

This Master Services Agreement (this “**Agreement**”) is effective as of **April 1, 2019** (the “**Effective Date**”), by and between Qualtrics, LLC (“**Qualtrics**”) and **County of Monterey** (“**Customer**,” and each of Qualtrics and Customer, a “**Party**,” and collectively, the “**Parties**”). This Agreement is a framework document to establish a Services-based relationship between the Parties.

#### Recitals

A. Under this Agreement, Customer may order and Qualtrics may provide two types of services (together, “**Services**”):

1. **Subscription Services**, which are the series of proprietary computer software programs developed by Qualtrics as delivered to Customer that facilitate and automate the process of conducting surveys, polls, intercepts, and reports (“**Software**”), products and related systems, security, updates and improvements thereto, and support services accessed by Customer using a web browser and the Internet. Subscription Services are specified in a service order (“**Service Order**”) and are purchased on an annual or multi-year basis as set forth in a Service Order.

2. **Professional Services**, which are Services other than Subscription Services that Qualtrics performs or provides, including the development and delivery of certain deliverables (“**Deliverables**”), specified in a statement of work (“**SOW**” and each Service Order, SOW or other ordering document, an “**Order**”). Professional Services are purchased on a project basis and on an “as requested” and “as approved by Customer” basis.

B. Each Order will reference this Agreement and will be subject to the terms hereof.

C. Customer desires to use the Services set forth in an Order, and Qualtrics desires to provide such Services to Customer, pursuant to the terms and conditions of this Agreement.

#### Agreement

In consideration of the mutual promises set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, Qualtrics and Customer agree as follows:

#### SECTION 1 LICENSE OF SUBSCRIPTION SERVICES AND RESTRICTIONS

**Section 1.1 License; Contacts.** Effective upon the Parties’ execution of an applicable Order, Qualtrics hereby grants to Customer a limited, non-exclusive, non-transferable (except pursuant to the Assignment section below), revocable, worldwide license to use the Subscription Services and the Deliverables, each as applicable, for Customer’s internal business purposes, including responses by external respondents, during the term set forth in the applicable Order. Customer is responsible for creating and maintaining user accounts and all use of its license, and for ensuring that those accounts are protected with passwords to prevent unauthorized use. Each Party shall appoint a contact person for each Order, as specified in such Order, who will be the other Party’s principal contact to resolve issues related to the applicable Services. Either Party may change its contact person by providing notice thereof to the other Party. Customer shall designate one person to be responsible for administering its account and all its users (such person, the “**Brand Administrator**”).

**Section 1.2 Restrictions.** Notwithstanding anything herein to the contrary, Customer shall not: (a) sell, resell, rent, or lease the Subscription Services; (b) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit or violates this Agreement or an Order; (c) access or use any of Qualtrics’ intellectual property except as provided herein; (d) permit third parties to use the Subscription Services without Qualtrics’ prior consent (except that Customer may allow third parties to use the Subscription Services if such third parties are providing services to Customer (but not for such third parties’ own use) and such third party is not a direct competitor of Qualtrics as can be reasonably determined); (e) tamper with the security of the Software or reverse engineer, interfere with, or disrupt the

integrity or performance of the Services; (f) perform vulnerability tests, network scans, penetration tests, or other investigative techniques on Qualtrics' software or services; (g) if Customer is an academic institution purchasing an academic license, permit use of the Services by individuals other than students, staff, or faculty of Customer, or use the Services for other than academic or research purposes (e.g., Customer shall not use the Services for commercial purposes, including on behalf of other entities for compensation); (h) use the Services in violation of applicable law; or (i) use the Services to (1) send irrelevant or inappropriate messages to third parties (e.g., "spam"), (2) upload, send, or store malicious code, including software or content that condones, contains, or links to warez, cracks, hacks, their associated utilities, or other piracy-related information, whether for educational purposes or not, (3) collect sensitive personal information, (4) upload binary files or executable code, or (5) upload content that (A) infringes, misappropriates, or otherwise violates any third party's intellectual property right, (B) aggravates, harasses, threatens, defames, or abuses Qualtrics or third parties (including content that is racist or otherwise extremely offensive to others), (C) contains or contains links to nudity, pornography, obscene content, sex, profanity, or foul language (except in pursuit of valid research purposes), (D) exploits images of children under 18 years of age, or (E) contains links to third-party services.

