perform, or cause to be performed, the professional services specified in each SOW (the “**Professional Services**”) in accordance with this Agreement and the applicable SOW.
- 3.3 Provision of Similar Services. Nothing in this Agreement will restrict or limit SurveyMonkey’s right to perform similar services for any third party or to assign any employees or subcontractors to perform similar services for any third party, provided that SurveyMonkey complies with its obligations under Section 6 (Confidentiality) with respect to Customer’s Confidential Information.
- 3.4 Changes to SOWs. Customer may submit to SurveyMonkey written requests to change the scope of Professional Services described in an SOW (each such request, a “**Change Order Request**”). SurveyMonkey may, at its discretion, consider such Change Order Request, but SurveyMonkey has no obligation to do so. If SurveyMonkey elects to consider such a Change Order Request, then SurveyMonkey will promptly notify Customer if SurveyMonkey believes that the Change Order Request requires an adjustment to the fees or to other parts of the SOW for the performance of the Professional Services. In such event, the parties will negotiate in good faith a reasonable and equitable adjustment to the SOW. SurveyMonkey will continue to perform Professional Services pursuant to the existing SOW and will have no obligation to perform any Change Order Request unless and until the parties have agreed in writing to adjust the SOW.
- 3.5 Customer Responsibilities. In connection with each SOW, SurveyMonkey acknowledges that Customer’s timely provision of, and SurveyMonkey’s access to, Customer’s facilities, equipment, assistance, cooperation, data, information and materials from Customer’s agents and employees (“**Cooperation**”) is essential to the performance of the Professional Services, and that SurveyMonkey will not be liable for any deficiency in performing the Professional Services if such deficiency results from Customer’s failure to provide full Cooperation as required hereunder. Cooperation includes, without limitation:
- (a) designating a project manager or technical lead to liaise with SurveyMonkey during the course of receiving the Professional Services;
 - (b) allocating and engaging additional resources as may be required to assist SurveyMonkey in performing the Professional Services; and
 - (c) making available to SurveyMonkey any data, information and any other materials required by SurveyMonkey to perform the Professional Services, such as any data, information or materials specifically identified in an SOW (collectively, “**Customer Materials**”). Customer will be responsible for ensuring that all Customer Materials are accurate and complete.
- 3.6 SurveyMonkey Obligations. If the Professional Services require SurveyMonkey to provide those Professional Services on Customer’s premises, SurveyMonkey’s employees and subcontractors will comply with all reasonable security practices and procedures generally prescribed by Customer and provided in writing to SurveyMonkey in advance. SurveyMonkey employees and subcontractors will not be required to sign any waivers, releases or any other documents to gain access to Customer’s premises in connection with the performance of the Professional Services and all such documents will be invalid and have no effect.
- 3.7 Primary Contacts. Each party will designate in each SOW one or more individuals who will be the primary point of contact between the parties for all matters relating to the Professional Services to

be performed thereunder. A party may designate a new primary point of contact by written notice to the other party.