**Section 1.3** Qualtrics, in its sole discretion, may restrict access to Customer's account after providing notice to Customer of unauthorized access or use and allowing Customer a reasonable period to cure such unauthorized access or use.

**Section 1.4 Insurance.** Qualtrics shall maintain in effect during the Term the minimum insurance coverage outlined in **Exhibit A** attached hereto.

## SECTION 2 SUPPORT AND MAINTENANCE

**Section 2.1** During the term of the applicable Order (the "**Order Term**") and on the condition that Customer has paid all undisputed fees due and owing to Qualtrics and is otherwise in material compliance with the terms of this Agreement, Qualtrics shall provide the support and maintenance services to Customer set forth in Section 2.2.

**Section 2.2 Technical Support.** Qualtrics shall respond to technical support requests via phone and email 24 hours a day, 7 days a week, excluding major international holidays, and make reasonable, good faith efforts to correct errors as outlined in **Exhibit B**. Customer shall provide Qualtrics with information as Qualtrics reasonably requests to enable Qualtrics to verify and reproduce the reported error. Certain Qualtrics employees may need to access Data to provide the Services. Customer hereby consents to such access where necessary to provide the Services, which access may include downloading a copy of Data for so long as necessary and thereafter deleting such copy. Online support materials for the Subscription Services ("**Online Information**") are included with the Subscription Services and are available at [www.qualtrics.com/support](http://www.qualtrics.com/support).

## SECTION 3 PAYMENT TERMS.

**Section 3.1** During an Order Term, Customer shall pay Qualtrics the fees and charges specified on the applicable Order. Customer is responsible for all applicable taxes on the fees and charges paid by Customer, including any and all sales, use, and value-added taxes, but not any taxes imposed on Qualtrics income. Fees for Services shown on an Order do not include any applicable sales, use, or value-added taxes. Customer is responsible for paying any fees for exceeding the quantity limits set forth in an Order.

**Section 3.2** Qualtrics shall render an invoice to Customer for the payment of Software, Deliverables, and Services due and owing for the Order Term. The invoice shall set forth the amounts claimed by Qualtrics for the applicable period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Customer shall certify the invoice, either in the requested amount or in such other amount as Customer approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount

certified within thirty (30) days of receiving the certified invoice ("Due Date"). If Customer disagrees with Qualtrics on the amount of an invoice, Customer shall work with Qualtrics in good faith to correct the invoice. Pending settlement or resolution of the dispute, Customer's non-payment of such disputed items shall not constitute default by Customer.

**Section 3.3** During an Order Term, Customer shall pay Qualtrics the fees and charges specified on the applicable Order. Customer is responsible for all applicable taxes on the fees and charges paid by Customer, including any and all sales, use, and value-added taxes, but not any taxes imposed on Qualtrics income. Fees for Services shown on an Order do not include any applicable sales, use, or value-added taxes. Customer is responsible for paying any fees for exceeding the quantity limits set forth in an Order.

**SECTION 4 OWNERSHIP OF INTELLECTUAL PROPERTY.** As between the Parties, Qualtrics exclusively owns all right, title, and interest in and to the Software, the Deliverables (which, for the avoidance of doubt, do not include Data (as defined below)) and any Services-related suggestions, ideas, enhancements, requests, feedback, and recommendations provided by Customer to Qualtrics during the Term. Any transaction contemplated hereby or by any Order is not a sale and does not convey to Customer any rights of ownership in or related to the Services or the Deliverables, or intellectual property rights of Qualtrics. Qualtrics' logo and the product names associated with the Services are trademarks of Qualtrics (or its licensors, where applicable) and no right or license is granted to Customer to use them.

## **SECTION 5 CUSTOMER DATA**

**Section 5.1 General.** As between the Parties, Customer owns all right, title and interest in and to all survey responses, reports, and any other information input or generated on behalf of Customer in connection with the Services ("Data"). Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, classification, and intellectual property right to use Data and shall obtain and maintain all consents necessary for using and processing the Data in accordance herewith. Data shall be deemed to be Customer's Confidential Information (as defined below), and Qualtrics shall not use Data for any purpose other than performing its obligations hereunder or as otherwise agreed to in writing by the Parties. Notwithstanding the foregoing, Customer hereby grants to Qualtrics a non-exclusive, worldwide, royalty-free, fully paid up, sublicensable (directly and indirectly), transferrable, perpetual, and irrevocable license to anonymize and aggregate the Data and use such anonymized and aggregated data ("Usage Data") for Qualtrics' business purposes. Qualtrics shall own all right, title, and interest in Usage Data. Usage Data will not include personally identifiable information and will only be used on an aggregated basis with similarly anonymized data of other Qualtrics customers. Usage Data shall not be considered Confidential Information of Customer.

**Section 5.2 Data Security.** Qualtrics shall maintain appropriate technical and organizational security measures to protect Data against: (a) accidental destruction, loss, and alteration; and (b) unauthorized disclosure of, or access to, Data transmitted, stored or otherwise processed as set forth herein. Qualtrics uses secure hosting facilities that are independently audited using the SSAE-18 methodologies. Qualtrics shall comply with applicable data processing laws relating to the processing, transmission, and disclosure of Data. Qualtrics' Data Security White Paper, referenced in Section 7(d) is incorporated herein by reference.

**Section 5.3 Incidents.** Either Party shall, without undue delay after discovery thereof, notify the other Party of: (a) any loss, unauthorized disclosure, or unauthorized use of Data; or (b) any access, acquisition or misappropriation of Data by third parties; or (c) any other disclosure of Data in violation of this Agreement (collectively, "Security Breach"). In the event of a Security Breach, each Party shall take such steps as are necessary to: (1) promptly mitigate the effects of such Security Breach and prevent a recurrence thereof; and (2) comply with applicable laws relating to such Security Breach.

**Section 5.4 Data Transfer.** Qualtrics is strictly a data processor, not a data controller, for the processing of the Data in order to provide the Services. Subscription Services are self-service ("do-it-yourself") products in which only Customer determines what data to collect, from whom, from where, for what purpose, and when to delete it. Qualtrics shall (a) store and process all Data in a single geographical

region as specified on an Order and (b) not transfer Data out of that region. Qualtrics is responsible for the daily backup of Data for disaster recovery purposes only and the deletion of such backups. Customer is responsible for routine backup and deletion of Data.

## SECTION 6 TERM AND TERMINATION

**Section 6.1 Term.** The term of this Agreement (“Term”) commences on the Effective Date and continues for three years unless earlier terminated as provided below. Each Order still in effect as of the expiration of this Agreement will remain in effect after such expiration, subject to the terms and conditions of this Agreement, until the expiration or termination of such Order.

**Section 6.2 Termination.** Either Party may immediately terminate this Agreement or any Order for cause upon notice if the other Party: (a) materially breaches this Agreement and such breach is not cured within 30 days after the breaching Party receives notice thereof from the other Party (or 10 days in the case of payment breach); or (b) becomes insolvent, acknowledges insolvency in any manner, ceases to do business, makes an assignment for the benefit of its creditors, or files a petition in bankruptcy.

**Section 6.3 Termination for Lack of Government Funding.** Customer’s payments to Qualtrics under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the Customer’s purchase of the indicated quantity of services, then Customer may give written notice of this fact to Customer, and the obligations of the parties under this Agreement and applicable Order shall terminate immediately, or on such date thereafter, as Customer may specify in its notice, unless in the meanwhile the parties enter under a written amendment modifying this Agreement or Order.

**Section 6.4 Termination of Professional Services.** Except as otherwise specified, obligations for Professional Services expire automatically upon (a) fulfillment of the last milestone as stated in the applicable Order; (b) the termination of the applicable Order in accordance with the terms thereof; or (c) the termination or expiration of Customer’s Subscription Services. If custom functionality developed under an Order, in whole or in part, becomes available as part of a standard Qualtrics product or paid features maintained by Qualtrics, then, at no additional cost to Customer, (1) Qualtrics may migrate Customer to use such functionality or feature on the standard Qualtrics product, and (2) Qualtrics is not required to maintain that custom functionality under such Order.