4 Fees and Billing.

- 4.1 Fees for Services. The Customer will pay to SurveyMonkey all applicable fees for the Services and Professional Services as described on an Order Form or SOW respectively. Fees paid by the Customer are non-refundable, except as provided in this Agreement or when required by law.
- 4.2 Subscriptions. Certain Services are subscription Services that are billed on a subscription basis. This means that the Customer will be billed on a recurring, periodic basis for the subscription (each such period is called a “**billing cycle**”). The length of each billing cycle depends on the type of subscription plan purchased. **Subscription Services will automatically renew at the end of each billing cycle unless auto-renewal is canceled by the Customer.** The Customer may cancel auto-renewal on its subscription at any time by contacting our customer support team in writing, in which case the Customer’s subscription will continue until the end of that billing cycle before terminating.
- 4.3 Service Fees – Payment Terms. The Customer authorizes SurveyMonkey to charge for Services fees using the Customer’s selected payment method. Unless otherwise agreed, payments for Services invoices are due 30 days after the invoice date. If the Customer elects to pay by credit card, debit card, or any other billing method that supports automatic recurring payments and that payment method is available, SurveyMonkey will initially attempt to charge the Customer using that billing method when payment is due, and payments will be considered overdue if payment is not received within 30 days of that due date. The Customer agrees to keep its billing and billing contact information current and accurate and to promptly notify SurveyMonkey in writing of any changes (such as by contacting SurveyMonkey customer support).
- 4.4 Professional Services Fees – Payment Terms. Unless otherwise specified in an SOW, SurveyMonkey will invoice Customer on a monthly basis for all applicable fees and expenses incurred in connection with the performance of the Professional Services and other payments due under any SOW. Unless otherwise specified in an SOW, the Customer will pay each such invoice within 30 days of the invoice date.
- 4.5 Expenses. Unless otherwise specified in the applicable SOW, upon invoice from SurveyMonkey, Customer will reimburse SurveyMonkey for all reasonable expenses incurred by SurveyMonkey while performing the Professional Services, including without limitation, transportation services, lodging, meal and out-of-pocket expenses related to the provision of the Professional Services.
- 4.6 Taxes. Unless otherwise stated, the Customer is responsible for any taxes (other than SurveyMonkey’s income tax) or duties associated with the sale of the Services and Professional Services, including any related penalties or interest (collectively, “**Taxes**”). The Customer will pay SurveyMonkey for the Services and Professional Services without any reduction for Taxes. If SurveyMonkey is obliged to collect or pay Taxes, the Taxes will be invoiced to the Customer, unless the Customer provides SurveyMonkey with a valid tax exemption certificate authorized by the appropriate taxing authority, VAT number issued by the appropriate taxing authority, or other documentation providing evidence that no tax should be charged. SurveyMonkey will not charge the Customer VAT if the Customer provides SurveyMonkey with a VAT number issued by a taxing authority in the European Union, is purchasing the Services from SurveyMonkey Limited for business reasons, and is located in a different European Union member state from SurveyMonkey Limited. If the Customer is required by law to withhold any Taxes from its payments to SurveyMonkey, the Customer must provide SurveyMonkey with an official tax receipt or other appropriate documentation to support such payments.
- 4.7 Price Changes. SurveyMonkey may change the fees charged for the Services at any time, provided that, for any fees billed on a subscription basis, the change will become effective only at the end of the then-current billing cycle of the Customer’s subscription. SurveyMonkey will provide the Customer with reasonable prior written notice of any change in fees to give the Customer an

opportunity to cancel auto-renewal on the Customer's subscription before the change becomes effective. Changes to Professional Services fees listed in an SOW must be agreed to by both parties in writing.

- 4.8 Other Services. Additional Services offered by SurveyMonkey may be available for purchase through the Services by End Users. Such products and services will be billed to the billing details provided by the applicable End User for that End User Account, unless marked otherwise.
- 4.9 Interest. Overdue payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on the amount overdue. The Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by SurveyMonkey in collecting such overdue amounts, except where the overdue amounts are due to SurveyMonkey's billing inaccuracies.

5 Intellectual Property.

5.1 Definitions.

- (a) **"Intellectual Property Rights"** means all worldwide patents, patent applications and disclosures, copyrights, moral rights, trademarks, trade secrets and other rights with respect to confidential or proprietary information, and any other intellectual or industrial property rights.
- (b) **"Pre-existing Technology"** means all of SurveyMonkey's and its licensors' Intellectual Property Rights in existence prior to the start of the Professional Services.
- (c) **"Developed Technology"** means all Intellectual Property Rights in the materials, software, tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, data, works of authorship and other innovations of any kind developed by SurveyMonkey and its contractors in connection with providing the Professional Services that derive from, improve or modify the Pre-existing Technology.
- (d) **"Generic Components"** means all Intellectual Property Rights in the materials, software, tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, data, works of authorship and other innovations of any kind developed by SurveyMonkey and its contractors in connection with providing the Professional Services that generally supports SurveyMonkey's products and services (including the Services) and which can be so used without use of the Customer's Confidential Information.