**Section 6.5 Effect of Termination.** Following any termination of this Agreement or an Order, Qualtrics shall discontinue providing the applicable Services, and Customer shall cease using such Services. Within 30 days after the end of the Term or termination of this Agreement or an Order, (a) Customer shall pay to Qualtrics all outstanding undisputed fees payable as of the effective date of termination, and (b) Qualtrics shall refund any pro-rated unused fees prepaid by Customer if Customer terminates this Agreement for cause or pursuant to a Force Majeure Event (defined below). If this Agreement is terminated for cause, each Order in effect will also terminate.

**Section 6.6 Customer Right to Access Data After Termination.** Upon the termination of all Subscription Services, Qualtrics shall make available to Customer a portal whereby Customer may download the data in machine readable format and delete Data for a period of 30 days. Qualtrics is not required to retain Data after such 30-day period has ended.

## SECTION 7 REPRESENTATIONS AND WARRANTIES

**Section 7.1 Mutual.** Each Party represents and warrants to the other Party that:

- (a) it has the power and authority to enter into this Agreement and perform its obligations hereunder, and such performance will not breach any separate agreement by which it is bound; and



- (b) it will comply with applicable laws, rules, and regulations, including applicable data privacy laws (in Qualtrics' case, as a data processor, and in Customer's case, as a data controller).

**Section 7.2 Qualtrics.** Qualtrics warrants to Customer that:

- (a) It will perform all services in a professional and competent manner using properly qualified and trained personnel;
- (b) The Software provided hereunder is and when delivered to Customer will be free from viruses, spyware, and other similar harmful and destructive code;
- (c) It will use commercially reasonable efforts to ensure that Software and any updates to the Software will not introduce any malicious code that could disrupt any software or system used by Customer in connection with the Subscription Services;
- (d) it will implement appropriate technical and organizational security measures designed to protect Data against theft, unauthorized access, copying, and distribution;
- (e) The Subscription Services will materially comply with the Online Information;
- (f) It will abide by all principles in the Qualtrics Security White Paper (<http://www.qualtrics.com/docs/QualtricsSecurityWhitepaper.pdf>), the URL for which will remain active throughout the Term, and which will only be updated as required to reflect improved security and operational procedures;
- (g) Neither it nor any of its owners, officers, directors, employees or agents has been excluded from payment for federal health care programs or appears on the List of Excluded Individuals/Entities of the Office of the Inspector General of the Department of Health and Human Services;
- (h) It has not been sanctioned, excluded or debarred under Medicare, Medicaid, or any other state or federal program. Qualtrics agrees to report immediately, with relevant factual detail, to Customer any sanction, exclusion or debarment of Qualtrics' or of any its owners, officers, directors, employees, or agents under Medicare, Medicaid, or any other state or federal program;
- (i) It is the developer and sole owner of the Software, and the Software and any Deliverables do not infringe any third party's intellectual property rights, except to the extent such infringement results from (1) content uploaded to or collected into the Software by Customer or a third party acting under Customer's license, (2) Qualtrics' compliance with instructions or specifications provided by Customer, or (3) the combination of the Software or any Deliverables with other content, services, or products not supplied by Qualtrics;
- (j) During the term of this Agreement and during any Order term, the Software will materially conform to the requirements of this Agreement and the applicable specifications.

**Section 7.3 Limitation of Warranties.** EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, AND MERCHANTABILITY, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND EXHIBIT B, ALL SERVICES PROVIDED BY QUALTRICS HEREUNDER ARE STRICTLY ON AN "AS IS" BASIS, AND QUALTRICS DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS, OR COVENANTS WITH RESPECT TO ANY THIRD-PARTY CONTENT OR PRODUCTS, EXPRESS OR IMPLIED.

**SECTION 8 CONFIDENTIAL INFORMATION**

**Section 8.1 Definitions.** As used herein, "**Recipient**" means the Party receiving Confidential Information from the other Party; "**Discloser**" means the Party providing Confidential Information to the

other Party; and “**Confidential Information**” means the Data and any other information, written or oral, that should reasonably be expected by the Recipient to be confidential. Confidential Information does not include information which (a) becomes generally available to the public in any manner or form through no fault of Recipient or its employees, agents or representatives, but only from the date that it becomes so available, (b) was rightfully in possession of Recipient without obligation of confidentiality prior to receipt thereof from Discloser, (c) is independently developed by Recipient without benefit of any Confidential Information, (d) is rightfully received by Recipient from another source on a non-confidential basis, (e) is released for disclosure with Discloser’s prior written consent, or (f) is subject to disclosure pursuant to the California Public Records Act.

**Section 8.2 Use and Disclosure.** Recipient shall keep the Confidential Information of Discloser confidential and not disclose to any person or use for any purpose, except as expressly permitted by this Agreement, any Confidential Information of Discloser, except that Recipient may disclose Confidential Information to those employees, independent contractors, and advisors who have a need to know such information for Recipient to perform its obligations or exercise its rights hereunder, and who are bound to keep such information confidential. Recipient shall give Discloser’s Confidential Information at least the same level of protection as Recipient gives its own Confidential Information of similar nature, but not less than a reasonable level of protection. Upon written request from Discloser and subject to any legal obligation to preserve Confidential Information (e.g., litigation hold), Recipient shall promptly return or destroy all Confidential Information (other than Data), except that Recipient is not required to return or destroy copies of any electronic records or files containing the Confidential Information that have been created pursuant to automatic archiving or back-up procedures and that would be unreasonably burdensome to return or destroy. Recipient may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, on the condition that the Recipient, (a) to the extent permitted by law, gives the Discloser reasonable notice to allow the Discloser to seek a protective order or other appropriate remedy, (b) discloses only such information as is required by the governmental entity or otherwise required by law, and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

**Section 8.3 Injunctive Relief.** Because money damages may not be a sufficient remedy for any breach of the obligations in this Section 8, Discloser is entitled to seek specific injunctive relief as a remedy for any such breach.

## **SECTION 9 INDEMNIFICATION; LIMITATION OF LIABILITY**

**Section 9.1** EXCEPT FOR THE PARTIES’ RESPECTIVE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, (I) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY TO THE OTHER PARTY IN ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, PERTAINING TO ANY SERVICES PROVIDED HEREUNDER, EXCEED THE AMOUNT EQUAL TO THE TOTAL FEES PAID TO QUALTRICS BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE WARRANTIES STATED IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**Section 9.2** Qualtrics agrees to indemnify, defend and hold harmless Customer and its affiliates and their respective officers, agents, and employees, with respect to any actual third party claim, expense (including reasonable attorneys’ fees), liability, loss, fine or damages, in any way arising out of or in connection with: (i) any personal injury or damage to real or tangible personal property caused or incurred by Qualtrics or its personnel; (ii) the infringement, misappropriation, or other violation of a third party’s intellectual

property rights; and (iii) the grossly negligent acts or omissions or willful misconduct of Qualtrics or its personnel. Notwithstanding the foregoing, Qualtrics shall have no indemnity obligation for intellectual property infringement claims arising from (i) specifications provided by Customer; (ii) use of the Customer intellectual property or Qualtrics intellectual property in combination with software and/or hardware that is not approved or provided by Qualtrics; or (iii) Customer's failure to implement an update or enhancement to the Customer intellectual property and/or Qualtrics intellectual property, provided Qualtrics provides the update or enhancement free of charge and provides Customer with notice that implementing the update or enhancement would avoid the infringement.

**Section 9.3** Customer agrees to indemnify, defend and hold harmless Qualtrics and its affiliates and their respective officers, agents, and employees, with respect to any actual third party claim, expense (including reasonable attorneys' fees), liability, loss, fine or damages, in any way arising out of or in connection with: (i) the negligent acts or omissions or willful misconduct of Customer or its personnel; (ii) Customer's unauthorized use of the Software in connection with this Agreement; (iii) any personal injury or damage to real or tangible personal property caused or incurred by Customer or its personnel; (iv) any issues caused by Software where a maintenance contract was offered by Qualtrics but terminated by Customer; and (v) the infringement, misappropriation, or other violation of a third party's intellectual property rights.