5.2 Ownership and Rights in Customer Data and Services. As between the parties, the Customer retains ownership of all Intellectual Property Rights in the Customer Data, and SurveyMonkey retains ownership of all Intellectual Property Rights in the Services. This Agreement does not grant SurveyMonkey any licenses or rights to the Customer Data except as described in this Agreement. Except as permitted by SurveyMonkey's brand and trademark use policies, this Agreement does not grant the Customer any right to use SurveyMonkey's trademarks or other brand elements.

5.3 Limited License to Customer Data. The Customer grants SurveyMonkey a worldwide, royalty-free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit Customer Data, but only for the limited purposes of providing the Services and Professional Services to the Customer and as otherwise permitted by SurveyMonkey's privacy policies. This license for such limited purposes continues even after this Agreement or the applicable Sales Document terminates with respect to aggregate and de-identified data derived from Customer Data and any residual backup copies of Customer Data made in the ordinary course of business. This license also extends to any trusted third parties that SurveyMonkey works with to the extent necessary to provide the Services to the Customer. If the Customer provides SurveyMonkey with feedback about the Services, SurveyMonkey may use that feedback without any obligation to the Customer.

- 5.4 Rights to Professional Services Deliverables. The parties acknowledge that any Professional Services provided under this Agreement or any SOW primarily involve the configuration of Customer's subscription to the Services and not the creation of any deliverables or work product. If any deliverables or work product (including any Developed Technology and Generic Components) are created or developed by SurveyMonkey in connection with providing the Professional Services ("**Deliverables**"), each such Deliverable will be owned by SurveyMonkey and the Customer will not obtain any rights, title or interest in that Deliverable unless the SOW under which it was created or developed expressly designates that Deliverable as a "Customer-owned Deliverable" or to be owned by the Customer ("**Customer-owned Deliverable**"). The Customer will not obtain any rights, title or interest in any Pre-existing Technology, whether or not it is incorporated into, or used in connection with creating or developing, a Deliverable or Customer-owned Deliverable. SurveyMonkey and its licensors retain ownership to the Deliverables and the Pre-existing Technology (together, the "**SurveyMonkey Materials**").
- 5.5 Ownership of Customer-owned Deliverables. Subject to SurveyMonkey's rights in the SurveyMonkey Materials, SurveyMonkey agrees that the Customer will own (and SurveyMonkey hereby assigns to the Customer) all rights, title, and interest in the Customer-owned Deliverables, including the Intellectual Property Rights subsisting in those Deliverables. The Customer hereby grants to SurveyMonkey and its contractors, a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable (upon breach) license to use the Customer-owned Deliverables only to the extent required for SurveyMonkey to provide the Services and Professional Services to the Customer.
- 5.6 License Back of SurveyMonkey Materials. Subject to this Agreement, SurveyMonkey will grant to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable (upon breach) license to use the SurveyMonkey Materials solely for Customer's internal business purposes and to the extent required for the Customer to use the Services and Professional Services provided by SurveyMonkey hereunder. Customer will not, without SurveyMonkey's written consent:
- (a) use the SurveyMonkey Materials except as expressly authorized in this Agreement;
 - (b) copy the SurveyMonkey Materials (except for reasonable backup purposes);
 - (c) modify, adapt, or create derivative works of the SurveyMonkey Materials;
 - (d) rent, lease, loan, resell, transfer, sublicense (including, without limitation, offering any of the functionality of the SurveyMonkey Materials on a service provider, hosted or time sharing basis) or distribute the SurveyMonkey Materials to any third party;
 - (e) decompile, disassemble or reverse engineer the SurveyMonkey Materials; or
 - (f) authorize any third parties to do any of the above.
- For the purposes of this Section 5.6, SurveyMonkey Materials does not include the Services provided hereunder.
- 5.7 Reservation of Rights. Except as otherwise expressly provided herein, nothing in this Agreement will be deemed to grant, directly, impliedly or by estoppel or otherwise, any right or license with respect to any technology or other Intellectual Property Rights, and each party retains all right, title and interest in and to their respective technologies and other Intellectual Property Rights.
- 5.8 Customer Lists. SurveyMonkey may identify the Customer (by name and logo) as a SurveyMonkey customer on SurveyMonkey's website and on other promotional materials. Any goodwill arising from the use of the Customer's name and logo will inure to the benefit of the Customer.