**Section 9.4** The indemnified party shall give the indemnifying party prompt notice of any indemnified claims, permit the indemnifying party to control the defense and settlement of such claims, and reasonably cooperate with the indemnifying party in connection with the defense and settlement of such claims; provided, that settlements shall require prior approval by the indemnitee.

**Section 9.5** Except for Qualtrics' Indemnification obligation set forth herein, Customer's sole remedy and Qualtrics' sole liability for Qualtrics' breach of **Error! Reference source not found.**, Qualtrics shall, at its option and sole cost and expense: (1) obtain the right for Customer to continue to use the Software or Deliverables as licensed by this Agreement; (2) modify or replace the Software or Deliverables, in whole or in part, to seek to make the Software or Deliverables (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software or Deliverables under this Agreement; or (3) if in Qualtrics' discretion the options set forth in clauses (1) and (2) are not commercially reasonable, by notice to Customer, terminate this Agreement and any applicable Orders with respect to all or part of the Services, and require Customer to immediately cease any use of the Services or any specified part or feature thereof, in which case Qualtrics shall refund to Customer a prorated portion of Customer's prepaid unused fees for the discontinued features of the Services.

## SECTION 10 GENERAL

**Section 10.1 Choice of Law and Jurisdiction.** This Agreement, any Order, and all claims arising out of or related thereto will be governed by the laws of the United States of America and the State of California, without reference to rules governing choice of law. Except for the right of either party to apply to any court for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any dispute that arises between the Parties concerning this Agreement or any Order, forum and venue will be laid exclusively in the state and federal courts located nearest to San Francisco, California exclusive jurisdiction over any dispute concerning this Agreement or any Order. The Parties hereby consent to the personal jurisdiction of such courts and expressly waive all defenses of lack of personal jurisdiction and forum non-conveniens and agree that process may be served on either Party in a manner authorized by applicable law or court rule. The Parties hereby expressly disclaim the application of the Uniform Computer Information Transaction Act and the United Nations Convention on the International Sale of Goods to this Agreement or any Order.

**Section 10.2 Force Majeure.** Neither Party will be liable for any delays in, or failures of, performance under this Agreement or any Order, except for payments, to the extent that performance of such Party's

obligations or attempts to cure any breach under this Agreement or any Order are delayed or prevented as a result of any event or circumstance beyond the reasonable control of such Party ("**Force Majeure Event**"), except that the other Party may terminate this Agreement or any affected Order upon 30 days' notice if the circumstances causing non-performance can reasonably be expected to continue for more than one calendar month.

**Section 10.3 Entire Agreement; Amendment; Counterparts.** This Agreement, the attached Exhibits, and each Order executed hereunder, constitute the entire agreement between the Parties concerning the subject matter hereof and thereof and supersede all written or oral prior agreements or understandings with respect thereto, including any proposals, price quotes, click-wrap agreements, purchase order terms and conditions or non-disclosure agreements. All Exhibits and Orders are hereby incorporated into this Agreement as if set forth herein in full. If the terms of this Agreement conflict with the terms of any Exhibit, Order, or other document binding and applicable to the Parties, the terms of this Agreement control unless expressly stated otherwise. This Agreement, the attached Exhibits, and each Order may not be amended except in writing signed by authorized representatives of both Parties. This Agreement or any Order may be executed by the Parties electronically and in counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

**Section 10.4 Language.** This Agreement, the attached Exhibits, and each Order have been prepared and written in English. Any non-English translation thereof is provided for convenience only and is not valid or legally binding.

**Section 10.5 Construction.** The Parties intend this Agreement and each Order to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Unless the context requires otherwise, as used herein, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation," (b) the word "or" is not exclusive, and (c) the words "herein," "hereof," "hereto," "hereunder," and similar words refer to this Agreement as a whole.

**Section 10.6 Severability.** If any one or more of the provisions of this Agreement or any Order is held invalid, illegal, or unenforceable, such invalid, illegal, or unenforceable provision will be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remaining provisions contained herein or therein will not in any way be affected or impaired.