6 Confidentiality.

6.1 Definition. “**Confidential Information**” means any information, whether written or oral, disclosed by one party (the “**Discloser**”) to the other (the “**Recipient**”) during the Term in connection with the Purpose that either: (i) is designated as confidential or proprietary by Discloser at the time of disclosure, such as by written legend; or (ii) would reasonably be understood to be confidential or proprietary given the nature of the information and the circumstances under which it was disclosed. Confidential Information includes, without limitation, any information relating to Discloser’s business, products and services, research and development activities, design details, engineering information, procurement requirements, customer lists, marketing plans, business forecasts, pricing, financial information, inventions, and know-how. Without limiting the foregoing, SurveyMonkey Confidential Information includes the SurveyMonkey Materials and the terms of this Agreement (including any SOW), and Customer Confidential Information includes the Customer Materials and Customer Data. Notwithstanding the foregoing, Confidential Information does not include any information that:

- (a) is or becomes available to the public through no fault of Recipient, at or after the time such Confidential Information was communicated to Recipient by Discloser;
- (b) Recipient can show was already known to Recipient at the time of its receipt from Discloser;
- (c) Recipient can show was independently developed by Recipient without reference to any Confidential Information; or
- (d) was or is received by Recipient, without restriction on disclosure, from an unaffiliated third party who did not acquire or disclose such information by a wrongful, unlawful or tortious act.

6.2 Confidentiality. Recipient will: (a) maintain the Confidential Information in strict confidence and not use it for any purpose other than to exercise Recipient’s rights or to perform Recipient’s obligations under this Agreement; (b) treat the Confidential Information with the same degree of care as it accords to its own Confidential Information but in no event with less than reasonable care; and (c) not disclose the Confidential Information, except to affiliates, employees, contractors, agents, and professional advisors who need to know it and who have agreed in writing to keep it confidential. Each party (and any permitted recipient to whom a party has disclosed Confidential Information of the other party) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement. Nothing in this Agreement will prevent SurveyMonkey from using or disclosing the Customer’s Confidential Information in any manner permitted by SurveyMonkey’s privacy policies.

6.3 Compelled Disclosure. Each party may disclose the other party’s Confidential Information when required by law or legal process, but only after it, if permitted by law: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the opportunity to challenge the requirement to disclose.

7 Term and Termination.

7.1 Term. This Agreement continues until all Order Forms and SOWs (each a “**Sales Document**”) terminate, unless earlier terminated in accordance with this Section 7. Each Sales Document continues until all the services provided under that Sales Document have been completed, unless earlier terminated in accordance with this Section 7.

7.2 Non-renewal of Subscription. The Customer may terminate a subscription under an Order Form at the end of a billing cycle for that subscription by submitting a written request to SurveyMonkey customer support, or by otherwise providing written notice to SurveyMonkey, in each case at least 30 days before the end of such billing cycle. SurveyMonkey may terminate an automatically renewing subscription under an Order Form at the end of that subscription’s billing cycle by providing at least 30 days’ prior written notice to the Customer.