**Section 10.7 Waiver.** Neither Party's failure to enforce strict performance of any provision of this Agreement or any Order will constitute a waiver of a right to subsequently enforce such a provision. No modification, extension, or waiver of this Agreement or any Order will be valid unless made in writing and signed by an authorized representative of the Party to be charged. No written waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement or any Order.

**Section 10.8 Assignment.** Neither Party may assign this Agreement or any Order, by operation of law or otherwise, without the prior written consent (not to be unreasonably withheld or delayed) of the other Party, except that either Party may assign this Agreement without consent to (a) an affiliate of such Party or (b) its successor in a merger, acquisition, or other change of control, including the sale of all or substantially all of its assets, stock, or business to which this Agreement or the applicable Order relates, in each case on the condition that the assignee is not a direct competitor of the non-assigning Party. Qualtrics may use subcontractors to perform certain portions of the Services, but Qualtrics remains responsible for any subcontractor's performance hereunder.

**Section 10.9 No Agency.** Neither this Agreement nor any Order will be construed to create an agency, franchise, representative, joint venture, employment relationship, or partnership between the Parties. The Parties are and remain independent contractors. Neither Party has the authority to bind the other or to incur any liability or otherwise act on behalf of the other.



# Master Services Agreement

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**Section 10.10 Survival.** Each Party's obligation under Section 6.5, Section 7.3, Section 8, Section 9, and Section 10 will survive the Term or termination of this Agreement for a period of two years, except that Qualtrics' obligations related to the storage and protection of Data will continue perpetually with respect to any Data that has not been permanently destroyed within its Service.


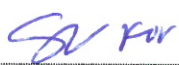
**Section 10.11 Cumulative Remedies.** Except as expressly set forth herein or in any Order, the rights and remedies provided hereunder are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity or otherwise.

**Section 10.12 Notices.** Each Party shall cause all notices it delivers to the other Party hereunder and under each Order to be in writing and sent (a) by a delivery service with provisions for a receipt, to the physical address listed on the signature page hereto; or (b) by email to [notice@qualtrics.com](mailto:notice@qualtrics.com) for notices going to Qualtrics, or to the email address listed for Customer in the applicable Order for notices going to Customer. Except as otherwise provided herein, any notice or other communication is effective only (1) upon receipt (or rejection) by the receiving Party and (2) if the Party giving notice has complied with the requirements of this Section.

**Section 10.13 No Third-Party Beneficiaries.** Except as otherwise set forth herein, this Agreement is for the sole benefit of the Parties and their permitted successors and assigns, and nothing herein is intended to or should confer upon any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever.

**Section 10.14 Export Controls.** Qualtrics provides services and uses software and technology that may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access to or use of any Service in a U.S. embargoed country or in violation of any U.S. export law or regulation.

The Parties have executed this Master Services Agreement as of the Effective Date.

Qualtrics, LLC	Customer
By: 	By: 
Name: Mark Creer	Name: Elsa Jimenez
Title: Managing Counsel	Title: Director of Health
Date: March 13, 2019	Date: 04/30/2019
Address: Qualtrics, LLC Attn: Legal Department 333 W River Park Dr. Provo, UT 84604 United States	Address: Monterey County Health Dept. 1270 Natividad Road Salinas, CA 93906

## Attachments:

Exhibit A: Insurance Coverage

Exhibit B: Service Level Agreement/Incident Response

Reviewed as to fiscal provisions

Auditor-Controller  
County of Monterey

3/28/19

APPROVED AS TO FORM

Stacy Vaello



## Insurance

Qualtrics shall at its own expense secure and continuously maintain throughout the Term the following insurance with companies qualified to do business in the jurisdiction in which the services will be performed and rating A-VII or better in the current Best's Insurance Reports published by A.M. Best Company.