- 7.3 Termination for Cause. Each of the Customer and SurveyMonkey may suspend performance or terminate this Agreement or the applicable Sales Document if the other party: (a) is in material breach of this Agreement or a Sales Document and fails to cure that breach within 30 days after receipt of written notice describing the breach; or (b) ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. SurveyMonkey may terminate this Agreement or the applicable Sales Document if any payment owed by the Customer to SurveyMonkey under this Agreement is more than 30 days overdue.
- 7.4 Consequences of Termination of Agreement. If this Agreement terminates, all Sales Documents will terminate.
- 7.5 Consequences of Termination of Sales Document. If a Sales Document terminates:
- (a) the rights granted by SurveyMonkey to the Customer under that Sales Document will cease immediately, except as set forth in this Section 7;
 - (b) all End User Accounts will be deactivated and End Users will no longer have access to the data stored in such accounts;
 - (c) SurveyMonkey will, upon Customer's request, permanently delete data stored in all End User accounts (subject to SurveyMonkey's data retention practices, including regarding data it is required by law or regulation to retain, and backup copies of data made for disaster recovery purposes for which prompt deletion would not be technically feasible);
 - (d) if this Agreement was terminated by the Customer due to SurveyMonkey's breach, SurveyMonkey will provide a pro rata refund of any fees prepaid by the Customer applicable to the period following the termination of this Agreement; and
 - (e) SurveyMonkey will bill the Customer, and the Customer will pay, for any accrued but unbilled fees. The Customer will remain liable to pay any invoices outstanding on the termination date.
- 7.6 Survival. The following sections will survive the termination of this Agreement: 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14.

8 Warranties.

- 8.1 Warranties. Each party represents and warrants that: (a) it has full power and authority to enter into this Agreement; and (b) it will comply with all laws and regulations applicable to its provision or use of the Services and Professional Services, as applicable.
- 8.2 Professional Services Warranty. SurveyMonkey warrants that the Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of 30 days from the completion of any Professional Services. As Customer's sole and exclusive remedy and SurveyMonkey's entire liability for any breach of the foregoing warranty, SurveyMonkey will, at its sole option and expense, either promptly re-perform any Professional Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Professional Services.
- 8.3 Warranty Disclaimers. THE EXPRESS WARRANTIES IN SECTION 8.2 (PROFESSIONAL SERVICES WARRANTY) ARE IN LIEU OF, AND SURVEYMONKEY DISCLAIMS, ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT, INTEGRATION AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BECAUSE THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME STATES OR JURISDICTIONS, SUCH DISCLAIMER MAY NOT APPLY TO CUSTOMER. SURVEYMONKEY DOES NOT WARRANT THAT THE OPERATION OF THE

SURVEYMONKEY MATERIALS OR ANY OF THE SERVICES PERFORMED PURSUANT TO ANY SOW WILL BE UNINTERRUPTED OR ERROR-FREE.

- 8.4 Embargoes. The Customer represents and warrants that it is not barred by any applicable laws from being supplied with the Services. The Services may not be used in any country that is subject to an embargo by the United States or European Union applicable to the Services. The Customer will ensure that: (a) its End Users do not use the Services in violation of any export restriction or embargo by the United States; and (b) it does not provide access to the Services to persons on the U.S. Department of Commerce's Denied Persons List or Entity List, or the U.S. Treasury Department's list of Specially Designated Nationals.

9 Indemnities.

- 9.1 By Customer. The Customer will indemnify, defend, and hold harmless SurveyMonkey from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding or in connection with: (a) Customer Data (including claims of intellectual property infringement); (b) the Customer's use of the Services or Professional Services in breach of this Agreement; and (c) use of the Services by the Customer's End Users.
- 9.2 By SurveyMonkey. SurveyMonkey will indemnify, defend, and hold harmless the Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the SurveyMonkey technology used to provide the Services or Professional Services to the Customer infringes any copyright, U.S. patent, trademark or trade secret of such third party. However, in no event will SurveyMonkey have any obligations or liability under this Section arising from: (a) use of any Services in a modified form or in combination with materials not furnished or authorized by SurveyMonkey; or (b) any content or data provided by the Customer, End Users, or third parties.
- 9.3 Potential Infringement. If SurveyMonkey believes the Services may infringe or may be alleged to infringe a third party's intellectual property rights, then SurveyMonkey may: (a) obtain the right for the Customer, at SurveyMonkey's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe. If SurveyMonkey does not believe that the foregoing options are commercially reasonable, then SurveyMonkey may suspend or terminate the Customer's use of the impacted Services and provide a pro rata refund of any fees prepaid by the Customer applicable to the period following the termination of such Services.
- 9.4 Indemnity Procedures. A party seeking indemnification under this Agreement will promptly notify the other party of the claim and cooperate with the other party in defending the claim. If permitted by applicable law, the indemnifying party will have full control and authority over the defense, except that: (a) any settlement requiring the indemnified party to admit liability or to pay any money will require that party's prior written consent (such consent not to be unreasonably withheld or delayed); and (b) the indemnified party may join in the defense with its own counsel at its own expense. THE INDEMNITIES IN THIS AGREEMENT ARE A PARTY'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10 Disclaimers and Limitations of Liability.

- 10.1 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SURVEYMONKEY NOR THE CUSTOMER MAKES WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SURVEYMONKEY PROVIDES THE SERVICES AND PROFESSIONAL SERVICES ON AN "AS IS" BASIS AND, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, MAKES NO REPRESENTATIONS REGARDING THE AVAILABILITY, RELIABILITY, OR ACCURACY OF THE

SERVICES OR PROFESSIONAL SERVICES, OR REGARDING ANY CUSTOMER DATA OR CONTENT IN AN END USER ACCOUNT.

- 10.2 Exclusion of Certain Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SURVEYMONKEY NOR THE CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 10.3 Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF SURVEYMONKEY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE LESSER OF: (A) THE AMOUNTS PAID BY THE CUSTOMER TO SURVEYMONKEY UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY; AND (B) US\$50,000.
- 10.4 Exceptions to Limitations. The limitations of liability in Section 10.2 (Exclusion of Certain Liability) do not apply to violations of a party's intellectual property rights by the other party or indemnification obligations.

11 Amendments.

- 11.1 Agreement Amendments. SurveyMonkey may amend this Agreement from time to time and the most current version will always be posted on the SurveyMonkey website. If an amendment is material, as determined in SurveyMonkey's sole discretion, SurveyMonkey will notify you. Except in the case of an amendment being made to satisfy legal requirements, we will provide you with at least 30 days' notice of material amendments. Notice of amendments may also be posted to SurveyMonkey's blog, through an Admin Console, or upon your login to your End User Account.

If an amendment has a material adverse impact on the Customer and the Customer does not agree to the amendment, the Customer may terminate the Agreement by notifying SurveyMonkey [through this form \(https://smforms.wufoo.com/forms/contact-surveymonkey-compliance/\)](https://smforms.wufoo.com/forms/contact-surveymonkey-compliance/) within 30 days of receiving notice of the amendment (otherwise, the Customer is deemed to have consented to the amendment). Upon SurveyMonkey's receipt of such notification, the Customer will remain governed by the terms in effect immediately prior to the amendment until the end of the then-current billing cycle for the affected Services and then the Agreement will terminate, unless SurveyMonkey agrees to permit the Customer to continue under the prior version of the Agreement. If the affected Services are renewed, they will be renewed under SurveyMonkey's then-current Agreement. If an End User does not agree to the amended Agreement terms, the End User must stop using their End User Account by the end of the billing cycle. In any other circumstance, by continuing to access or use the Services after the amendments become effective, you agree to be bound by the amended Agreement.

- 11.2 Other Amendments. Any amendment to this Agreement that is not made to the online version of this Agreement which applies to SurveyMonkey's general customer base ("**Online Agreement**") and that amends this Agreement with respect to the Customer alone, must be in writing, signed by the Customer and SurveyMonkey, and expressly state that it is amending this Agreement. If the Customer signs a physical agreement with SurveyMonkey to receive the Services, that physical agreement will override this Online Agreement in its entirety if the physical agreement so states.