1. Worker's Compensation Insurance, which shall fully comply with the statutory requirements of all applicable state and federal laws.
2. Commercial General Liability Insurance with a combined single limit of liability of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, death, property damage, personal injury, and products.
3. Business Automobile Liability Insurance covering all owned and non-owned and hired vehicles used by Qualtrics with a combined single limit of liability of \$1,000,000 for injury and/or death and/or property damage.
4. Excess (Umbrella) coverage with respect to Sections 1, 2, and 3 above with a per occurrence limit of \$5,000,000.
5. Cyber and Errors and Omissions (Professional Liability) Insurance with limit of \$5,000,000, covering liabilities arising from a) product or service financial injury caused by a product or service defect or performance failure; b) technology-related injury caused by any errors or omissions and all series of continuous, repeated or related acts, errors or omissions; and c) breach mitigation and notification expenses related to a privacy breach. Coverage also includes reasonable legal litigation expenses.
6. Crime Insurance (Employee Dishonesty) with limit of \$1,000,000.

## Exhibit B

### Qualtrics Incident Response and Service Levels

#### Service Levels

1. **Availability.** Qualtrics will use commercially reasonable efforts to ensure that the Subscription Services will be available at all times, excluding when the Subscription Services are unavailable due to (a) required system maintenance as determined by Qualtrics ("**Scheduled Maintenance**"); and (b) causes outside of the reasonable control of Qualtrics that could not have been avoided by its exercise of due care, including any outages caused by: (i) the Internet in general; (ii) a Customer-caused event; or (iii) any Force Majeure Event ("**Availability**").
2. **Scheduled Maintenance.** A minimum of five days' advance notice will be provided by email to Customer for all Scheduled Maintenance exceeding two hours. For Scheduled Maintenance lasting less than two hours, notice will be displayed on the login page.
3. **Downtime.** "**Downtime**" is defined as the Subscription Services having no Availability, expressed in minutes.
4. **Remedies for Downtime.** If Downtime exceeds a certain amount per month, Customer will be entitled, upon written request, to a credit ("**Fee Credit**") based on the formula: Fee Credit = Fee Credit Percentage set forth below \* (1/12 current annual Fees paid for Software affected by Downtime). All times listed immediately below are per calendar month.
  - a. If Downtime is 30 minutes or less, no Fee Credit Percentage is awarded.
  - b. If Downtime is from 31 to 120 minutes, Customer is eligible for a Fee Credit Percentage of 5%.
  - c. If Downtime is from 121 to 240 minutes, Customer is eligible for a Fee Credit Percentage of 7.5%.
  - d. If Downtime is 241 minutes or greater, Customer is eligible for a Fee Credit Percentage of 10.0%
  - e. If, in each of three consecutive months, (i) Downtime is 241 minutes or greater or (ii) Scheduled Maintenance is greater than 8 hours, Customer is eligible for a pro-rated refund and may terminate this Agreement for cause.
5. **Fee Credits.** Except as specified in Section 4.e. above, Fee Credits will be Customer's sole and exclusive remedy if Qualtrics fails to meet the Service Levels. Fee Credits will be applied to Customer's next invoice.

#### Incident Response

1. An "**Incident**" is declared by Qualtrics when any of the following occurs:
  - a. A malfunction, disruption, or unlawful use of the Services;
  - b. The loss or theft of Data from the Services;
  - c. Unauthorized access to Data, information storage, or a computer system; or
  - d. Material delays or the inability to use the Services.
2. An Incident involving the loss or unauthorized access of Data, not due to Customer's errors or omissions, will always be categorized as Code Red. In such a case, Customer will be notified as expeditiously as possible after a disclosure is discovered. Qualtrics will conduct a formal investigation and will deliver an official written report to Customer within two weeks of the Incident.
3. Incidents are prioritized as set forth in the Incident Level Table below.

## Exhibit B

**Incident Level Table**

<b>Incident Level</b>	<b>Typical Conditions</b>	<b>Resolution Response</b>
4	A minor issue affecting an individual user that may not be reproducible.	Addressed by support team for workaround or other resolution.
3	The problem is reproducible and has an impact on usability of the product, though a workaround exists to garner full functionality.	Addressed in a subsequent release in a reasonable timeframe.
2	A product is effectively unusable on a widespread basis; survey taking experience significantly affected.	Corrected as expeditiously as possible after code is developed and tested.
Code Red	Loss of a key functionality or access to Service. Data loss due to unauthorized access. A suspected/actual data breach or security threat. Survey taking severely hindered or impossible.	Full engineering efforts directed toward resolution. After hours, Engineer-on-call will be contacted and will work nonstop until resolution is met.