12 Contracting Entity.

- 12.1 Customers in the United States. If Customer has its principal place of business in the United States (as determined by the Customer's address on an Order Form or SOW or, if such address is not provided, the Customer's billing address), the Service is provided by SurveyMonkey Inc. and the following provisions will apply:

- (a) Contracting Entity. References to “**SurveyMonkey**”, “**we**”, “**us**”, and “**our**” are references to SurveyMonkey Inc., a Delaware corporation with Tax ID: 37-1581003 located at 101 Lytton Avenue, Palo Alto, CA 94301, United States of America.
 - (b) Governing Law. This Agreement is governed by the laws of the State of California (without regard to its conflict of laws provisions).
 - (c) Jurisdiction. Except if prohibited by applicable law, each party submits to the exclusive jurisdiction of the state courts located in Santa Clara County, California, and the federal courts located in the Northern District of California with respect to the subject matter of this Agreement.
- 12.2 Customers outside the United States. If Customer has its principal place of business outside of the United States (as determined by the Customer’s address on an Order Form or SOW or, if such address is not provided, the Customer’s billing address), the Service is provided by SurveyMonkey Limited and the following provisions will apply:
- (a) Contracting Entity. References to “**SurveyMonkey**”, “**we**”, “**us**”, and “**our**” are references to SurveyMonkey Limited, an Irish company with Companies number: 532327, Tax ID: 3223102GH and VAT number: IE 3223102GH located at 2 Shelbourne Buildings, Second Floor, Shelbourne Road, Dublin 4, Ireland.
 - (b) Governing Law. This Agreement is governed by the laws of the Republic of Ireland (without regard to its conflicts of laws provisions).
 - (c) Jurisdiction. Except if prohibited by applicable law, in relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement, each party irrevocably submits to the exclusive jurisdiction of the courts of the city of Dublin, Ireland.
- 13 Other Terms.**
- 13.1 Assignment. The Customer may not assign this Agreement without SurveyMonkey’s prior written consent (such consent not to be unreasonably withheld). SurveyMonkey may assign this Agreement by providing written notice to the Customer. However, SurveyMonkey may assign this Agreement without notice to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization or consolidation, or the sale of all or substantially all of SurveyMonkey’s assets or of the SurveyMonkey business line to which the subject matter of this Agreement relates. Any other attempt to transfer or assign is void.
- 13.2 Entire Agreement. This Agreement (including any documents incorporated herein by reference to a URL or otherwise), and any Sales Document constitute the entire agreement between you and SurveyMonkey and they supersede any other prior or contemporaneous agreements, terms and conditions, written or oral concerning its subject matter. Any terms and conditions appearing on a purchase order or similar document issued by the Customer do not apply to the Services, do not override or form a part of this Agreement, and are void.
- 13.3 Force Majeure. Neither SurveyMonkey nor the Customer will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, governmental action, or internet disturbance) that was beyond the party’s reasonable control.
- 13.4 Independent Contractors. The relationship between SurveyMonkey and you is that of independent contractors, and not legal partners, employees, or agents of each other.
- 13.5 Interpretation. The use of the terms “includes”, “including”, “such as” and similar terms, will be deemed not to limit what else might be included.
- 13.6 No Waiver. A party’s failure or delay to enforce a provision under this Agreement is not a waiver of its right to do so later.

- 13.7 Notices. All notices must be in writing and will be deemed given when: (a) verified by written receipt, if sent by postal mail with verification of receipt service or courier; (b) received, if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by email. Notices to SurveyMonkey must be sent to SurveyMonkey, 101 Lytton Ave, Palo Alto, CA 94301, USA marked to the attention of the Legal Department. Notices to the Customer may be sent to the email address associated with the Customer's account. If the Customer has provided contact details for legal notices on an Order Form or SOW, any non-routine legal notices (including indemnification claims, breach notices, and termination notices, but not including notices of overdue payments) will be provided to such contact instead, with a copy to the email address associated with the Customer's account. Notices to End Users may be sent to the email address associated with that End User's account. The Customer and End Users must keep the contact details associated with their End User accounts current and accurate. The Customer may grant approvals, permission, extensions, and consents by email.
- 13.8 Precedence. To the extent any conflict exists between them, the Sales Document (if one exists) prevails over this Agreement, and this Agreement prevails over any Additional Terms with respect to the Services.
- 13.9 Severability. If any provision of this Agreement is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.
- 13.10 Subcontractors. SurveyMonkey may use third party contractors to perform any of its obligations hereunder. Notwithstanding the foregoing, SurveyMonkey shall remain responsible to the Customer for all performance under this Agreement, and SurveyMonkey shall be responsible if any such third party contractor fails to meet any of SurveyMonkey's obligations under this Agreement with respect to the subcontracted or delegated responsibilities.
- 13.11 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. The Customer's End Users are not third party beneficiaries to the Customer's rights under this Agreement.
- 13.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile, electronic communication in portable document format (.pdf) or duplicate originals, and the parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

14 Terms for Certain Customers and Countries.

- 14.1 Language. This Agreement was prepared and written in English. To the extent that any translated version conflicts with the English version, the English version controls.
- 14.2 Customer-Specific Terms. The following amendments automatically apply to you upon acceptance of this Agreement if you are one of the types of entities identified below:
- (a) If you are a United States Federal Government Agency, [this Amendment](#) applies to you, except that references to the "Agreement" in that Amendment are to be read as references to this Agreement, and references to "Content" shall refer to Customer Data.
 - (b) If you are a different type of governmental entity in the United States, [this Amendment](#) applies to you, except that references to the "TOU" and "Terms" in that Amendment are to be read as references to this Agreement.
- 14.3 Country-Specific Terms. If you are located in one of the following locations, the terms thereunder apply.

Brazil

BR1. Additional Obligations Concerning End Users. Without limiting Section 2.4 (Obligations Concerning End Users), the Customer will not provide any End User accounts, or access to the

Services, to persons under the age of 16 who are not represented by their parents or guardians, nor to persons aged 16 or 17 who are not assisted by their parents or guardians.

BR2. Third Party Requests. Despite the provisions of Section 2.5 (Third Party Requests), if SurveyMonkey receives a Third Party Request, as addressee, then SurveyMonkey will, at its sole discretion, comply with such request, file the appropriate appeal, or present its clarifications in response to the request. To the extent permitted by law and by the Third Party Request, SurveyMonkey will use commercially reasonable efforts to promptly notify the Customer of SurveyMonkey's receipt of the Third Party Request.

France

FR1. Overdue Payments. Despite anything to the contrary in Section 4.9 (Interest), overdue payments may result in a penalty at an interest rate equal to 3 times the legal interest rate or the statutory minimum rate, whichever is higher. Additionally, the statutory penalty for collection costs may be payable by the Customer in the event of late payment.

FR2. Media. The limited license the Customer grants to SurveyMonkey under Section 5.3 (Limited License to Customer Data) allows SurveyMonkey to exploit the Customer Data in any form and on any medium, including paper or digital media such as hard disks and flash drives, and by any means or process, including by wired, wireless, or online transmission of digitized or analog data. The duration of such limited license extends only for the legal term of protection of the intellectual property rights attached to the Customer Data.

Germany

DE1. Specific Works. SurveyMonkey is not obliged to create any specific works for the Customer.

DE2. Liability Provisions. Sections 10.2 (Exclusion of Certain Liability) and 10.3 (Limitation of Liability) do not apply and are replaced with the following: "SurveyMonkey's liability to you for damages caused by slight negligence will, irrespective of its legal ground, be limited as follows: (a) SurveyMonkey will be liable up to the amount of foreseeable damages typical for this type of contract for a breach of material contractual obligations; and (b) SurveyMonkey shall not be liable for a breach of any non-material contractual obligations nor for the slightly negligent breach of any other applicable duty of care. The foregoing limitations of liability, as well as any other limitations of liability contained in these Terms, will not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act (*Produkthaftungsgesetz*), and liability for culpably caused personal injuries. Additionally, such limitations of liability will not apply if and to the extent that SurveyMonkey has assumed a specific guarantee. The foregoing shall apply accordingly to SurveyMonkey's liability to the Customer for futile expenses. The Customer and each End User is obliged to take adequate measures to avert and reduce damages."

Luxembourg

LU1. Survival. Sections of this Agreement which are expressly stated to survive its termination will not survive indefinitely, but survive for a period of 30 years.